

1985-86

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 22 May 1986

(*Treasurer*)

**A BILL**

FOR

**An Act to amend the *Income Tax (Rates) Act 1982***

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title, &c.**

5     **1.** (1) This Act may be cited as the *Income Tax (Rates) Amendment (Capital Gains) Act 1986*.

      (2) The *Income Tax (Rates) Act 1982*<sup>1</sup> is in this Act referred to as the Principal Act.

**Commencement**

10     **2.** This Act shall come into operation on the day on which it receives the Royal Assent.

**Interpretation**

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “Assessment Act” in sub-section (1) the following definitions:

“ ‘capital gains component’ means—

(a) in relation to the taxable income of a taxpayer of a year of income—

(i) if the taxable income is equal to or less than the amount (if any) included in the assessable income of the taxpayer of the year of income under section 160ZO of the Assessment Act—the whole of the taxable income; or

(ii) in any other case—so much of the taxable income as equals the amount (if any) included in the assessable income of the taxpayer of the year of income under section 160ZO of the Assessment Act; and

(b) in relation to the net income, or a share or part of the net income, of a trust estate of a year of income (which net income, share or part, as the case may be, is in this paragraph referred to as the ‘eligible net income’)—

(i) if the eligible net income is equal to or less than so much of the amount (if any) included in the assessable income of the trust estate of the year of income under section 160ZO of the Assessment Act as relates to the eligible net income—the whole of the eligible net income; or

(ii) in any other case—so much of the eligible net income as equals so much of the amount (if any) included in the assessable income of the trust estate of the year of income under section 160ZO of the Assessment Act as relates to the eligible net income;

‘eligible part’ means—

(a) in relation to the capital gains component of the taxable income of a taxpayer—so much of the capital gains component as is eligible taxable income for the purposes of Division 6AA of Part III of the Assessment Act; and

(b) in relation to the capital gains component of the net income, or of a share or part of the net income, of a trust estate—so much of the capital gains component as is net income to which Division 6AA of Part III of the Assessment Act applies;”;

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- (b) by inserting after the definition of “prescribed unit trust” in subsection (1) the following definitions:

5 “‘reduced notional income’, in relation to a taxpayer deriving a notional income in the year of income, as specified in section 59AB, 86 or 158D of the Assessment Act, means the amount that would be that notional income if that notional income had been calculated by reference to the reduced taxable income instead of by reference to the taxable income;

10 ‘reduced share’, in relation to a share of a beneficiary of the net income of a trust estate, means the part (if any) of that share other than the capital gains component;

‘reduced taxable income’ means the part (if any) of the taxable income other than the capital gains component;” and

- 15 (c) by omitting paragraph (2) (a) and substituting the following paragraph:

20 “(a) a reference to net income, taxable income, reduced notional income or reduced taxable income shall be read as a reference to net income, taxable income, reduced notional income or reduced taxable income, as the case may be, of the year of income; and”.

#### **Amendments of Schedule 19**

4. Schedule 19 to the Principal Act is amended—

(a) by omitting from Part I “The rate of tax” and substituting “1. Subject to clauses 2 and 3, the rate of tax”;

- 25 (b) by adding at the end of Part I the following clauses:

“2. Where—

(a) the taxable income of a resident taxpayer consists of or includes a capital gains component; and

30 (b) Division 16 of Part III of the Assessment Act does not apply to the income of the taxpayer,

the rate of tax for every \$1 of the taxable income is the amount ascertained in accordance with the formula  $\frac{A+B}{C}$ , where—

35 **A** is the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the reduced taxable income;

**B** is 5 times the difference between—

- 40 (c) the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the sum of—

(i) the reduced taxable income; and

(ii) 20% of the capital gains component of the taxable income; and

- (d) the amount represented by component A; and

**C** is the number of whole dollars in the taxable income.

“3. Where—

(a) the taxable income of a resident taxpayer consists of or includes a capital gains component; and

(b) Division 16 of Part III of the Assessment Act applies to the income of the taxpayer, 5

the rate of tax for every \$1 of the taxable income is the amount ascertained in accordance with the formula  $\frac{A+B}{C}$ , where—

**A** is the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the reduced taxable income; 10

**B** is 5 times the difference between—

(c) the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the sum of— 15

(i) the average income; and

(ii) 20% of the capital gains component of the taxable income; and

(d) the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the average income; and 20

**C** is the number of whole dollars in the taxable income.”;

(c) by omitting from Part II “The rate of tax” and substituting “1. Subject to clauses 2 and 3, the rate of tax”; and 25

(d) by adding at the end of Part II the following clauses:

“2. Where—

(a) the taxable income of a non-resident taxpayer consists of or includes a capital gains component; and

(b) Division 16 of Part III of the Assessment Act does not apply to the income of the taxpayer, 30

the rate of tax for every \$1 of the taxable income is the amount ascertained in accordance with the formula  $\frac{A+B}{C}$ , where—

**A** is the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the reduced taxable income; 35

**B** is 5 times the difference between—

(c) the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the sum of— 40

(i) the reduced taxable income; and

(ii) 20% of the capital gains component of the taxable income; and

(d) the amount represented by component A; and

C is the number of whole dollars in the taxable income.

“3. Where—

(a) the taxable income of a non-resident taxpayer consists of or includes a capital gains component; and

(b) Division 16 of Part III of the Assessment Act applies to the income of the taxpayer,

the rate of tax for every \$1 of the taxable income is the amount ascertained in accordance with the formula  $\frac{A+B}{C}$ , where—

A is the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the reduced taxable income;

B is 5 times the difference between—

(c) the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the sum of—

(i) the average income; and

(ii) 20% of the capital gains component of the taxable income; and

(d) the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the average income; and

C is the number of whole dollars in the taxable income.”.

## Amendments of Schedule 21

5. Schedule 21 to the Principal Act is amended—

(a) by omitting from Part I “For every \$1” and substituting “1. Subject to clause 2, for every \$1”;

(b) by adding at the end of Part I the following clause:

“2. For every \$1 of the taxable income of a resident taxpayer—

(a) who derives a notional income, as specified by section 59AB, 86 or 158D of the Assessment Act; and

(b) whose taxable income consists of or includes a capital gains component,

the rate of tax is the amount ascertained in accordance with the formula  $\frac{A+B}{C}$ , where—

A is the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the reduced taxable income;

**B** is 5 times the difference between—

(c) the amount of tax that would be payable by the taxpayer under clause 1 of Part I of Schedule 19 on a taxable income equal to the sum of—

(i) the reduced notional income; and

(ii) 20% of the capital gains component of the taxable income; and

(d) the amount of tax that would be payable by the taxpayer under clause 1 of Part I of Schedule 19 on a taxable income equal to the reduced notional income; and

**C** is the number of whole dollars in the taxable income.”;

(c) by omitting from Part II “For every \$1” and substituting “1. Subject to clause 2, for every \$1”;

(d) by adding at the end of Part II the following clause:

“2. For every \$1 of the taxable income of a non-resident taxpayer—

(a) who derives a notional income, as specified by section 59AB, 86 or 158D of the Assessment Act; and

(b) whose taxable income consists of or includes a capital gains component,

the rate of tax is the amount ascertained in accordance with the formula  $\frac{A+B}{C}$ , where—

**A** is the amount of tax that would be payable by the taxpayer under clause 1 on a taxable income equal to the reduced taxable income;

**B** is 5 times the difference between—

(c) the amount of tax that would be payable by the taxpayer under clause 1 of Part II of Schedule 19 on a taxable income equal to the sum of—

(i) the reduced notional income; and

(ii) 20% of the capital gains component of the taxable income; and

(d) the amount of tax that would be payable by the taxpayer under clause 1 of Part II of Schedule 19 on a taxable income equal to the reduced notional income; and

**C** is the number of whole dollars in the taxable income.”.

### Amendments of Schedule 23

6. Schedule 23 to the Principal Act is amended—

(a) by inserting in clauses 1 and 2 of Part I “and whose taxable income does not consist of or include a capital gains component” after “Assessment Act exceeds \$416”;

(b) by adding at the end of Part I the following clause:

“3. For every \$1 of the taxable income of a resident taxpayer—

(a) whose eligible taxable income for the purposes of Division 6AA of Part III of the Assessment Act exceeds \$416; and

(b) whose taxable income consists of or includes a capital gains component,

the rate of tax is the amount ascertained in accordance with the formula  $\frac{A+B+C}{D}$ , where—

**D**

**A** is the amount of tax that would be payable by the taxpayer under clauses 1 and 2 on a taxable income equal to the reduced taxable income;

**B** is 5 times the difference between—

(c) the amount of tax that would be payable by the taxpayer under clause 1 of Part I of Schedule 19 on a taxable income equal to the sum of—

(i) whichever of the following amounts is applicable:

(A) where Division 16 of Part III of the Assessment Act applies—the average income;

(B) where any part of the amount represented by component A was calculated by reference to Schedule 21—the reduced notional income;

(C) where neither sub-sub-paragraph (A) nor sub-sub-paragraph (B) applies—the reduced taxable income; and

(ii) 20% of the part of the capital gains component other than the eligible part of the capital gains component; and

(d) the amount of tax that would be payable by the taxpayer under clause 1 of Part I of Schedule 19 on a taxable income equal to the average income, reduced notional income or reduced taxable income, as the case may be;

**C** is—

(e) 5 times the difference between—

(i) the amount of tax that would be payable by the taxpayer under clause 1 of Part I of Schedule 19 on a taxable income equal to the sum of—

(A) the reduced taxable income; and

(B) 20% of the capital gains component; and

- (ii) the amount of tax that would be payable by the taxpayer under clause 1 of Part I of Schedule 19 on a taxable income equal to the sum of—
  - (A) the reduced taxable income; and
  - (B) 20% of the part of the capital gains component other than the eligible part of the capital gains component; or
  - (f) 46% of the eligible part of the capital gains component, whichever is the greater; and
- D** is the number of whole dollars in the taxable income.”;
- (c) by inserting in clauses 1 and 2 of Part II “and whose taxable income does not consist of or include a capital gains component” after “Assessment Act”; and
- (d) by adding at the end of Part II the following clause:
  - “3. For every \$1 of the taxable income of a non-resident taxpayer—
    - (a) who has an eligible taxable income for the purposes of Division 6AA of Part III of the Assessment Act; and
    - (b) whose taxable income consists of or includes a capital gains component,the rate of tax is the amount ascertained in accordance with the formula  $\frac{A+B+C}{D}$ , where—
  - A** is the amount of tax that would be payable by the taxpayer under clauses 1 and 2 on a taxable income equal to the reduced taxable income;
  - B** is 5 times the difference between—
    - (c) the amount of tax that would be payable by the taxpayer under clause 1 of Part II of Schedule 19 on a taxable income equal to the sum of—
      - (i) whichever of the following amounts is applicable:
        - (A) where Division 16 of Part III of the Assessment Act applies—the average income;
        - (B) where any part of the amount represented by component A was calculated by reference to Schedule 21—the reduced notional income;
        - (C) where neither sub-sub-paragraph (A) nor sub-sub-paragraph (B) applies—the reduced taxable income; and
      - (ii) 20% of the part of the capital gains component other than the eligible part of the capital gains component; and



(d) the amount of tax that would be payable by the taxpayer under clause 1 of Part II of Schedule 19 on a taxable income equal to the average income, reduced notional income or reduced taxable income, as the case may be;

C is—

(e) 5 times the difference between—

(i) the amount of tax that would be payable by the taxpayer under clause 1 of Part II of Schedule 19 on a taxable income equal to the sum of—

(A) the reduced taxable income; and

(B) 20% of the capital gains component; and

(ii) the amount of tax that would be payable by the taxpayer under clause 1 of Part II of Schedule 19 on a taxable income equal to the sum of—

(A) the reduced taxable income; and

(B) 20% of the part of the capital gains component other than the eligible part of the capital gains component; or

(f) 46% of the eligible part of the capital gains component, whichever is the greater; and

D is the number of whole dollars in the taxable income.”.

### Amendments of Schedule 24

7. Schedule 24 to the Principal Act is amended—

(a) by inserting in clauses 1 and 2 of Part I “and that share does not consist of or include a capital gains component” before “, the rates of tax”;

(b) by adding at the end of Part I the following clause:

“3. In the case of a trustee of a trust estate who is liable to be assessed and to pay tax in pursuance of section 98 of the Assessment Act in respect of a share of a resident beneficiary of the net income of the trust estate where—

(a) Division 6AA of Part III of that Act applies to a part of that share; and

(b) that share consists of or includes a capital gains component, the rate of tax for every \$1 of that share is the amount ascertained in accordance with the formula  $\frac{A+B+C}{D}$ , where—

A is the amount of tax that would be payable by the trustee under clauses 1 and 2 on the reduced share;

**B** is 5 times the difference between—

- (c) the amount of tax that would be payable under clause 1 of Part I of Schedule 19 on a taxable income equal to the sum of—
  - (i) whichever of the following amounts is applicable: 5
    - (A) where Division 16 of Part III of the Assessment Act applies—the average income;
    - (B) where any part of the amount represented by component A was calculated by reference to Schedule 21—the reduced notional income; 10
    - (C) where neither sub-sub-paragraph (A) nor sub-sub-paragraph (B) applies—the reduced share; and 15
  - (ii) 20% of the part of the capital gains component other than the eligible part of the capital gains component, 20  
if one individual were liable to be assessed and to pay tax on that income; and
- (d) the amount of tax that would be payable under clause 1 of Part I of Schedule 19 on a taxable income equal to the average income, reduced notional income or reduced share, as the case may be, if one individual were liable to be assessed and to pay tax on that income; 25

**C** is—

- (e) 5 times the difference between—
  - (i) the amount of tax that would be payable under clause 1 of Part I of Schedule 19 on a taxable income equal to the sum of— 30
    - (A) the reduced share; and
    - (B) 20% of the capital gains component, 35  
if one individual were liable to be assessed and to pay tax on that income; and
  - (ii) the amount of tax that would be payable under clause 1 of Part I of Schedule 19 on a taxable income equal to the sum of— 40
    - (A) the reduced share; and
    - (B) 20% of the part of the capital gains component other than the eligible part of the capital gains component, 40  
if one individual were liable to be assessed and to pay tax on that income; or
- (f) 46% of the eligible part of the capital gains component,

whichever is the greater; and

**D** is the number of whole dollars in the share.”;

- 5 (c) by inserting in clauses 1 and 2 of Part II “and that share does not consist of or include a capital gains component” before “, the rates of tax”; and
- (d) by adding at the end of Part II the following clause:

10 “3. In the case of a trustee of a trust estate who is liable to be assessed and to pay tax in pursuance of section 98 of the Assessment Act in respect of a share of a non-resident beneficiary of the net income of the trust estate where—

(a) Division 6AA of Part III of that Act applies to a part of that share; and

15 (b) that share consists of or includes a capital gains component, the rate of tax for every \$1 of that share is the amount ascertained in accordance with the formula  $\frac{A+B+C}{D}$ , where—

**A** is the amount of tax that would be payable by the trustee under clauses 1 and 2 on the reduced share;

**B** is 5 times the difference between—

20 (c) the amount of tax that would be payable under clause 1 of Part II of Schedule 19 on a taxable income equal to the sum of—

(i) whichever of the following amounts is applicable:

25 (A) where Division 16 of Part III of the Assessment Act applies—the average income;

(B) where any part of the amount represented by component A was calculated by reference to Schedule 21—the reduced notional income;

30 (C) where neither sub-sub-paragraph (A) nor sub-sub-paragraph (B) applies—the reduced share; and

35 (ii) 20% of the part of the capital gains component other than the eligible part of the capital gains component,

if one individual were liable to be assessed and to pay tax on that income; and

40 (d) the amount of tax that would be payable under clause 1 of Part I of Schedule 19 on a taxable income equal to the average income, reduced notional income or reduced share, as the case may be, if one individual were liable to be assessed and to pay tax on that income;

C is—

(e) 5 times the difference between—

(i) the amount of tax that would be payable under clause 1 of Part II of Schedule 19 on a taxable income equal to the sum of—

(A) the reduced share; and

(B) 20% of the capital gains component, if one individual were liable to be assessed and to pay tax on that income; and

(ii) the amount of tax that would be payable under clause 1 of Part II of Schedule 19 on a taxable income equal to the sum of—

(A) the reduced share; and

(B) 20% of the part of the capital gains component other than the eligible part of the capital gains component,

if one individual were liable to be assessed and to pay tax on that income; or

(f) 46% of the eligible part of the capital gains component, whichever is the greater; and

D is the number of whole dollars in the share.”.

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**NOTE**

1. No. 105, 1982, as amended. For previous amendments, see Nos. 15 and 104, 1983; No. 98, 1984; and No. 173, 1985.