

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**TAXATION (UNPAID COMPANY TAX) ASSESSMENT  
AMENDMENT BILL 1985**

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CONSEQUENTIAL AMENDMENTS

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Presented and read a first time, 27 March 1985

(*Treasurer*)

## A BILL

FOR

### **An Act to amend the *Taxation (Unpaid Company Tax) Assessment Act 1982*, and for related purposes**

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 *Taxation (Unpaid Company Tax) Assessment Amendment Act 1985*.

**(2)** The *Taxation (Unpaid Company Tax) Assessment 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.

**Title**

3. The title of the Principal Act is amended by omitting “company” and substituting “income”.

**Short title**

4. Section 1 of the Principal Act is amended by omitting “*Taxation (Unpaid Company Tax)*” and substituting “*Recoupment Tax*”. 5

**Interpretation**

5. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “distribution of corpus” in sub-section (1) the following definitions: 10

“ ‘dividend amount’, in relation to a person, means an amount that is a primary dividend amount or a secondary dividend amount in relation to the person;

‘dividend recoupment tax’ means tax assessed under this Act and imposed by the *Dividend Recoupment Tax Act 1985*;” 15

(b) by inserting after the definition of “prescribed distribution period” in sub-section (1) the following definitions:

“ ‘prescribed person’, in relation to a scheme under which shares in a company or companies were sold, means—

(a) a natural person, not being a person in the capacity of trustee of a trust estate; 20

(b) a person (other than a person referred to in paragraph (c)) in respect of whom a relevant exempting provision applied in relation to the year of income in which the prescribed time in relation to the person occurred; 25

(c) a person in the capacity of trustee of a trust estate, being a trust estate that is a provident, benefit, superannuation or retirement fund; or

(d) a company that is, by virtue of the application of paragraph 103A (2) (c) or sub-paragraph 103A (2) (d) (i), (iii) or (iv) of the Assessment Act, a public company for the purposes of Division 7 of Part III of that Act in relation to the year of income in which the prescribed time in relation to the company occurred; 30

‘prescribed time’, in relation to a person in relation to a scheme under which shares in a company or companies were sold, means— 35

(a) in a case to which neither paragraph (b) nor paragraph (c) applies—the last sale time;

(b) in the case of a person being a company or the trustee of a trust estate, being a company or trust estate that did not exist at the last sale time—the time when the company or trust estate commenced to exist; or 40

(c) in the case of a natural person who was born after the last sale time, not being a person in the capacity of trustee of a trust estate—the time when the person was born;

5 ‘primary dividend amount’, in relation to a person, means an amount that is a primary dividend amount in relation to the person under section 5A;”;

(c) by omitting from sub-section (1) the definition of “promoters recoupment tax” and substituting the following definition:

10 “‘promoters recoupment tax’ means tax assessed under this Act and imposed by the *Promoters Recoupment Tax Act 1982*;”;

(d) by omitting from sub-section (1) the definition of “recoupment tax” and substituting the following definitions:

15 “‘recoupment tax’ means promoters recoupment tax, vendors recoupment tax or dividend recoupment tax;

‘relevant exempting provision’ has the same meaning as in Division 9C of Part III of the Assessment Act;”;

(e) by inserting after the definition of “scheme” in sub-section (1) the following definition:

20 “‘secondary dividend amount’, in relation to a person, means an amount that is a secondary dividend amount in relation to the person under section 6A;”;

(f) by omitting from sub-section (1) the definition of “vendors recoupment tax” and substituting the following definition:

25 “‘vendors recoupment tax’ means tax assessed under this Act and imposed by the *Vendors Recoupment Tax Act 1982*;”;

(g) by omitting sub-section (12).

### Application of Assessment Act

6. Section 4 of the Principal Act is amended—

30 (a) by inserting after sub-section (3) the following sub-section:

“(3A) A report by the Commissioner under section 14 of the Assessment Act may—

35 (a) draw attention to the failure of a person to pay vendors recoupment tax or promoters recoupment tax due and payable by the person or to pay late payment tax due and payable by the person in relation to vendors recoupment tax or promoters recoupment tax; and

(b) disclose the identity of the person.”;

40 (b) by omitting paragraph (4) (a) and substituting the following paragraph:

“(a) the disclosure, to a person who is, or in the opinion of the Commissioner is likely to become, liable to pay recoupment tax, or to pay income tax by virtue of the operation of section 6C, 6D, 16 or 17, of information relating to the affairs of

another person where that information was, or in the opinion of the Commissioner is likely to be, taken into account in the assessment of the liability of the first-mentioned person to pay recoupment tax, or to pay income tax by virtue of the operation of section 6C, 6D, 16 or 17, as the case may be; or”;

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- (c) by omitting sub-sections (5) and (6) and substituting the following sub-sections:

“(6) Nothing in section 170 of the Assessment Act prevents the amendment, at any time, of an assessment for the purpose of giving effect to sub-section 5 (4), paragraph 5 (9) (d), sub-section 5A (2), 6 (2) or 6 (18), sub-section 6 (2) in its application in accordance with sub-section 6A (1), sub-section 6A (2), section 6B, 6C, 6D or 6E, sub-section 8 (5), (6) or (7) or section 16 or 17.

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“(6A) Where—

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- (a) at any time an eligible taxable amount or a dividend amount exists or existed, or would, but for paragraphs 5 (1) (f), 5 (2) (f), 7 (1) (e) and 7 (2) (e) exist or have existed, by virtue of the application of this Act in relation to a scheme under which shares in a company or companies were sold, in relation to ordinary company tax or undistributed profits tax payable by a company in relation to a year of income; and

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- (b) by virtue of an amendment of an assessment in relation to ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the year of income, the liability of the company in respect of ordinary company tax or undistributed profits tax, as the case may be, is reduced,

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the Commissioner may, notwithstanding sections 172 and 202 of the Assessment Act—

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- (c) refund the whole or a part of any amount that was overpaid in respect of the ordinary company tax or undistributed profits tax, as the case may be, to a person who paid any of that tax; or
- (d) apply the whole or a part of any amount that was overpaid in respect of the ordinary company tax or undistributed profits tax, as the case may be, against any liability to the Commonwealth of a person who paid any of that tax, being a liability arising under, or by virtue of, this Act or the Assessment Act.

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“(6B) Where—

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- (a) under paragraph (6A) (c) the Commissioner has refunded to a person any amount that was overpaid in respect of ordinary company tax or undistributed profits tax payable by a company in relation to a year of income; or

(b) under paragraph (6A) (d) the Commissioner has applied, against a liability of a person to the Commonwealth, any amount that was overpaid in respect of ordinary company tax or undistributed profits tax payable by a company in relation to a year of income, .

sub-section 9 (4) of the *Taxation (Interest on Overpayments) Act 1983* has no effect, and shall be deemed never to have had any effect, in relation to any payment of ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the year of income that was or is made by the person after 25 July 1982.”.

### Primary taxable amounts

7. Section 5 of the Principal Act is amended—

- (a) by adding at the end of paragraph (1) (g) “and”;
- (b) by omitting paragraph (1) (h);
- (c) by adding at the end of paragraph (2) (g) “and”;
- (d) by omitting paragraph (2) (h);
- (e) by omitting from paragraph (9) (c) “and”;
- (f) by adding at the end of sub-section (9) the following word and paragraph:

“; and (e) where—

(i) before the last sale time, a scheme (in this paragraph referred to as the ‘relevant scheme’) was entered into, and carried out, for the purpose, or for purposes that included the purpose, of securing the result that the company would not be liable to pay ordinary company tax, or would not be liable to pay undistributed profits tax, in relation to the year of income in which the last sale time occurred or a preceding year of income, or would be liable to pay less ordinary company tax or less undistributed profits tax in relation to the year of income in which the last sale time occurred or a preceding year of income than it would have been liable to pay if the relevant scheme had not been entered into; and

(ii) the relevant scheme did not secure that result, it shall be assumed that the ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the year of income would be ascertained on the basis that the relevant scheme had not been entered into.”; and

- (g) by omitting sub-section (15).

8. After section 5 of the Principal Act the following section is inserted:

**Primary dividend amounts**

“5A. (1) Subject to section 6B, where—

(a) at any time (in this section referred to as the ‘relevant time’)—

(i) a primary taxable amount exists; or

(ii) if payments of company tax made after 25 July 1982 were disregarded, a primary taxable amount would exist,

in relation to a person, in relation to a sale of shares or an interest in shares under a scheme, in relation to ordinary company tax payable by a company (in this sub-section referred to as the ‘taxable company’) in relation to a year of income (in this sub-section referred to as the ‘relevant year of income’); and

(b) there is, in relation to the taxable company in relation to the relevant year of income, an amount (in this sub-section referred to as the ‘distributable amount’) of undistributed profits,

a primary dividend amount shall be taken to exist at the relevant time in relation to the person in relation to the relevant year of income and the primary dividend amount is an amount ascertained by multiplying the distributable amount by the factor that is the apportionment factor in relation to the primary taxable amount.

“(2) Where—

(a) a primary dividend amount exists or existed in relation to a person in relation to a sale of shares or an interest in shares under a scheme in relation to an amount of undistributed profits, for the purposes of paragraph (1) (b), in relation to a company in relation to a year of income;

(b) a primary taxable amount does not, or did not, exist at the same time in relation to the person in relation to the sale of shares or the interest in shares in relation to ordinary company tax payable by the company in relation to the year of income; and

(c) the Commissioner, having regard to the circumstances by reason of which the condition specified in paragraph (b) is satisfied, considers it unreasonable that the primary dividend amount should be taken to exist or to have existed in relation to the person,

the primary dividend amount shall not be taken to exist or to have existed in relation to the person.

“(3) For the purposes of the application of paragraph (1) (b) in relation to a sale or sales of shares under a scheme, the amount of undistributed profits in relation to a company in relation to a year of income shall be taken to be the amount (if any) ascertained in accordance with the formula  $I - T$ , where—

**I** is the amount of the taxable income of the company of the year of income; and

**T** is the aggregate of the following amounts:



(a) any amount of ordinary company tax (not including additional tax payable under section 207 of the Assessment Act) that became payable by the company before the relevant time in relation to the year of income; and

(b) any amount of additional tax payable by the company under section 207 of the Assessment Act immediately before the last sale time in respect of ordinary company tax payable by the company in relation to the year of income in a case where no copy of a notice of assessment in respect of the liability of the company to pay ordinary company tax in relation to that year of income is required to be served on a person under sub-section 18 (5).

“(4) For the purposes of the application of sub-section (3) in relation to a sale or sales of shares under a scheme, a reference to the amount of the taxable income of a company of the year of income in which the last sale time occurred shall, if that amount exceeds the amount (in this sub-section referred to as the ‘reduced taxable income’) that would be the taxable income of the company of that year of income if that taxable income had been assessed on the basis that that year of income ended immediately before the last sale time, be read as a reference to the reduced taxable income.

“(5) A primary dividend amount may be taken to exist at a particular time in relation to a company or the trustee of a trust estate, not being a prescribed person, notwithstanding that the company or trust estate has ceased to exist before that time.”.

## Secondary taxable amounts

9. Section 6 of the Principal Act is amended—

(a) by omitting from sub-sections (1), (2), (3), (4), (5), (6), (8), (9) and (10) “immediately before the relevant distribution time” and substituting “at the relevant distribution time”;

(b) by omitting from sub-section (8) “eligible” and substituting “vendors”;

(c) by omitting paragraph (12) (a) and substituting the following paragraph:

“(a) if the vendors taxable amount is a primary taxable amount—

(i) in a case to which sub-paragraph (ii) does not apply—the consideration paid or given in respect of the sale of the shares or the interest in shares to which the primary taxable amount relates; and

(ii) where the primary taxable amount exists in relation to a beneficiary (in this paragraph referred to as the ‘relevant beneficiary’) in a trust estate and the sale of shares or the interest in shares to which the primary taxable amount relates was a sale of shares or an interest in shares by a person who was a bare trustee in respect of

those shares or that interest—the amount ascertained in accordance with the formula **EF**, where—

**E** is the consideration paid or given in respect of the sale of the shares or the interest in shares to which the primary taxable amount relates; and

**F** is—

(A) if the relevant beneficiary was the only beneficiary in the trust estate—the number 1; and 5

(B) if the relevant beneficiary was not the only beneficiary in the trust estate—the interest in the trust estate of the relevant beneficiary expressed as a fraction of the aggregate of the interests in the trust estate of the beneficiaries; and”; and 10

(d) by omitting paragraph (13) (b) and substituting the following paragraph: 15

“(b) in any other case—the time immediately before the time of sale of the shares or interest in shares to which the vendors taxable amount relates.”.

**10.** After section 6 of the Principal Act the following sections are inserted:

**Secondary dividend amounts** 20

“6A. (1) Without prejudice to its effect apart from this section, section 6 (other than sub-section (18)) also has, subject to section 6B, the effect that it would have if—

(a) a reference in section 6 to a primary taxable amount were a reference to a primary dividend amount; 25

(b) a reference in section 6 to a secondary taxable amount were a reference to a secondary dividend amount;

(c) a reference in section 6 to a vendors taxable amount were a reference to a dividend amount;

(d) in paragraphs 6 (3) (c), (d) and (e) “the amount of the recoupment tax” were omitted and “the dividend amount” were substituted; 30

(e) a reference in section 6 to a relevant vendors taxable amount were a reference to a relevant dividend amount;

(f) a reference in section 6 to a prescribed taxable amount were a reference to a prescribed dividend amount; 35

(g) “, or to recoupment tax on which,” and “or that recoupment tax, as the case may be” were omitted from paragraph 6 (12) (b); and

(h) a reference in sub-section 6 (19) to a company or the trustee of a trust estate were a reference to a company or the trustee of a trust estate, not being a prescribed person. 40

“(2) Where—

- 5 (a) a secondary dividend amount exists or existed in relation to a person in relation to a sale of shares or an interest in shares under a scheme in relation to an amount of undistributed profits, for the purposes of paragraph 5A (1) (b), in relation to a company in relation to a year of income;
- 10 (b) a secondary taxable amount does not, or did not, exist at the same time in relation to the person in relation to the sale of shares or the interest in shares in relation to ordinary company tax payable by the company in relation to the year of income; and
- (c) the Commissioner, having regard to the circumstances by reason of which the condition specified in paragraph (b) is satisfied, considers it unreasonable that the secondary dividend amount should be taken to exist or to have existed in relation to the person,

15 the secondary dividend amount shall not be taken to exist or to have existed in relation to the person.

#### **Modification of dividend amounts**

“6B. Where—

- 20 (a) for the purposes of calculating a primary dividend amount or a secondary dividend amount in relation to a person in relation to a sale of shares or an interest in shares under a scheme, the ordinary company tax liability of a company in relation to a year of income is taken into account in ascertaining in accordance with sub-section 5A (3) the amount of undistributed profits in relation to the company in relation to the year of income; and
- 25 (b) after the amount of undistributed profits is ascertained, an assessment in relation to ordinary company tax payable by the company in relation to the year of income is amended,

30 the primary dividend amount or the secondary dividend amount, as the case may be, in relation to the person in relation to the sale of shares or the interest in shares under the scheme in relation to the year of income is the amount that would have been the primary dividend amount or the secondary dividend amount, as the case may be, if the ordinary company tax payable by the company under the amended assessment had been payable by the company

35 under the assessment that was amended.

#### **Dividend deemed to have been paid**

40 “6C. (1) Subject to this section, where a dividend amount exists in relation to a prescribed person in relation to a scheme under which shares in a company or companies were sold, in relation to an amount of undistributed profits, for the purposes of paragraph 5A (1) (b), in relation to a company (in this sub-section referred to as the ‘relevant company’), then, for the purposes of

the Assessment Act other than Division 7 of Part III and Division 4 of Part VI—

(a) the relevant company shall be deemed to have paid to the prescribed person as a shareholder in the company a dividend of an amount equal to the dividend amount; and 5

(b) the dividend—

(i) shall be deemed to have been paid by the relevant company, at the prescribed time in relation to the prescribed person (whether or not the relevant company existed at that time), out of profits derived by the relevant company from sources in Australia; and 10

(ii) shall be deemed not to be a dividend to which sub-section 44 (2) of the Assessment Act applies.

“(2) Where—

(a) a secondary dividend amount exists in relation to a prescribed person by reason of the application of sub-section 6 (3), in its application in accordance with sub-section 6A (1), in relation to an amount of dividend recoupment tax payable by a company or the trustee of a trust estate on a dividend amount (in this sub-section referred to as the ‘relevant dividend amount’); and 15 20

(b) either before or after the secondary dividend amount commenced to exist, an amount or amounts (in this sub-section referred to as the ‘paid amount’ or ‘paid amounts’) of dividend recoupment tax payable by the company or trustee on the relevant dividend amount is or are paid, or an amount or amounts (in this sub-section also referred to as the ‘paid amount’ or ‘paid amounts’) is or are deemed by sub-section 9A (1) to have been applied in reduction of dividend recoupment tax payable by the company or trustee on the relevant dividend amount, 25

the amount of the dividend that is deemed to have been paid to the prescribed person by virtue of this section in relation to the secondary dividend amount is the amount (in this sub-section referred to as the ‘original amount’) that would, but for this sub-section, have been deemed to have been paid to the prescribed person in relation to the secondary dividend amount reduced by so much of the original amount as bears to the original amount the same proportion as the paid amount, or the aggregate of the paid amounts, as the case may be, bears to the amount of the dividend recoupment tax that became payable by the company or trustee on the relevant dividend amount. 30 35

**Request that dividend be deemed to have been paid**

“6D. (1) Subject to sub-section (3), where—

(a) at any time a dividend amount exists in relation to a person (in this section referred to as the ‘taxable entity’), being a company or the trustee of a trust estate but not being a prescribed person, in relation to a sale or sales of shares under a scheme, in relation to an amount of undistributed profits, for the purposes of paragraph 5A (1) (b), in 40

relation to a company (in this section referred to as the 'relevant company'); and

5 (b) if there had been a distribution (in this section referred to as the 'capital distribution'), at the relevant distribution time, of capital or corpus, as the case may be, of the taxable entity, or of the trust estate of which the taxable entity is trustee, as the case may be, of an amount equal to the distribution amount in relation to the dividend amount, a prescribed person, or prescribed persons, would have received, or might reasonably be expected to have received, the whole or a part of the capital distribution if there had been successive distributions of the relative parts of that capital distribution to and by each of any companies or trustees, not being prescribed persons, interposed between the taxable entity and the prescribed person or prescribed persons,

15 the prescribed person or all the prescribed persons, as the case may be, may request that, for the purposes of the Assessment Act other than Division 7 of Part III and Division 4 of Part VI, the relevant company shall be taken to have paid to the prescribed person, or to have paid to the prescribed persons, a dividend of a specified amount or dividends of specified amounts, being an amount equal to, or amounts equal in the aggregate to, the dividend amount.

20 "(2) A request under sub-section (1) shall—

(a) be in writing signed by the person or each of the persons, as the case may be, making the request; and

25 (b) be sent to or lodged with the Commissioner within 30 days after service of the notice of assessment (not being an amended assessment) in relation to the dividend recoupment tax payable on the dividend amount referred to in paragraph (1) (a), or within such further period as the Commissioner allows.

30 "(3) Where a request under sub-section (1) is not made by all the prescribed persons who, but for this sub-section, would be required to make the request and either of the following conditions is satisfied:

(a) the request was not made by all the persons who, but for this sub-section, would be required to make the request by reason that—

35 (i) any of the prescribed persons has died or, being a company, has ceased to exist;

(ii) if any of the prescribed persons was a prescribed person by virtue of being the trustee of a trust estate—the trust estate has ceased to exist; or

(iii) the whereabouts of any of the prescribed persons is not known;

40 (b) the Commissioner is satisfied that other special circumstances exist by reason of which it would be unreasonable that all the persons who, but

for this sub-section, would be required to make the request, should make the request,

the Commissioner may waive compliance with the provisions of sub-section (1) with regard to—

- (c) the persons who are required to make the request; and 5
- (d) the requirement that the amount, or the aggregate of the amounts, specified in the request be equal to the dividend amount to which the request relates.

“(4) On receipt of a request under sub-section (1) the Commissioner, having regard to— 10

- (a) where 2 or more amounts are specified in the request—whether the amounts are reasonable having regard to the part of the capital distribution that, in the opinion of the Commissioner, would have, or might reasonably be expected to have, been received by each prescribed person; 15
- (b) the likelihood that any tax that may become payable by reason of the operation of this section in relation to the request will be paid or would, but for the operation of section 265 of the Assessment Act, be paid; and
- (c) any other matters that the Commissioner considers relevant,

may grant the request or refuse the request. 20

“(5) Subject to this section, where a request is made under sub-section (1), in relation to a sale or sales of shares under a scheme, in relation to a dividend amount and the request is granted by the Commissioner—

- (a) for the purposes of the Assessment Act other than Division 7 of Part III and Division 4 of Part VI— 25
  - (i) the relevant company shall be deemed to have paid to the prescribed person or each of the prescribed persons, as the case may be, making the request, as a shareholder or shareholders in the company, a dividend of an amount equal to the amount specified in the request in relation to that person; and 30
  - (ii) the dividend—
    - (A) shall be deemed to have been paid by the relevant company, at the prescribed time in relation to the prescribed person (whether or not the relevant company existed at that time), out of profits derived by the relevant company from sources in Australia; and 35
    - (B) shall be deemed not to be a dividend to which sub-section 44 (2) of the Assessment Act applies; and
- (b) the taxable entity is not liable, and shall be deemed never to have been liable, to pay dividend recoupment tax on the dividend amount. 40

“(6) For the purposes of this section, the distribution amount in relation to a dividend amount is—

(a) if the dividend amount is a primary dividend amount—

5 (i) in a case to which sub-paragraph (ii) does not apply—the consideration paid or given in respect of the sale of the shares or the interest in shares to which the primary dividend amount relates; and

10 (ii) where the primary dividend amount exists in relation to a beneficiary (in this paragraph referred to as the ‘relevant beneficiary’) in a trust estate and the sale of shares or the interest in shares to which the primary dividend amount relates was a sale of shares or an interest in shares by a person who was a bare trustee in respect of those shares or that interest—the amount ascertained in accordance with the formula  $\frac{E}{E+F}$ , where—

15  $E$  is the consideration paid or given in respect of the sale of the shares or the interest in shares to which the primary dividend amount relates; and

$F$  is—

20 (A) if the relevant beneficiary was the only beneficiary in the trust estate—the number 1; and

25 (B) if the relevant beneficiary was not the only beneficiary in the trust estate—the interest in the trust estate of the relevant beneficiary expressed as a fraction of the aggregate of the interests in the trust estate of the beneficiaries; and

30 (b) if the dividend amount is a secondary dividend amount—an amount that bears to the amount that is the distribution amount in relation to the dividend amount by reference to which the secondary dividend amount was ascertained the same proportion as the secondary dividend amount bears to that dividend amount.

“(7) For the purposes of this section, the relevant distribution time in relation to a dividend amount that exists in relation to a company or the trustee of a trust estate is—

35 (a) if the company or trust estate did not exist at the time of sale of the shares or interest in shares to which the dividend amount relates—the time when the company or trust estate commenced to exist; or

(b) in any other case—the time immediately before the time of sale of the shares or interest in shares to which the dividend amount relates,

40 or, if the Commissioner is of the opinion that that time is inappropriate, such later time as the Commissioner determines.

“(8) Where—

(a) a request made under sub-section (1) in relation to a dividend amount is granted by the Commissioner; and

- (b) after the request is granted, the dividend amount is increased or reduced,

sub-section (5) has effect in relation to the request as if—

- (c) the request had been made in relation to the increased or reduced dividend amount; 5
- (d) the request had been made by such persons as the Commissioner determines, being some or all of the persons who, but for sub-section (3), would have been required to make the request if the request had been made in relation to the increased or reduced dividend amount; and 10
- (e) the amounts specified in the request in relation to those persons had been such amounts as the Commissioner considers appropriate.

“(9) Where—

- (a) but for this sub-section, a dividend would be deemed to have been paid to a prescribed person by virtue of the application of this section in relation to a secondary dividend amount that exists in relation to a company or the trustee of a trust estate by virtue of the application of sub-section 6 (3), in its application in accordance with sub-section 6A (1), in relation to an amount of dividend recoupment tax payable by a company (in this sub-section referred to as the ‘relevant company’) or the trustee (in this sub-section referred to as the ‘relevant trustee’) of a trust estate on a dividend amount (in this sub-section referred to as the ‘relevant dividend amount’); and 15 20
- (b) either before or after the secondary dividend amount commenced to exist, an amount or amounts (in this sub-section referred to as the ‘paid amount’ or ‘paid amounts’) of dividend recoupment tax payable by the relevant company or relevant trustee on the relevant dividend amount is or are paid, or an amount or amounts (in this sub-section also referred to as the ‘paid amount’ or ‘paid amounts’) is or are deemed by sub-section 9A (1) to have been applied in reduction of dividend recoupment tax payable by the relevant company or relevant trustee on the relevant dividend amount, 25 30

the amount of the dividend that is deemed to have been paid to the prescribed person by virtue of this section in relation to the secondary dividend amount is the amount (in this sub-section referred to as the ‘original amount’) that would, but for this sub-section, have been deemed to have been paid to the prescribed person in relation to the secondary dividend amount reduced by so much of the original amount as bears to the original amount the same proportion as the paid amount, or the aggregate of the paid amounts, as the case may be, bears to the amount of the dividend recoupment tax that became payable by the relevant company or relevant trustee on the relevant dividend amount. 35 40

**Liability to undistributed profits tax where dividend amount exists**

“6E. (1) Where, in relation to a scheme under which shares in a company or companies were sold, a dividend amount exists or existed in relation to an amount of undistributed profits, for the purposes of paragraph 5A (1) (b), in 45



relation to a company (in this sub-section referred to as the 'relevant company') in relation to a year of income (in this sub-section referred to as the 'relevant year of income')—

- 5 (a) for the purposes of this Act and the Assessment Act, the relevant company shall be deemed not to be liable, and never to have been liable, to pay undistributed profits tax in relation to the relevant year of income;
- 10 (b) if a request has been made under sub-section 16 (1) in relation to the relevant company in relation to the scheme and paragraph (c) of this sub-section does not apply, sections 16 and 17 have no effect, and shall be deemed never to have had any effect, in relation to the relevant company in relation to the relevant year of income; and
- (c) if—
- 15 (i) a request (in this paragraph referred to as the 'original request') has been made under sub-section 16 (1) in relation to the relevant company in relation to the scheme before the date of commencement of the *Taxation (Unpaid Company Tax) Assessment Amendment Act 1985*; and
- 20 (ii) a request under this paragraph is made in relation to the relevant company in relation to the scheme by the person or persons, as the case may be, who made the original request, sections 16 and 17 have no effect, and shall be deemed never to have had any effect, in relation to the relevant company.

“(2) A request under paragraph (1) (c) shall—

- 25 (a) be in writing signed by the person or each of the persons, as the case may be, making the request; and
- (b) be sent to or lodged with the Commissioner.

“(3) In sub-section (1), a reference to undistributed profits tax payable by a company in relation to the year of income in which the last sale time occurred shall, if that amount exceeds the amount (in this sub-section referred to as the 'reduced undistributed profits tax') of the undistributed profits tax that would be payable by the company if the undistributed profits tax payable by the company in relation to the year of income had been assessed on the basis that, except for the purpose of ascertaining the prescribed distribution period in relation to the year of income, the year of income ended immediately before the last sale time, be read as a reference to the reduced undistributed profits tax.”.

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### **Promoters taxable amounts**

**11.** Section 7 of the Principal Act is amended—

- 40 (a) by adding at the end of paragraph (1) (f) “and”;
- (b) by omitting paragraph (1) (g);
- (c) by adding at the end of paragraph (2) (f) “and”;
- (d) by omitting paragraph (2) (g);

- (e) by omitting from paragraphs (8) (d), (e) and (f) “or at the time when the arrangement or transaction referred to in paragraph (1) (g) or (2) (g), as the case may be, was entered into”; and
- (f) by omitting sub-section (17).

**Liability to pay tax**

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**12. Section 8 of the Principal Act is amended—**

- (a) by omitting from sub-section (1) “*Taxation (Unpaid Company Tax—Vendors)*” and substituting “*Vendors Recoupment Tax*”;
- (b) by omitting from sub-section (2) “*Taxation (Unpaid Company Tax—Promoters)*” and substituting “*Promoters Recoupment Tax*”; and
- (c) by inserting after sub-section (2) the following sub-section:

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“(2A) Subject to this Act, where at any time a dividend amount exists in relation to a person, not being a prescribed person, the person is liable to pay the tax imposed on that amount by the *Dividend Recoupment Tax Act 1985*.”

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**13. After section 9 of the Principal Act the following section is inserted:**

**Reduction of liability where tax paid on a dividend amount**

“9A. (1) Where—

- (a) dividend recoupment tax is or was payable on a secondary dividend amount and dividend recoupment tax is payable on the dividend amount (in this sub-section referred to as the ‘prior dividend amount’) by reference to which the secondary dividend amount was ascertained; and
- (b) either before or after the secondary dividend amount commenced to exist, an amount of dividend recoupment tax on the prior dividend amount is paid or an amount is deemed, by another application of this sub-section, to have been applied in reduction of the dividend recoupment tax payable on the prior dividend amount,

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there shall be deemed to be applied, or to have been applied, in reduction of the dividend recoupment tax that is or was payable on the secondary dividend amount, an amount equal to so much of the amount paid or deemed to be applied as mentioned in paragraph (b) as bears to that amount the same proportion as the secondary dividend amount bears to the prior dividend amount.

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“(2) Where—

- (a) dividend recoupment tax is or was payable on a dividend amount and dividend recoupment tax is payable on a secondary dividend amount ascertained by reference to the dividend amount; and
- (b) an amount of dividend recoupment tax on the secondary dividend amount is paid or an amount is deemed, by another application of this

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sub-section, to have been applied in reduction of the dividend  
recoupment tax payable on the secondary dividend amount,

5 an amount equal to the amount paid or deemed to be applied as mentioned in  
paragraph (b) shall be deemed to be applied, or to have been applied, in  
reduction of the dividend recoupment tax that is or was payable on the  
dividend amount.

10 “(3) Where under this section an amount is deemed to be applied, or to  
have been applied, in reduction of the dividend recoupment tax that is or was  
payable on a dividend amount, being dividend recoupment tax that includes or  
included late payment tax, the amount shall, to the extent to which it does not  
exceed the amount of that late payment tax, be deemed to be applied, or to  
have been applied, in reduction of that late payment tax and the balance (if  
any) shall be deemed to be applied, or to have been applied, in reduction of the  
remaining dividend recoupment tax.

15 “(4) In this section, ‘dividend recoupment tax’ includes late payment tax.”.

#### **Right of contribution and apportionment of liability**

14. Section 10 of the Principal Act is amended by omitting from  
sub-paragraph (2) (b) (i) “, or in the arrangement or transaction referred to in  
paragraph 7 (1) (g) or (2) (g), as the case may be”.

#### **20 Declaration excluding person from eligible promoters class**

15. Section 11 of the Principal Act is amended by omitting from paragraph  
(5) (a) “, or in the arrangement or transaction referred to in paragraph  
7 (1) (g) or (2) (g), as the case may be”.

#### **Companies ceasing to exist**

25 16. Section 15 of the Principal Act is amended by inserting after  
sub-section (4) the following sub-section:

“(4A) In forming an opinion for the purposes of paragraphs (3) (c) and  
(4) (b), the Commissioner shall disregard section 6E.”.

#### **Notification of company tax liability**

30 17. Section 18 of the Principal Act is amended by inserting after  
sub-section (9) the following sub-section:

“(9A) In forming an opinion for the purposes of paragraphs (1) (b),  
(5) (b) and (9) (b), the Commissioner shall disregard section 6E.”.

#### **Instalment arrangements in relation to payment of company tax**

35 18. Section 21 of the Principal Act is amended by omitting from  
sub-section (1) “or such longer period as the Commissioner, in special  
circumstances, determines”.

19. After section 21 of the Principal Act the following section is inserted:

**Instalment arrangements in relation to payment of income tax or dividend recoupment tax**

“21A. (1) Where—

- (a) an assessment has been made under which income tax is payable by a person; 5
- (b) the whole or a part of the income tax payable under the assessment (which whole or part is in this sub-section referred to as the ‘relevant tax’) is attributable to the inclusion of an amount in the assessable income of the person by virtue of the operation of section 6C or 6D; 10
- (c) no objection has been lodged against the assessment on a ground relating to the inclusion of that amount in the assessable income of the person; and
- (d) the person has, within 30 days after service of the notice of the assessment, made an application in writing to the Commissioner for an arrangement under this section in relation to the payment of the relevant tax by instalments, 15

the Commissioner may enter into an arrangement with the person in relation to the payment by instalments, over a period of 12 months commencing on the date of service of the notice of assessment, of the relevant tax and, where such an arrangement is entered into, all payments made in accordance with the arrangement shall, for the purposes of the Assessment Act, be deemed to have been made at the time when the first payment was made in accordance with the arrangement. 20

“(2) Where— 25

- (a) an assessment has been made under which dividend recoupment tax is payable by a person;
- (b) no objection has been lodged against the assessment; and
- (c) the person has, within 30 days after service of the notice of the assessment, made an application in writing to the Commissioner for an arrangement under this section in relation to the payment of the dividend recoupment tax by instalments, 30

the Commissioner may enter into an arrangement with the person in relation to the payment by instalments, over a period of 12 months commencing on the date of service of the notice of assessment, of the dividend recoupment tax and, where such an arrangement is entered into, all payments made in accordance with the arrangement shall, for the purposes of this Act, be deemed to have been made at the time when the first payment was made in accordance with the arrangement. 35

“(3) Where, after an arrangement referred to in sub-section (1) or (2) is entered into, an objection is lodged against the assessment referred to in paragraph (1) (a) on a ground referred to in paragraph (1) (c) or an objection is lodged against the assessment referred to in paragraph (2) (a), as the case may be, the arrangement shall be deemed never to have been entered into.”. 40

**Arrangements, &c., to avoid operation of Act**

20. Section 22 of the Principal Act is amended by inserting after sub-section (5) the following sub-section:

5 “(5A) For the purposes of the application of this section in relation to a scheme entered into or carried out by a person after 5 March 1983, a reference in this section to recoupment tax shall be read as including a reference to income tax payable by virtue of the operation of section 6C or 6D and a reference to future recoupment tax shall be read as including a reference to income tax that could reasonably have been expected by the person at the time  
10 when the scheme was entered into or carried out to become payable by the person after that time by virtue of the operation of section 6C or 6D.”

21. Section 23 of the Principal Act is repealed and the following section is substituted:

**Evidence**

15 “23. (1) For the purposes of this Act—

(a) a certificate signed by the Commissioner, a Second Commissioner or a Deputy Commissioner and stating that an amount of company tax specified in the certificate became due and payable by a company is, except in—

20 (i) proceedings under Division 2 of Part V of the Assessment Act in relation to an assessment in respect of the company tax; and

(ii) proceedings under Division 1 of Part VI of the Assessment Act for the recovery of income tax or recoupment tax,

conclusive evidence of the matters stated in the certificate; and

25 (b) a certificate signed by the Commissioner, a Second Commissioner or a Deputy Commissioner and stating that, on a date specified in the certificate, an amount of company tax specified in the certificate remained unpaid is, in proceedings under Division 2 of Part V of the Assessment Act in relation to—

30 (i) an assessment of recoupment tax in respect of that company tax;

(ii) an assessment of income tax payable by virtue of the operation of section 6C or 6D in relation to a dividend amount that exists in relation to that company tax; or

35 (iii) an assessment of income tax payable by virtue of the operation of section 16 or 17 in relation to a primary taxable amount that exists in relation to that company tax,

*prima facie* evidence of the matters stated in the certificate.

40 “(2) A document purporting to be a certificate referred to in sub-section (1) shall, unless the contrary is established, be taken to be such a certificate.

“(3) Nothing in this section affects the operation of section 177 of the Assessment Act in relation to proceedings referred to in sub-paragraphs (1) (a) (i) and (ii) of this section.

“(4) A reference in sub-section (1) to company tax includes a reference to notional company tax applicable in relation to a company in accordance with sub-section 15 (11).”.

**Consequential amendments**

**22.** The Acts specified in the Schedule are amended as set out in the Schedule.

**SCHEDULE**

Section 22

CONSEQUENTIAL AMENDMENTS

Act	Amendments
<i>Administrative Decisions (Judicial Review) Act 1977</i>	Schedule 1 (paragraph (e))— (a) Insert “ <i>Recoupment Tax Assessment Act 1982</i> ” after “ <i>Pay-roll Tax (Territories) Assessment Act 1971</i> ”. (b) Omit “ <i>Taxation (Unpaid Company Tax) Assessment Act 1982</i> ”.
<i>Income Tax Assessment Act 1936</i>	Sub-section 78B (7)— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”.
<i>States (Tax Sharing and Health Grants) Act 1981</i>	Schedule 1— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”.
<i>Stevedoring Industry Charge Assessment Act 1947</i>	Paragraph 27 (3D) (ca)— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”.
<i>Taxation Administration Act 1953</i>	Paragraph 8J (2) (k)— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”. Paragraph 8ZE (3) (e)— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”.
<i>Taxation (Interest on Overpayments) Act 1983</i>	Sub-section 3 (1) (definitions of “objection” and “relevant tax”)— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”.
<i>Taxation (Unpaid Company Tax—Promoters) Act 1982</i>	Section 1— Omit “ <i>Taxation (Unpaid Company Tax—Promoters)</i> ”, substitute “ <i>Promoters Recoupment Tax</i> ”. Section 3— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”. Section 4— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”.
<i>Taxation (Unpaid Company Tax—Vendors) Act 1982</i>	Section 1— Omit “ <i>Taxation (Unpaid Company Tax—Vendors)</i> ”, substitute “ <i>Vendors Recoupment Tax</i> ”.

**SCHEDULE—continued**

Act	Amendments
	Section 3— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”. Section 4— Omit “ <i>Taxation (Unpaid Company Tax)</i> ”, substitute “ <i>Recoupment Tax</i> ”.

**NOTE**

1. No. 119, 1982, as amended. For previous amendments, see No. 123, 1984.

