

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**TAXATION (UNPAID COMPANY TAX) ASSESSMENT BILL 1982**

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1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 23 September 1982

(*Treasurer*)

## A BILL

FOR

### **An Act relating to the assessment and collection of a tax in respect of certain unpaid company tax**

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

#### **Short title**

1. This Act may be cited as the *Taxation (Unpaid Company Tax) Assessment Act 1982*.

#### **Commencement**

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

#### **Interpretation**

3. (1) In this Act, unless the contrary intention appears—

“apportionment factor”, in relation to a primary taxable amount, means—

- (a) in the case of a primary taxable amount that was ascertained by the application of paragraph 5 (1) (k) or (2) (k)—the number 1;

- (b) in the case of a primary taxable amount that was ascertained by the application of paragraph 5 (1) (m) or (2) (m)—the number ascertained in accordance with the formula  $\frac{C}{S}$ , where the components  $C$  and  $S$  have the same respective values as those components had for the purposes of that application of that paragraph; and
- (c) in the case of a primary taxable amount that was ascertained by the application of paragraph 5 (2) (n)—the number ascertained in accordance with the formula  $\frac{CN}{SW}$ , where the components  $C$ ,  $N$ ,  $S$  and  $W$  have the same respective values as those components had for the purposes of that application of that paragraph;

“Assessment Act” means the *Income Tax Assessment Act 1936*;

“company tax” means ordinary company tax or undistributed profits tax;

“distribution of capital”, in relation to a company, means a distribution, on the winding-up of the company, of the surplus of the assets of the company over the liabilities of the company;

“distribution of corpus”, in relation to a trust estate in relation to a particular time, means a distribution of the corpus of the trust estate among the beneficiaries of the trust estate having a vested interest in the corpus at that time;

“eligible taxable amount”, in relation to a person, means an amount that is a primary taxable amount or a secondary taxable amount in relation to the person;

“late payment tax” means additional tax payable under section 10;

“object”, in relation to an assessment, means post to or lodge with the Commissioner, under section 185 of the Assessment Act, an objection in writing against the assessment;

“objection”, in relation to an assessment, means an objection against the assessment under section 185 of the Assessment Act;

“ordinary company tax”, in relation to a company, means—

- (a) income tax assessed under the Assessment Act and levied upon the taxable income of the company, being income tax imposed as such by an Act; and
- (b) additional tax payable by the company under section 207 of the Assessment Act in relation to tax referred to in paragraph (a);

“person” includes a company and a person in the capacity of trustee of a trust estate;

“prescribed distribution period”, in relation to a company in relation to a year of income, means the period that, for the purposes of Division 7 of

Part III of the Assessment Act, is the prescribed period in relation to the company in relation to that year of income;

“primary taxable amount”, in relation to a person, means an amount that is a primary taxable amount in relation to the person under section 5;

“property” includes—

- (a) a chose in action;
- (b) any estate, interest, right or power, whether at law or in equity, in or over property; and
- (c) any right to receive income;

“recoupment tax” means tax assessed under this Act and imposed by the *Taxation (Unpaid Company Tax) Act 1982*;

“right to receive income” means a right of a person to have income that will or may be derived (whether from property or otherwise) paid to, or applied or accumulated for the benefit of, the person;

“scheme” means any agreement, arrangement, transaction, understanding or scheme, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings;

“secondary taxable amount”, in relation to a person, means an amount that is a secondary taxable amount in relation to the person under section 6;

“shares” means shares in the capital of a company and includes stock;

“undistributed amount”, in relation to a company, means an amount that is an undistributed amount in relation to the company for the purposes of Division 7 of Part III of the Assessment Act;

“undistributed profits tax”, in relation to a company, means—

- (a) additional tax that the company is liable to pay upon an undistributed amount in relation to the company, being additional tax imposed by any Act for the purposes of Division 7 of Part III of the Assessment Act; and
- (b) additional tax payable by the company under section 207 of the Assessment Act in relation to tax referred to in paragraph (a).

(2) Where under a scheme particular shares are sold on more than one occasion, a reference in this Act to the sale of those shares under the scheme is a reference to the first sale under that scheme of those shares.

(3) A reference in this Act to a joint holder of shares includes a reference to a person who holds the shares in common with another person or persons.

(4) In this Act—

- (a) a reference, in relation to a scheme under which shares in a company or companies were sold, to the first sale time is a reference to—
  - (i) if all the shares that were sold under the scheme were sold at the same time—that time; and
  - (ii) in any other case—the time when the first of the shares that were sold under the scheme were sold;

- (b) a reference, in relation to a scheme under which shares in a company or companies were sold, to the last sale time is a reference to—
- (i) if all the shares that were sold under the scheme were sold at the same time—that time; and
  - (ii) in any other case—the time when the last of the shares that were sold under the scheme were sold; and
- (c) a reference to the time of sale of shares or an interest in shares under a scheme, being shares or an interest in shares to which an eligible taxable amount, or recoupment tax on an eligible taxable amount, relates, is a reference to—
- (i) if all those shares were sold at the same time—that time; and
  - (ii) in any other case—the time when the last of those shares were sold under the scheme.

(5) In this Act, a reference to a company, in relation to shares, or an interest in shares, in another company shall be read as not including a reference to a company that is a trustee in respect of those shares or that interest.

(6) For the purposes of this Act, company tax or recoupment tax that has been assessed shall be deemed to be payable notwithstanding that it has not become due and payable.

(7) For the purposes of the application of this Act (other than paragraph 5 (1) (d) or 5 (2) (d)) in relation to a sale or sales of shares under a scheme, a reference to the amount of ordinary company tax or undistributed profits tax payable at a particular time 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 amount”) of the ordinary company tax or undistributed profits tax, as the case may be, that would be payable by the company at that time if the ordinary company tax or undistributed profits tax, as the case may be, 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 amount.

(8) For the purpose of ascertaining the amount of ordinary company tax or undistributed profits tax that, for the purposes of this Act (other than paragraph 5 (1) (d) or 5 (2) (d)), is payable at a particular time by a company in relation to a year of income in a case where a copy of a notice of assessment in respect of ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to that year of income has been served on a person under section 15, the assessment shall be deemed not to have been served on the company until the day on which the copy was served on the person.

(9) For the purposes of this Act, where under a scheme—

- (a) a person (in this sub-section referred to as the “shareholder”) who was the holder of shares transferred the shares to another person (in this sub-section referred to as the “transferee”) to hold upon trust for the shareholder;
- (b) the beneficial interest in the shares later passed to the transferee or another person; and
- (c) consideration was paid or given in respect of the passing of the beneficial interest,

the shareholder shall be deemed to have sold the shares to the transferee under the scheme at the time when the beneficial interest passed and for the consideration referred to in paragraph (c).

### Application of Assessment Act

4. (1) Unless the contrary intention appears in this Act, sections 6 and 7A, Part II, section 21, Parts IV and V, Division 1 of Part VI, and Parts VII and VIII of the Assessment Act, and regulations made under that Act, apply for the purposes of the assessment and collection of recoupment tax, and the collection of late payment tax, in like manner, *mutatis mutandis*, as those provisions apply for the purposes of the assessment and collection of income tax under the Assessment Act.

(2) A reference in this Act to a provision of the Assessment Act shall, unless the contrary intention appears, be read as a reference to that provision in its application, in accordance with sub-section (1), for the purposes of this Act.

(3) For the purposes of section 14 of the Assessment Act, this Act shall be deemed to be part of the Assessment Act.

(4) A report of the Commissioner under section 14 of the Assessment Act may—

- (a) draw attention to the failure of a person to pay recoupment tax or late payment tax due and payable by the person; and
- (b) disclose the identity of the person.

(5) Nothing in section 16 of the Assessment Act prevents the disclosure, to a person who is, or in the opinion of the Commissioner is likely to become, liable to pay recoupment tax, 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.

(6) Where—

- (a) a person makes a request in writing to the Commissioner that the Commissioner disclose to the person information relating to an arrangement or transaction referred to in paragraph 5 (1) (h) or (2) (h); and

- (b) the arrangement or transaction was, or in the opinion of the Commissioner, is likely to be, taken into account in the assessment of the liability of the person to pay recoupment tax,

the Commissioner shall, notwithstanding section 16 of the Assessment Act, disclose to the person all information (including the identities of the parties to the arrangement or transaction) known to the Commissioner that is relevant to that liability and relates to the arrangement or transaction.

(7) 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 (8) (d), sub-section 6 (2), 6 (18), 7 (4) or 7 (5) or section 13 or 14 of this Act.

(8) For the purposes of section 215 of the Assessment Act, recoupment tax and late payment tax shall be deemed to be tax within the meaning of that section.

(9) Where a person dies after an assessment is made of the recoupment tax payable by the person on an eligible taxable amount, the Commissioner has the same powers and remedies against the trustee of that person's estate in respect of the collection of recoupment tax and late payment tax on that eligible taxable amount as he would have had against that person if that person were alive.

### Primary taxable amounts

#### 5. (1) Where—

- (a) under a scheme entered into, whether in Australia or outside Australia, on or after 1 January 1972 and before 4 December 1980, some or all of the shares in a company were sold;
- (b) the sale or sales of the shares referred to in paragraph (a) occurred before the commencement of this Act;
- (c) immediately before the first sale time, the person or persons who sold the shares referred to in paragraph (a) was or were, by virtue of rights attaching to the shares, capable of controlling more than 90% of the voting power in the company;
- (d) the total consideration paid or given in respect of the sale or sales under the scheme of the shares referred to in paragraph (a) exceeds an amount ascertained in accordance with the formula  $A - (L + T)$ , where—

*A* is the total value, immediately before the last sale time, of the assets of the company;

*L* is the total amount of the liabilities of the company immediately before the last sale time; and

*T* is the amount of the company tax liability of the company immediately before the last sale time, reduced by any part of that company tax liability that is taken into account in ascertaining component *L*;



- (e) an assessment of ordinary company tax or undistributed profits tax has been made under the Assessment Act, whether before or after the commencement of this Act, in relation to the company in relation to a year of income (in this sub-section is referred to as the “relevant year of income”), being the year of income in which the last sale time occurred or a preceding year of income;
- (f) the period for objecting against the assessment has expired and any objection against the assessment has been finalised;
- (g) at any time (in this sub-section referred to as the “relevant time”) after the commencement of this Act, there remains unpaid an amount (in this sub-section referred to as the “overdue company tax”) of ordinary company tax or undistributed profits tax, as the case may be, due and payable by the company in relation to the relevant year of income;
- (h) before the relevant time, an arrangement or transaction (whether or not the arrangement or transaction was, or was part of, the scheme) was entered into that secured or achieved the result that the company was, at the relevant time, or, if the company ceased to exist before the relevant time, at the time when the company ceased to exist, unable, having regard to other debts of the company, to pay to the Commissioner all the company tax due and payable by the company at the relevant time or at the time when the company ceased to exist, as the case may be; and
- (j) if the company carried on a business immediately before the last sale time, not being a business that consisted only of deriving income from property—the company did not continue to carry on that business after the last sale time,

the following provisions have effect:

- (k) if all the shares referred to in paragraph (a) were sold under the scheme by one person—a primary taxable amount equal to the overdue company tax shall be taken to exist at the relevant time in relation to that person; and
- (m) in any other case—a primary taxable amount shall be taken to exist at the relevant time in relation to each person who, as the holder or one of the joint holders of any of the shares referred to in paragraph (a), sold the shares, or his interest in the shares, as the case may be, under the scheme and that primary taxable amount is an amount ascertained

in accordance with the formula  $\frac{OC}{S}$ , where—

*O* is the amount of the overdue company tax;

*C* is the number of whole dollars in the amount or value of the consideration paid or given in respect of the sale of the shares or interest by the person; and

*S* is the number of whole dollars in the amount or value of the total consideration paid or given in respect of the sale or sales under the scheme of all the shares referred to in paragraph (a).

## (2) Where—

- (a) under a scheme entered into, whether in Australia or outside Australia, on or after 1 January 1972 and before 4 December 1980, some or all of the shares in one or more companies were sold;
- (b) the sale or sales of the shares referred to in paragraph (a) occurred before the commencement of this Act;
- (c) immediately before the first sale time, the person or persons who sold the shares referred to in paragraph (a) was or were, by virtue of rights attaching to the shares, capable of controlling, either directly or through one or more interposed companies, trustees or partnerships, more than 90% of the voting power in each of 2 or more companies (in this sub-section referred to as the “eligible companies”);
- (d) the total consideration paid or given in respect of the sale or sales under the scheme of the shares referred to in paragraph (a) exceeds an amount ascertained in accordance with the formula  $A - (L + T)$ , where—

*A* is the aggregate of the total values, immediately before the last sale time, of the assets of the eligible companies;

*L* is the aggregate of the total amounts of the liabilities of the eligible companies immediately before the last sale time; and

*T* is the aggregate of the amounts of the company tax liabilities of the eligible companies immediately before the last sale time reduced by any part of those company tax liabilities that is taken into account in ascertaining component *L*;

- (e) an assessment of ordinary company tax or undistributed profits tax has been made under the Assessment Act, whether before or after the commencement of this Act, in relation to a company (in this sub-section referred to as the “taxable company”), being one of the eligible companies, in relation to a year of income (in this sub-section referred to as the “relevant year of income”), being the year of income in which the last sale time occurred or a preceding year of income;
- (f) the period for objecting against the assessment has expired and any objection against the assessment has been finalised;
- (g) at any time (in this sub-section referred to as the “relevant time”) after the commencement of this Act, there remains unpaid an amount (in this sub-section referred to as the “overdue company tax”) of ordinary company tax or undistributed profits tax, as the case may be, due and payable by the taxable company in relation to the relevant year of income;
- (h) before the relevant time, an arrangement or transaction (whether or not the arrangement or transaction was, or was part of, the scheme) was entered into that secured or achieved the result that the taxable company was, at the relevant time, or, if the taxable company ceased to exist before the relevant time, at the time when the taxable company ceased to exist, unable, having regard to other debts of the taxable company, to pay to the Commissioner all the company tax due and

payable by the taxable company at the relevant time or at the time when the taxable company ceased to exist, as the case may be; and

- (j) if the taxable company carried on a business immediately before the last sale time, not being a business that consisted only of deriving income from property—the taxable company did not continue to carry on that business after the last sale time,

the following provisions have effect:

- (k) if all the shares referred to in paragraph (a) were sold under the scheme by one person—a primary taxable amount equal to the overdue company tax shall be taken to exist at the relevant time in relation to that person;

- (m) if all the shares referred to in paragraph (a) were shares in the same company and paragraph (k) does not apply—a primary taxable amount shall be taken to exist at the relevant time in relation to each person who, as the holder or one of the joint holders of any of the shares referred to in paragraph (a), sold the shares, or his interest in the shares, as the case may be, under the scheme and that primary taxable amount is an amount ascertained in accordance with the formula  $\frac{OC}{S}$ , where—

*O* is the amount of the overdue company tax;

*C* is the number of whole dollars in the amount or value of the consideration paid or given in respect of the sale of the shares or interest by the person; and

*S* is the number of whole dollars in the amount or value of the total consideration paid or given in respect of the sale or sales under the scheme of all the shares referred to in paragraph (a); and

- (n) if the shares referred to in paragraph (a) were shares in 2 or more companies and paragraph (k) does not apply—a primary taxable amount shall be taken to exist at the relevant time in relation to each person who, as the holder or one of the joint holders of any of the shares referred to in paragraph (a) that were shares in a company (in this paragraph referred to as the “prescribed company”), being the taxable company or another company that, immediately before the first sale time, was related to the taxable company, sold the shares, or his interest in the shares, as the case may be, under the scheme and that primary taxable amount is an amount ascertained in accordance with

the formula  $\frac{OCN}{SW}$ , where—

*O* is the amount of the overdue company tax;

*C* is the number of whole dollars in the amount or value of the consideration paid or given in respect of the sale of the shares or interest by the person;

*N* is the number of whole dollars in—

- (i) where the prescribed company is the taxable company—the value, immediately before the first sale time, of all the shares referred to in paragraph (a) that were shares in the taxable company; or
- (ii) in any other case—the amount equal to so much of the value of the assets of the prescribed company immediately before the first sale time as was attributable to the net worth of the taxable company immediately before that time;

*S* is the number of whole dollars in the amount or value of the total consideration paid or given in respect of the sale or sales under the scheme of all the shares referred to in paragraph (a) that were shares in the prescribed company; and

*W* is the number of whole dollars in the net worth of the taxable company immediately before the first sale time.

(3) Where sub-section (2) applies in relation to the sale of shares in a company, sub-section (1) does not apply in relation to that sale.

(4) Where a primary taxable amount exists or existed in relation to a person in relation to an amount of company tax payable by a company and—

(a) the Commissioner, having regard to—

- (i) circumstances relating to the sale of the shares or the interest in shares to which the primary taxable amount relates;
- (ii) circumstances, whether occurring before or after that sale, that caused or contributed to the failure of the company to pay that company tax; and
- (iii) such other circumstances as the Commissioner considers relevant,

considers it unreasonable that the primary taxable amount should be taken to exist or to have existed in relation to the person; or

(b) if the primary taxable amount is less than \$100—the Commissioner considers that the primary taxable amount should not be taken to exist or to have existed in relation to the person,

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

(5) Sub-sections (1) and (2) do not apply in relation to the sale of shares or of an interest in shares by a person who was a bare trustee in respect of those shares or that interest but, where, but for this sub-section and sub-section (4), a primary taxable amount (in this sub-section referred to as the “trustee’s taxable amount”) would exist in relation to the person at a particular time in relation to such a sale—

(a) if there was only one beneficiary in the trust estate—a primary taxable amount equal to the trustee’s taxable amount shall be taken to exist at that time in relation to the beneficiary; and

(b) if there were 2 or more beneficiaries in the trust estate—a primary taxable amount shall be taken to exist at that time in relation to each of those beneficiaries and, in relation to each beneficiary, that primary taxable amount is an amount ascertained by multiplying the interest in the trust estate of the beneficiary concerned, expressed as a fraction of the aggregate of the interests in the trust estate of the beneficiaries, by the trustee's taxable amount.

(6) For the purposes of the application of paragraphs (1) (d) and (2) (d) in relation to a sale or sales of shares under a scheme—

(a) the total value of the assets of a company immediately before the last sale time shall, subject to sub-section (7), be taken to be—

(i) where, for the purposes of the sale or sales of the shares under the scheme, it was agreed by the parties to the sale or to each of the sales that the assets of the company were to be taken to have a particular value—that value; and

(ii) in any other case—such amount as the Commissioner determines;

(b) the total amount of the liabilities of a company immediately before the last sale time shall be taken to be—

(i) where, for the purposes of the sale or sales of the shares under the scheme, it was agreed by the parties to the sale or to each of the sales that the total amount of the liabilities of the company was to be taken to be a particular amount—that amount; and

(ii) in any other case—such amount as the Commissioner determines; and

(c) the amount of the company tax liability of a company immediately before the last sale time shall be taken to be the aggregate of the following amounts:

(i) any amount of ordinary company tax or undistributed profits tax payable by the company immediately before the last sale time;

(ii) any amount of ordinary company tax (not including additional tax payable under section 207 of the Assessment Act) that, immediately before the last sale time, might reasonably have been expected to become payable by the company at a later time in relation to the year of income in which the last sale time occurred or a preceding year of income; and

(iii) any amount of undistributed profits tax (not including additional tax payable under section 207 of the Assessment Act) that, immediately before the last sale time, might reasonably have been expected to become payable by the company at a later time in relation to the year of income in which the last sale time occurred or a preceding year of income.

(7) The total value of the assets of a company at a particular time ascertained in accordance with paragraph (6) (a) for the purposes of the

application of paragraph (2) (d) in relation to the company shall be reduced by an amount equal to so much of that total value as is attributable, by virtue of the beneficial ownership by the company of shares in another company that, for the purposes of that application of that paragraph, is one of the eligible companies referred to in that paragraph, to the value of the assets of that other company. 5

(8) In determining for the purposes of sub-section (6) whether, immediately before the last sale time in relation to a sale or sales of shares under a scheme, it might reasonably have been expected that ordinary company tax or undistributed profits tax would become payable by a company at a later time in relation to the year of income in which the last sale time occurred or a preceding year of income— 10

- (a) full knowledge of the affairs of the company shall be assumed to have existed;
- (b) it shall be assumed that the company would continue to exist; 15
- (c) in the case of the year of income in which the last sale time occurred, it shall be assumed that the ordinary company tax or the undistributed profits tax, as the case may be, payable by the company in relation to that year of income would be ascertained 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; and 20
- (d) it shall be assumed that the company would, after the last sale time, pay only those dividends (if any) that the company in fact paid after the last sale time. 25

(9) For the purposes of paragraphs (1) (f) and (2) (f), an objection against an assessment shall be taken to have been finalised if—

- (a) there is no proceeding that has been instituted in relation to the objection under Division 2 of Part V of the Assessment Act that has not been determined; and 30
- (b) the time for instituting proceedings under that Division in relation to the objection has expired.

(10) For the purposes of paragraph (9) (a), any proceeding under Division 2 of Part V of the Assessment Act that has lapsed or otherwise been terminated shall be taken to have been determined. 35

(11) For the purposes of paragraph (9) (b), the time for instituting a proceeding in relation to an objection under Division 2 of Part V of the Assessment Act shall not be taken not to have expired by reason only of the possibility that an extension of that time might be granted.

(12) For the purposes of the application of paragraph (2) (n) in relation to a sale or sales of shares under a scheme— 40

- (a) a company shall be taken to be related to another company immediately before the first sale time if, and only if, immediately before that time, a reduction in the value of any shares in the other

company could reasonably be expected to result in the reduction of the value in the shares of the first-mentioned company; and

- 5 (b) a reference to the net worth of a company immediately before the first sale time is a reference to the value of the assets of the company immediately before that time reduced by the total amount of the liabilities of the company immediately before that time.

(13) For the purposes of the application of paragraph (12) (b) in relation to a sale or sales of shares under a scheme—

- 10 (a) the value of the assets of a company immediately before the first sale time shall be taken to be—

(i) where, for the purposes of the sale or sales of the shares under the scheme, it was agreed by the parties to the sale or to each of the sales that the assets of the company were to be taken to have a particular value—that value; and

15 (ii) in any other case—such amount as the Commissioner determines; and

- (b) the total amount of the liabilities of a company immediately before the first sale time shall be taken to be—

20 (i) where, for the purposes of the sale or sales of the shares under the scheme, it was agreed by the parties to the sale or to each of the sales that the total amount of the liabilities of the company was to be taken to be a particular amount—that amount; and

(ii) in any other case—such amount as the Commissioner determines.

25 (14) In this section—

- (a) a reference to an arrangement or transaction includes a reference to both an arrangement and a transaction and to any series or combination of arrangements or transactions or arrangements and transactions; and

- 30 (b) a reference to an arrangement includes a reference to an arrangement, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

35 (15) A primary taxable amount may be taken to exist at a particular time in relation to a company or the trustee of a trust estate notwithstanding that the company or trust estate has ceased to exist before that time.

### **Secondary taxable amounts**

6. (1) Where—

- 40 (a) at any time (in this sub-section referred to as the “relevant time”) an eligible taxable amount exists in relation to a company or in relation to a person in the capacity of trustee of a trust estate; and

- (b) at the relevant time, the company or the trust estate, as the case may be, no longer exists; and

- (c) an assessment of the recoument tax payable on the eligible taxable amount was not made before that company or trust estate, as the case may be, ceased to exist,

a secondary taxable amount shall be taken to exist at the relevant time in relation to each person who, if there had been a distribution (in this sub-section referred to as the “capital distribution”) of capital of the company or of corpus of the trust estate, as the case may be, immediately before the relevant distribution time, of an amount equal to the distribution amount in relation to the eligible taxable amount, would have had a right, as a shareholder in the company or as a beneficiary in the trust estate, as the case may be, to receive the whole or a part of the capital distribution and, in relation to each such person, the secondary taxable amount is—

- (d) if only one person would have had such a right—an amount equal to the eligible taxable amount;

- (e) if 2 or more persons would have had such a right and paragraph (f) does not apply—an amount ascertained in accordance with the formula  $\frac{AB}{C}$ , where—

*A* is the eligible taxable amount;

*B* is the number of whole dollars in the amount that the person concerned would have received in the event of the capital distribution being made; and

*C* is the number of whole dollars in the amount of the capital distribution; and

- (f) if 2 or more persons would have had such a right and the eligible taxable amount is a prescribed taxable amount by virtue of sub-section (4), (5), (6), (8), (9) or (10)—such part of the eligible taxable amount as the Commissioner, having regard to the matters specified in sub-section (16), determines.

(2) Where—

- (a) at any time (in this sub-section referred to as the “relevant time”) an eligible taxable amount exists in relation to a company (in this sub-section referred to as the “relevant company”) or in relation to a person in the capacity of a trustee of a trust estate (in this sub-section referred to as the “relevant trust estate”) in relation to a sale of shares or of an interest in shares;

- (b) after the time of sale of the shares or interest referred to in paragraph (a) and before the relevant time—

- (i) if the eligible taxable amount exists in relation to the relevant company—

(A) some or all of the shares in the relevant company were sold; or

(B) some or all of the shares in another company that, immediately before the time of sale of the shares or



interest referred to in paragraph (a), was a holding company of the relevant company, were sold; or

(ii) if the eligible taxable amount exists in relation to the trustee of the relevant trust estate—

(A) any beneficial interest in the relevant trust estate was sold; or

(B) any beneficial interest in another trust estate that, immediately before the time of sale of the shares or interest referred to in paragraph (a) was a holding trust estate in relation to the relevant trust estate, was sold; and

(c) the Commissioner is of the opinion that, by reason of a circumstance mentioned in paragraph (b), it would be unreasonable that the relevant company or the trustee of the relevant trust estate, as the case may be, be liable to pay recoupment tax on the eligible taxable amount,

the following provisions have effect:

(d) a secondary taxable amount shall be taken to exist at the relevant time in relation to each person who, if there had been a distribution (in this sub-section referred to as the “capital distribution”) of capital of the relevant company or of corpus of the relevant trust estate, as the case may be, immediately before the relevant distribution time, of an amount equal to the distribution amount in relation to the eligible taxable amount, would have had a right, as a shareholder in the relevant company or as a beneficiary in the relevant trust estate, as the case may be, to receive the whole or a part of the capital distribution and, in relation to each such person, the secondary taxable amount is—

(i) if only one person would have had such a right—an amount equal to the eligible taxable amount;

(ii) if 2 or more persons would have had such a right and sub-paragraph (iii) does not apply—an amount ascertained in accordance with the formula  $\frac{AB}{C}$ , where—

*A* is the eligible taxable amount;

*B* is the number of whole dollars in the amount that the person would have received in the event of the capital distribution being made; and

*C* is the number of whole dollars in the amount of the capital distribution; and

(iii) if 2 or more persons would have had such a right and the eligible taxable amount is a prescribed taxable amount by virtue of sub-section (4), (5), (6), (8), (9) or (10)—such part of the eligible taxable amount as the Commissioner, having regard to the matters specified in sub-section (16), determines; and

- (e) the relevant company or the trustee of the relevant trust estate, as the case may be, is not liable, and shall be deemed never to have been liable, to pay recoupment tax on the eligible taxable amount referred to in paragraph (a).

(3) Where at any time (in this sub-section referred to as the “relevant time”)—

- (a) there remains unpaid an amount of recoupment tax payable on an eligible taxable amount by a company or a person in the capacity of trustee of a trust estate; and
- (b) the Commissioner is of the opinion that the recoupment tax, or part of the recoupment tax, is unlikely to be paid,

a secondary taxable amount shall be taken to exist at the relevant time in relation to each person who, if there had been a distribution (in this sub-section referred to as the “capital distribution”) of capital of the company or of corpus of the trust estate, as the case may be, immediately before the relevant distribution time of an amount equal to the distribution amount in relation to the eligible taxable amount, would have had a right, as a shareholder in the company or as a beneficiary in the trust estate, as the case may be, to receive the whole or a part of the capital distribution and, in relation to each such person, the secondary taxable amount is—

- (c) if only one person would have had such a right—an amount equal to the amount of the recoupment tax;
- (d) if 2 or more persons would have had such a right and paragraph (e) does not apply—an amount ascertained in accordance with the formula  $\frac{AB}{C}$ , where—

*A* is the amount of the recoupment tax;

*B* is the number of whole dollars in the amount that the person concerned would have received in the event of the capital distribution being made; and

*C* is the number of whole dollars in the amount of the capital distribution; and

- (e) if 2 or more persons would have had such a right and the eligible taxable amount is a prescribed taxable amount by virtue of sub-section (4), (5), (6), (8), (9) or (10)—such part of the amount of the recoupment tax as the Commissioner, having regard to the matters specified in sub-section (16), determines.

(4) For the purposes of the application of sub-section (1), (2) or (3) in relation to—

- (a) an eligible taxable amount that exists in relation to a company; or
- (b) recoupment tax on an eligible taxable amount payable by a company, at a particular time (in this sub-section referred to as the “relevant time”), where, after the sale of the shares or interest in shares to which the eligible

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5 taxable amount relates and before the relevant time, a person, as a shareholder  
in the company, received the whole or any part of a distribution of capital of the  
company on the winding-up of the company or a reduction of capital of the  
company, the eligible taxable amount is a prescribed taxable amount for the  
0 purposes of this section and that person shall be deemed to be a person who, if  
there had been a distribution of capital of the company immediately before the  
relevant distribution time, would have had a right, as a shareholder in the  
company, to receive part of the distribution of capital (whether or not the  
person or the company existed immediately before the sale of the shares or  
interest).

5 (5) For the purposes of the application of sub-section (1), (2) or (3) in  
relation to a company (in this sub-section referred to as the "relevant  
company") in relation to a sale or sales of shares (in this sub-section referred to  
as the "original shares") under a scheme in relation to—

- 5 (a) a primary taxable amount that exists in relation to the relevant  
company; or  
(b) recoupment tax on a primary taxable amount payable by the relevant  
company,

0 at a particular time (in this sub-section referred to as the "relevant time"),  
where—

(c) the following conditions are satisfied:

(i) before the relevant time and under a scheme, whether entered  
into in Australia or outside Australia and whether entered into  
before or after the commencement of this Act—

5 (A) the relevant company transferred property to a person  
(in this paragraph referred to as the "transferee") by  
way of loan; and

0 (B) after the transfer referred to in sub-sub-paragraph (A), a  
person (in this sub-section referred to as the  
"recipient") or persons (in this sub-section referred to as  
the "recipients"), whether or not that person was or  
those persons included the transferee, acquired  
(whether or not for consideration), as the assignee or  
15 assignees of rights under the agreement relating to the  
making of the loan, the right to recover from the  
transferee the whole or a part of the loan; and

(ii) the Commissioner is of the opinion that the transfer of  
property referred to in sub-sub-paragraph (i) (A) would not  
have occurred if the original shares had not been sold by the  
relevant company;

0 (d) the following conditions are satisfied:

(i) before the relevant time, the relevant company—

15 (A) as settlor of a trust, transferred property to the trustee  
of a trust estate (in this sub-section referred to as the  
"recipient trust estate"); or

- (B) otherwise than as settlor, transferred property by way of gift to the trustee of a trust estate (in this sub-section also referred to as the “recipient trust estate”);
- (ii) at the time of the transfer referred to in sub-paragraph (i), the relevant company or an associate of the relevant company was a beneficiary of the recipient trust estate; and
- (iii) the Commissioner is of the opinion that the transfer of property referred to in sub-paragraph (i) would not have occurred if the original shares had not been sold by the relevant company; or
- (e) the following conditions are satisfied:
- (i) before the relevant time, the relevant company acquired redeemable shares in another company (in this sub-section also referred to as the “recipient”) or acquired redeemable units in a unit trust (in this sub-section referred to as the “recipient unit trust”);
- (ii) the redemption value of the redeemable shares or of the redeemable units, as the case may be, is less than the amount or value of the consideration paid or given by the relevant company in respect of the acquisition of the redeemable shares or the redeemable units, as the case may be; and
- (iii) the Commissioner is of the opinion that the acquisition referred to in sub-paragraph (i) would not have occurred if the original shares had not been sold by the relevant company,
- the primary taxable amount is a prescribed taxable amount for the purposes of this section and—
- (f) in a case to which paragraph (c) applies—the recipient or each of the recipients, as the case may be, referred to in that paragraph;
- (g) in a case to which paragraph (d) applies—the trustee of the recipient trust estate referred to in that paragraph; or
- (h) in a case to which paragraph (e) applies—the recipient or the trustee of the recipient unit trust, as the case may be, referred to in that paragraph,
- shall be deemed to be a person who, if there had been a distribution of capital of the relevant company immediately before the relevant distribution time, would have had a right, as a shareholder in the relevant company, to receive part of the distribution.
- (6) For the purposes of the application of sub-section (1), (2) or (3) in relation to a company (in this sub-section referred to as the “relevant company”) in relation to—
- (a) an eligible taxable amount (in this sub-section referred to as the “relevant eligible taxable amount”) that exists in relation to the relevant company; or

- (b) recoupment tax on an eligible taxable amount (in this sub-section also referred to as the “relevant eligible taxable amount”) payable by the relevant company,

at a particular time (in this sub-section referred to as the “relevant time”), where—

- (c) before the relevant time and under a scheme, whether entered into in Australia or outside Australia and whether entered into before or after the commencement of this Act—

- (i) any corpus of a trust estate was paid to, or applied for the benefit of, the relevant company or the relevant company received a distribution of capital of another company on a winding-up or reduction of capital of the other company; and

- (ii) a person (in this sub-section referred to as the “recipient”) acquired property from the relevant company (otherwise than by way of a distribution of capital to the person as a shareholder), whether by loan or otherwise, whether or not for consideration and whether before or after the payment or application, or the receipt, as the case may be, referred to in sub-paragraph (i);

- (d) the relevant eligible taxable amount was ascertained by reference to, or to recoupment tax on, an eligible taxable amount that existed in relation to the trustee of the trust estate, or the other company, as the case may be, referred to in sub-paragraph (c) (i); and

- (e) the Commissioner is of the opinion that the acquisition of property by the recipient would not have occurred unless the payment or application of the corpus of the trust estate, or the distribution of capital of the other company, as the case may be, referred to in sub-paragraph (c) (i) had been made, or was to be made, as the case may be, under the scheme,

the relevant eligible taxable amount is a prescribed taxable amount for the purposes of this section and the recipient shall be deemed to be a person who, if there had been a distribution of capital of the relevant company immediately before the relevant distribution time, would have had a right, as a shareholder in the relevant company, to receive part of the distribution of capital.

(7) Where sub-section (6) applies in relation to the acquisition of property by a person from a company, that acquisition of property shall, for the purposes of any other application of sub-section (6) and any application of sub-section (10), be deemed to be a distribution of capital of the company received by that person at the time when the property was acquired.

(8) For the purposes of the application of sub-section (1), (2) or (3) in relation to—

- (a) an eligible taxable amount that exists in relation to the trustee of a trust estate; or

- (b) recoupment tax on an eligible taxable amount payable by the trustee of a trust estate,

at a particular time (in this sub-section referred to as the “relevant time”), where, after the sale of the shares or interest in shares to which the eligible taxable amount relates and before the relevant time, any of the corpus of the trust estate was paid to, or applied for the benefit of, a person as a beneficiary in the trust estate, the eligible taxable amount is a prescribed taxable amount for the purposes of this section and the person shall be deemed to be a person who, if there had been a distribution of corpus of the trust estate immediately before the relevant distribution time, would have had a right, as a beneficiary in the trust estate, to receive the whole or a part of the distribution.

(9) For the purposes of the application of sub-section (1), (2) or (3) in relation to the trustee of a trust estate (in this sub-section referred to as the “relevant trust estate”) in relation to a sale or sales of shares (in this sub-section referred to as the “original shares”) under a scheme in relation to—

- (a) a primary taxable amount that exists in relation to the trustee of the relevant trust estate; or
- (b) recoupment tax on a primary taxable amount payable by the trustee of the relevant trust estate,

at a particular time (in this sub-section referred to as the “relevant time”), where—

- (c) the following conditions are satisfied:

- (i) before the relevant time and under a scheme, whether entered into in Australia or outside Australia and whether entered into before or after the commencement of this Act—

(A) property of the relevant trust estate was transferred to a person (in this paragraph referred to as the “transferee”) by way of loan; and

(B) after the transfer referred to in sub-sub-paragraph (A), a person (in this sub-section referred to as the “recipient”) or persons (in this sub-section referred to as the “recipients”), whether or not that person was or those persons included the transferee, acquired (whether or not for consideration), as the assignee or assignees of rights under the agreement relating to the making of the loan, the right to recover from the transferee the whole or a part of the loan; and

- (ii) the Commissioner is of the opinion that the transfer of property referred to in sub-sub-paragraph (i) (A) would not have occurred if the original shares had not been sold by the trustee of the relevant trust estate;

(d) the following conditions are satisfied:

(i) before the relevant time, the trustee of the relevant trust estate—

(A) as settlor of a trust, transferred property of the relevant trust estate to the trustee of another trust estate (in this sub-section referred to as the “recipient trust estate”); or

(B) otherwise than as settlor, transferred property of the relevant trust estate by way of gift to the trustee of another trust estate (in this sub-section also referred to as the “recipient trust estate”);

(ii) at the time of the transfer referred to in sub-paragraph (i), the trustee of the relevant trust estate or an associate of the trustee of the relevant trust estate was a beneficiary of the recipient trust estate; and

(iii) the Commissioner is of the opinion that the transfer of property referred to in sub-paragraph (i) would not have occurred if the original shares had not been sold by the trustee of the relevant trust estate; or

(e) the following conditions are satisfied:

(i) before the relevant time, the trustee of the relevant trust estate acquired redeemable shares in a company (in this sub-section also referred to as the “recipient”) or acquired redeemable units in a unit trust (in this sub-section referred to as the “recipient unit trust”);

(ii) the redemption value of the redeemable shares or of the redeemable units, as the case may be, is less than the amount or value of the consideration paid or given by the trustee of the relevant trust estate in respect of the acquisition of the redeemable shares or the redeemable units, as the case may be; and

(iii) the Commissioner is of the opinion that the acquisition referred to in sub-paragraph (i) would not have occurred if the original shares had not been sold by the trustee of the relevant trust estate,

the primary taxable amount is a prescribed taxable amount for the purposes of this section and—

(f) in a case to which paragraph (c) applies—the recipient or each of the recipients, as the case may be, referred to in that paragraph;

(g) in a case to which paragraph (d) applies—the trustee of the recipient trust estate referred to in that paragraph; or

(h) in a case to which paragraph (e) applies—the recipient or the trustee of the recipient unit trust, as the case may be, referred to in that paragraph,

shall be deemed to be a person who, if there had been a distribution of corpus of the relevant trust estate immediately before the relevant distribution time,

would have had a right, as a beneficiary in the relevant trust estate, to receive part of the distribution.

(10) For the purposes of the application of sub-section (1), (2) or (3) in relation to the trustee of a trust estate (in this sub-section referred to as the “relevant trust estate”) in relation to—

- (a) an eligible taxable amount (in this sub-section referred to as the “relevant eligible taxable amount”) that exists in relation to the trustee of the relevant trust estate; or
- (b) recoupment tax on an eligible taxable amount (in this sub-section also referred to as the “relevant eligible taxable amount”) payable by the trustee of the relevant trust estate,

at a particular time (in this sub-section referred to as the “relevant time”), where—

- (c) before the relevant time and under a scheme, whether entered into in Australia or outside Australia and whether entered into before or after the commencement of this Act—

- (i) any corpus of another trust estate was paid to, or applied for the benefit of, the trustee of the relevant trust estate or the trustee of the relevant trust estate received a distribution of capital of a company on a winding-up or reduction of capital of the company; and

- (ii) a person (in this sub-section referred to as the “recipient”) acquired property of the relevant trust estate (otherwise than by way of a distribution of corpus to the person as a beneficiary in the trust estate), whether by loan or otherwise, whether or not for consideration and whether before or after the payment or application, or the receipt, as the case may be, referred to in sub-paragraph (i);

- (d) the relevant eligible taxable amount was ascertained by reference to, or to recoupment tax on, an eligible taxable amount that existed in relation to the trustee of the other trust estate, or the company, as the case may be, referred to in sub-paragraph (c) (i); and

- (e) the Commissioner is of the opinion that the acquisition of property by the recipient would not have occurred unless the payment or application of the corpus of the other trust estate, or the distribution of capital of the company, as the case may be, referred to in sub-paragraph (c) (i) had been made, or was to be made, as the case may be, under the scheme,

the relevant eligible taxable amount is a prescribed taxable amount for the purposes of this section and the recipient shall be deemed to be a person who, if there had been a distribution of corpus of the relevant trust estate immediately before the relevant distribution time, would have had a right, as a beneficiary in the relevant trust estate, to receive the whole or a part of the distribution.

(11) Where sub-section (10) applies in relation to the acquisition by a person of property of a trust estate, that acquisition of property shall, for the



purposes of any application of sub-section (6) and any other application of sub-section (10), be deemed to be a distribution of corpus of the trust estate received by that person, as a beneficiary in the trust estate, at the time when the property was acquired.

5 (12) For the purposes of this section, the distribution amount in relation to an eligible taxable amount is—

(a) if the eligible taxable amount is a primary taxable amount—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

10 (b) if the eligible taxable amount is a secondary taxable amount—an amount that bears to the amount that is the distribution amount in relation to the eligible taxable amount by reference to which, or to recoupment tax on which, the secondary taxable amount was ascertained the same proportion as the secondary taxable amount bears to that eligible taxable amount or that recoupment tax, as the case may be.

(13) For the purposes of this section, the relevant distribution time in relation to an eligible taxable amount that exists in relation to a company or the trustee of a trust estate is—

20 (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 eligible taxable amount relates—the time when the company or trust estate commenced to exist; or

25 (b) in any other case—the time of sale of the shares or interest in shares to which the primary taxable amount relates,

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

(14) For the purposes of this section—

30 (a) a company is a holding company of another company at a particular time if the company has a controlling interest in the other company at that time; and

(b) a trust estate is a holding trust estate in relation to another trust estate at a particular time if the trustee of the other trust estate has a beneficial interest in the first-mentioned trust estate at that time.

35 (15) For the purposes of sub-section (14)—

(a) where a company has a controlling interest in a second company that has a controlling interest in a third company (including a controlling interest that the second company has in the third company by another application or other applications of this paragraph), the first-mentioned company shall be deemed to have a controlling interest in the third company; and

40 (b) where the trustee of a trust estate has a beneficial interest in a second trust estate and the trustee of the second trust estate has a beneficial interest in a third trust estate (including a beneficial interest that the

trustee of the second trust estate has in the third trust estate by another application or other applications of this paragraph), the trustee of the first-mentioned trust estate shall be deemed to have a beneficial interest in the third trust estate.

(16) In determining, in accordance with paragraph (1) (f), sub-paragraph (2) (d) (iii) or paragraph (3) (e), the amount of the secondary taxable amount that is to be taken to exist in relation to each of 2 or more persons by the application of sub-section (1), (2) or (3), as the case may be, in relation to an eligible taxable amount that exists in relation to a company or the trustee of a trust estate, the Commissioner shall have regard to—

- (a) the rights (if any) that any of those persons would, but for sub-sections (4), (5), (6), (8), (9) and (10), have had in respect of the capital distribution referred to in sub-section (1), (2) or (3), as the case may be;
- (b) the amount of any distribution of capital of the company or of corpus of the trust estate, as the case may be, to which sub-section (4) or (8) applies in relation to any of those persons in relation to the eligible taxable amount;
- (c) the amount or value of any property acquired by any of those persons from the company or trust estate, as the case may be, being property to which paragraph (5) (c) or (d), sub-section (6), paragraph (9) (c) or (d) or sub-section (10) applies in relation to the person concerned in relation to the eligible taxable amount;
- (d) the consideration paid or given in respect of the acquisition by the company or the trustee of the trust estate of redeemable shares or redeemable units from any of those persons, being redeemable shares or redeemable units to which paragraph (5) (e) or (9) (e) applies in relation to the person concerned in relation to the eligible taxable amount, and the redemption value of those redeemable shares or redeemable units; and
- (e) such other matters as the Commissioner considers relevant.

(17) For the purposes of sub-sections (5) and (9)—

- (a) “associate” has the same meaning in relation to a person as that expression has for the purposes of Subdivision D of Division 3 of Part III of the Assessment Act in relation to a taxpayer;
- (b) “redemption value”, in relation to redeemable shares or redeemable units means—
  - (i) if the redeemable shares or the redeemable units, as the case may be, have been redeemed—the amount for which they were redeemed; and
  - (ii) in any other case—the amount that, in the opinion of the Commissioner, might reasonably be expected to be the amount for which the redeemable shares or the redeemable units, as the case may be, would be redeemed if they were redeemed at the

relevant time referred to in sub-section (5) or (9), as the case may be;

(c) a share in a company is a redeemable share if—

- (i) the share is, or at the option of the company is to be, liable to be redeemed; or
- (ii) the share was issued in pursuance of, or as part of, an agreement or arrangement, whether oral or in writing and whether entered into before or after the commencement of this Act, that had the purpose, or purposes that included the purpose, of enabling the company, by means of the redemption, purchase or cancellation, or of a reduction in the paid-up value, of that share or of any other share in the company, to pay, transfer or apply to, on behalf of or at the direction of the person to whom the share was issued or any other person, whether upon the exercise of an option by the company or by any other person or not, any money or other property other than shares in the company;

(d) a unit in a unit trust is a redeemable unit if—

- (i) the unit is, or at the option of the trustee of the unit trust is to be, liable to be redeemed; or
- (ii) the unit was issued in pursuance of, or as part of, an agreement or arrangement, whether oral or in writing and whether entered into before or after the commencement of this Act, that had the purpose, or purposes that included the purpose, of enabling the trustee of the unit trust, by means of the redemption, purchase or cancellation of the unit or of any other unit in the unit trust or of a distribution of corpus of the unit trust, to pay, transfer or apply to, on behalf of or at the direction of the person to whom the unit was issued or any other person, whether upon the exercise of an option by the trustee of the unit trust or by any other person or not, any money or other property other than units in the unit trust;

(e) a person to whom redeemable shares or redeemable units were issued or allotted shall be taken to have acquired those redeemable shares or redeemable units; and

(f) a reference to the consideration paid or given by a person in respect of the acquisition of redeemable shares in a company or redeemable units in a unit trust includes a reference to any payment or other consideration given by the person to the company or to the trustee of the unit trust, as the case may be, in respect of the redeemable shares or redeemable units, whether as payment of a premium in respect of the redeemable shares or redeemable units or otherwise and whether on application for, or on allotment of, the redeemable shares or redeemable units or otherwise.

(18) Where a secondary taxable amount exists or existed in relation to a person and—

(a) the Commissioner, having regard to—

(i) the circumstances by reason of which the secondary taxable amount exists or existed; and

(ii) such other circumstances as the Commissioner considers relevant,

considers it unreasonable that the secondary taxable amount should be taken to exist or to have existed in relation to the person; or

(b) if the secondary taxable amount is less than \$100—the Commissioner considers that the secondary taxable amount should not be taken to exist or to have existed in relation to the person,

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

(19) A secondary taxable amount may be taken to exist at a particular time in relation to a company or the trustee of a trust estate notwithstanding that the company or trust estate has ceased to exist before that time.

(20) For the purposes of this section, a distribution of capital of a company shall be taken to have been received by a person although it is not actually paid over to the person but is re-invested, accumulated, capitalised, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on behalf of the person or as the person directs.

(21) In this section, unless the contrary intention appears, “recoupment tax” includes late payment tax.

**Liability to pay tax**

7. (1) Subject to this Act, where at any time an eligible taxable amount exists in relation to a person, the person is liable to pay the tax imposed on that amount by the *Taxation (Unpaid Company Tax) Act* 1982.

(2) Where an assessment has been made, in relation to a sale of shares, or of an interest in shares, under a scheme, of the recoupment tax payable by a person on a primary taxable amount ascertained by reference to an amount of company tax due and payable by a company in relation to a year of income that remained unpaid at the time when the assessment was made, the liability of the person in respect of recoupment tax or late payment tax in respect of that sale of those shares or of that interest in respect of that year of income shall not be increased on account of any additional tax payable by the company under section 207 of the Assessment Act that accrues after the time when the assessment was made.

(3) Where an assessment has been made, in relation to a sale of shares, or of an interest in shares, under a scheme, of the recoupment tax payable by a person on a secondary taxable amount, being recoupment tax ascertained by reference to an amount of company tax due and payable by a company in relation to a year of income, the liability of the person in respect of recoupment

tax or late payment tax in respect of that sale of those shares or of that interest in respect of that year of income—

5 (a) shall not be increased on account of any additional tax payable by the company under section 207 of the Assessment Act that accrues after the time when the assessment was made; and

(b) in a case to which sub-section 6 (3) applies, shall not be reduced on account of any change in the opinion of the Commissioner as to the likelihood of the recoupment tax referred to in that sub-section being paid.

10 (4) Where—

15 (a) an assessment (in this sub-section referred to as the “recoupment tax assessment”) is made of the recoupment tax payable by a person in relation to a sale of shares, or of an interest in shares, in relation to an amount of ordinary company tax or undistributed profits tax due and payable by a company in relation to a year of income; and

(b) after the recoupment tax assessment is made, the assessment in relation to the ordinary company tax or undistributed profits tax, as the case may be, is amended,

20 the amount of the recoupment tax that the person is liable to pay in respect of that sale of those shares or of that interest, in relation to the ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to that year of income is the amount that the person would have been liable to pay if the ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the year of income under  
25 the amended assessment had been payable by the company under the assessment that was amended.

30 (5) For the purposes of this Act, where any additional tax payable under section 207 of the Assessment Act or any late payment tax is remitted, that additional tax or late payment tax, as the case may be, shall be deemed never to have been payable.

### **Reduction of liability where tax paid**

8. (1) Where—

35 (a) in relation to a sale of shares, or of an interest in shares, under a scheme, recoupment tax is or was payable on an eligible taxable amount in relation to an amount of ordinary company tax or undistributed profits tax payable by a company in relation to a year of income; and

40 (b) after the recoupment tax became payable, an amount (in this sub-section referred to as the “company tax payment”) that is paid to the Commissioner is applied in reduction of ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the year of income,

there shall be deemed to be applied, or to have been applied, in reduction of the recoupment tax that is or was payable on the eligible taxable amount—

- (c) if the eligible taxable amount is a primary taxable amount—the amount ascertained by multiplying the amount of the company tax payment by the apportionment factor in relation to the primary taxable amount; and      5
- (d) if the eligible taxable amount is a secondary taxable amount—the amount ascertained by multiplying the company tax payment by the reduction factor in relation to the secondary taxable amount.

(2) For the purposes of sub-section (1), the reduction factor in relation to a secondary taxable amount is the product of the numbers that are the relevant numbers in relation to—      10

- (a) the secondary taxable amount;
- (b) the eligible taxable amount by reference to which, or to recoupment tax on which, the secondary taxable amount was ascertained; and      15
- (c) any other eligible taxable amount by reference to which, or to recoupment tax on which, an eligible taxable amount to which paragraph (b) or this paragraph applies was ascertained.

(3) For the purposes of sub-section (2), the relevant number in relation to a primary taxable amount or a secondary taxable amount is—      20

- (a) in the case of a primary taxable amount—the apportionment factor in relation to the primary taxable amount; and
- (b) in the case of a secondary taxable amount—the number that bears to 1 the same proportion as the secondary taxable amount bears to the eligible taxable amount, or to the recoupment tax on an eligible taxable amount, as the case may be, by reference to which the secondary taxable amount was ascertained.      25

(4) Where—

- (a) recoupment tax is or was payable on a secondary taxable amount and recoupment tax is payable on the eligible taxable amount by reference to which, or to recoupment tax on which, the secondary taxable amount was ascertained; and      30
- (b) an amount of recoupment tax on that eligible taxable amount is paid or an amount is deemed, by another application of this sub-section, to have been applied in reduction of the recoupment tax payable on that eligible taxable amount,      35

there shall be deemed to be applied, or to have been applied, in reduction of the recoupment tax that is or was payable on the secondary taxable 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 taxable amount bears to the eligible taxable amount, or to the recoupment tax by reference to which the secondary taxable amount was ascertained, as the case may be.      40

(5) Where—

(a) recoupment tax is or was payable on an eligible taxable amount and recoupment tax is payable on a secondary taxable amount ascertained by reference to the eligible taxable amount or to recoupment tax on the eligible taxable amount; and

(b) an amount of recoupment tax on the secondary taxable amount is paid or an amount is deemed, by another application of this sub-section, to have been applied in reduction of the recoupment tax payable on the secondary taxable amount,

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 recoupment tax that is or was payable on the eligible taxable amount.

(6) Where under this section an amount is deemed to be applied, or to have been applied, in reduction of the recoupment tax that is or was payable on a primary taxable amount or secondary taxable amount, being 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 recoupment tax.

(7) In this section, “recoupment tax” includes late payment tax.

### Application of payments

9. (1) No part of any payment made to the Commissioner shall be applied in discharge or reduction of any recoupment tax while any late payment tax in respect of that recoupment tax remains unpaid.

(2) Except where the Commissioner otherwise directs, no part of any payment made to the Commissioner, whether before or after the commencement of this Act, shall, for the purposes of this Act, be taken to have been applied in reduction of—

(a) basic company tax payable by a company in relation to a year of income; or

(b) additional tax payable by a company under section 207 of the Assessment Act in relation to basic company tax payable by the company in relation to a year of income,

while there remained unpaid—

(c) any additional tax payable by the company under section 226 of the Assessment Act in relation to that basic company tax; or

(d) any additional tax payable by the company under section 207 of the Assessment Act in relation to additional tax referred to in paragraph (c).

(3) This section has effect in relation to a payment made to the Commissioner notwithstanding any direction of the person making the payment.

(4) In this section “basic company tax” means—

- (a) ordinary company tax to which paragraph (a) of the definition of “ordinary company tax” in sub-section 3 (1) applies; or 5
- (b) undistributed profits tax to which paragraph (a) of the definition of “undistributed profits tax” in sub-section 3 (1) applies.

### Penalty for late payment of tax

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15  
10. (1) Notwithstanding section 207 of the Assessment Act, if any recoupment tax assessed under this Act remains unpaid after the time when it became due and payable or would, but for section 206 of the Assessment Act, have become due and payable, additional tax under this section shall be due and payable by way of penalty at the rate of 20% per annum on the amount unpaid, computed from that time or, where, under section 206 of the Assessment Act, the Commissioner has granted an extension of time for payment of the recoupment tax or has permitted payment of the recoupment tax to be made by instalments, from such date as the Commissioner determines, not being a date prior to the date on which the recoupment tax was originally due and payable.

20  
(2) Where additional tax is due and payable by a person under this section in relation to an amount of recoupment tax and—

(a) the Commissioner is satisfied that—

- (i) the circumstances that contributed to the delay in payment of the recoupment tax were not due to, or caused directly or indirectly by, an act or omission of the person; and 25
- (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances;

(b) the Commissioner is satisfied that—

- (i) the circumstances that contributed to the delay in payment of the recoupment tax were due to, or caused directly or indirectly by, an act or omission of the person; 30
- (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
- (iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the additional tax or part of the additional tax; or 35

(c) the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to remit the additional tax or part of the additional tax,

the Commissioner may remit the additional tax or part of the additional tax. 40



**Change of trustee**

**11. Where—**

(a) a person who was the holder, or one of the joint holders, of shares in the capacity of trustee of a trust estate sold the shares, or his interest in the shares; and

(b) at a later time, another person is trustee of that trust estate,

for the purposes of the application of this Act in relation to that later time, the shares or interest shall be taken to have been sold by the trustee referred to in paragraph (b) and not by the trustee referred to in paragraph (a).

**12. Companies ceasing to exist**

(1) This section has effect for the purposes of the application of this Act in relation to a sale or sales of shares under a scheme where, after the first sale time and either before or after the commencement of this Act, a company ceased to exist, being a company more than 90% of the voting power in which was, by virtue of rights attaching to the shares, capable of being controlled immediately before the first sale time, either directly or through one or more interposed companies, trustees or partnerships, by the person or persons who sold the shares.

(2) Where the company ceased to exist after an assessment was made of the ordinary company tax or undistributed profits tax payable by the company in relation to a year of income—

(a) if the company ceased to exist before the tax became due and payable under the assessment—

(i) the tax shall be taken to have become due and payable under the assessment notwithstanding that the company ceased to exist; and

(ii) the liability of the company in respect of ordinary company tax or undistributed profits tax, as the case may be, in relation to the year of income shall not be taken to have been affected or to be affected by the fact that the company ceased to exist; and

(b) if the company ceased to exist after the tax became due and payable under the assessment—the liability of the company in respect of ordinary company tax or undistributed profits tax, as the case may be, in relation to the year of income shall not be taken to have been affected or to be affected by the fact that the company ceased to exist.

(3) Where—

(a) the company ceased to exist after an assessment was made of the ordinary company tax or undistributed profits tax payable by the company in relation to a year of income (in this section referred to as the “relevant year of income”);

(b) if the company had not ceased to exist, the Commissioner would be empowered under the Assessment Act to amend the assessment; and

- (c) a person or persons—
  - (i) is or are liable to pay recoupment tax;
  - (ii) in the opinion of the Commissioner is likely or are likely to become liable to pay recoupment tax; or
  - (iii) in the opinion of the Commissioner would, if the amendment were made, be likely to become liable to pay recoupment tax, in relation to ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the relevant year of income, 5

the Commissioner may make an amended assessment (in this section referred to as the “notional assessment”) of the ordinary company tax (in this section referred to as the “notional ordinary company tax”) or undistributed profits tax (in this section referred to as the “notional undistributed profits tax”), as the case may be, that would be payable by the company in relation to the relevant year of income if the company had not ceased to exist. 10 15

(4) Where—

- (a) the company ceased to exist before an assessment was made of the ordinary company tax or undistributed profits tax payable by the company in relation to a year of income (in this section also referred to as the “relevant year of income”), being the year of income in which the last sale time in relation to the scheme occurred or a preceding year of income; and 20
- (b) the Commissioner is of the opinion that, if the company had not ceased to exist and an assessment had been made of the ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the relevant year of income— 25
  - (i) ordinary company tax or undistributed profits tax, as the case may be, would have become due and payable by the company in relation to the relevant year of income; and
  - (ii) if that ordinary company tax or undistributed profits tax, as the case may be, had remained unpaid, recoupment tax would have become payable by a person or persons in relation to the ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the relevant year of income, 30 35

the Commissioner may make an assessment (in this section also referred to as the “notional assessment”) of the ordinary company tax (in this section also referred to as the “notional ordinary company tax”) or undistributed profits tax (in this section also referred to as the “notional undistributed profits tax”), as the case may be, that would be payable by the company in relation to the relevant year of income if the company had not ceased to exist. 40

(5) For the purposes of the making of an assessment under sub-section (4) of undistributed profits tax that would be payable by a company if it had not ceased to exist, any dividends that the company might have paid if it had not ceased to exist shall be disregarded. 45

(6) The Commissioner shall serve notice of the notional assessment on the person, or on one of the persons, as the case may be, referred to in paragraph (3) (c) or sub-paragraph (4) (b) (ii), as the case may be.

5 (7) The person on whom notice of the notional assessment is served has the same rights under Division 2 of Part V of the Assessment Act in respect of the notional assessment as the company would have had if it had continued to exist and the notional assessment were an assessment of the ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the relevant year of income and, for the purpose of the exercise of those rights, the provisions of that Division apply in relation to the notional assessment in like manner as those provisions apply in relation to an assessment under the Assessment Act.

(8) For the purposes of this Act—

15 (a) the notional assessment shall be treated as if it were an assessment made under the Assessment Act of ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the relevant year of income; and

20 (b) the notional company tax that, at a particular time, is applicable in accordance with sub-section (9) in relation to the company in relation to the relevant year of income by virtue of the notional assessment shall be treated as if it were an amount of ordinary company tax or undistributed profits tax, as the case may be, that has become due and payable by the company in relation to the relevant year of income and remains unpaid at that time.

25 (9) For the purpose of ascertaining the notional company tax that is applicable, at a particular time, in relation to the company in relation to the relevant year of income by virtue of the notional assessment, the provisions of the Assessment Act apply in relation to the notional assessment and the notional ordinary company tax or notional undistributed profits tax, as the case may be, to which the notional assessment relates as if—

30 (a) the notional assessment were an assessment of the ordinary company tax or undistributed profits tax, as the case may be, payable by the company in relation to the relevant year of income; and

35 (b) the notional ordinary company tax or notional undistributed profits tax, as the case may be, were ordinary company tax or undistributed profits tax, as the case may be.

40 (10) Without limiting the generality of sub-section (9), sections 170 and 207 of the Assessment Act apply for the purpose of determining the notional company tax that is applicable, at a particular time, in relation to the company by virtue of the notional assessment.

**Request to eliminate undistributed amount****13. (1) Where—****(a) in relation to a sale or sales of shares under a scheme—**

- (i) a primary taxable amount exists, or primary taxable amounts exist, in relation to a person (in this section referred to as the “relevant person”) or each of 2 or more persons (in this section referred to as the “relevant persons”) in relation to an amount of undistributed profits tax payable in relation to a year of income by a company (in this section referred to as the “relevant company”); or 5
- (ii) primary taxable amounts exist in relation to a person (in this section also referred to as the “relevant person”) or each of 2 or more persons (in this section also referred to as the “relevant persons”) in relation to amounts of undistributed profits tax payable in relation to 2 or more years of income by a company (in this section also referred to as the “relevant company”); and 10

- (b) an assessment of undistributed profits tax has been made in relation to the relevant company in relation to each year of income, being the year of income in which the last sale time occurred or a preceding year of income, in relation to which there is an undistributed amount in relation to the company, 15

a request that this section should apply, in relation to that sale or those sales of shares, in relation to the relevant company may be made by— 20

- (c) if, in the opinion of the Commissioner, it is reasonably practicable for the request to be made by a majority of the persons who constituted the board of directors of the relevant company immediately before the last sale time—a majority of those persons; or 25
- (d) in any other case—the relevant person, or the relevant persons together, as the case may be.

**(2) A request under sub-section (1) shall—** 30

- (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) On receipt of a request under sub-section (1), the Commissioner may grant the request or he may refuse the request.** 35

**(4) In deciding whether to grant or refuse the request, the Commissioner shall have regard to—**

- (a) 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; and
- (b) any other matters that he considers relevant. 40

(5) Where a request is made under sub-section (1), in relation to a sale of shares under a scheme, in relation to the relevant company and the request is granted by the Commissioner—

5 (a) the relevant company shall, for the purposes of Division 7 of Part III of the Assessment Act, be deemed to have made a sufficient distribution in relation to each year of income to which paragraph (1) (a) applies; and

(b) for the purposes of the Assessment Act other than Division 11A of Part III and Division 4 of Part VI—

10 (i) the relevant company shall be deemed to have paid to the relevant person or each of the relevant persons, as the case may be, as a shareholder or shareholders in the company, in relation to each primary taxable amount referred to in paragraph  
15 (1) (a) that exists in relation to the person concerned, a dividend of an amount ascertained by multiplying the undistributed amount in relation to the relevant company in relation to the year of income (in this paragraph referred to as the “relevant year of income”) to which the primary taxable amount relates by the apportionment factor in relation to the  
20 primary taxable amount; and

(ii) the dividend—

25 (A) shall be deemed to have been paid by the relevant company on the last day of the prescribed distribution period in relation to the relevant year of income out of profits derived by the relevant company from sources in Australia; and

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

30 (6) For the purposes of this section, where the whole of the undistributed profits tax payable by a company in relation to an undistributed amount in relation to a year of income has been paid, an undistributed amount shall not be taken to exist in relation to the company in relation to the year of income.

35 (7) For the purposes of the application of this section in relation to an undistributed amount in a case where a part of the undistributed profits tax payable upon the undistributed amount has been paid, the reference to the undistributed amount shall be read as a reference to so much of the undistributed amount as bears to the undistributed amount the same proportion as the amount of the undistributed profits tax on the undistributed amount that remains unpaid bears to the undistributed profits tax on the  
40 undistributed amount.

(8) A reference in sub-section (7) to undistributed profits tax does not include a reference to additional tax payable under section 207 of the Assessment Act.

**Request where dividend deemed to be paid to trustee**

**14. (1) Where—**

- (a) by the operation of sub-section 13 (5), a dividend (in this sub-section referred to as the “deemed dividend”) deemed to have been paid by a company is included in the assessable income of a trust estate of a year of income; 5
- (b) but for this sub-section, the trustee of the trust estate would be liable to be assessed and to pay tax under section 99 or 99A of the Assessment Act in respect of an amount attributable, in whole or in part, to an amount (in this sub-section referred to as the “relevant amount”) being the deemed dividend or a part of the deemed dividend; and 10
- (c) if the deemed dividend had been a dividend in fact paid by the company, the trustee would have had a discretion to pay the deemed dividend or part of the deemed dividend to, or apply the deemed dividend or part of the deemed dividend for the benefit of, a specified beneficiary or specified beneficiaries, 15

the trustee and that beneficiary, or the trustee and all or any of those beneficiaries, as the case may be, may request that, for the purposes of the application of the Assessment Act in relation to the trust estate in relation to the deemed dividend, the trustee shall be taken to have paid to or applied for the benefit of the beneficiary making the request, or to have paid to or applied for the benefit of the beneficiaries making the request in such proportions as are specified in the request, so much of the deemed dividend as is equal to the relevant amount. 20

(2) For the purposes of the application of sub-section (1), where the beneficiary or any of the beneficiaries referred to in paragraph (1) (c) is under a legal disability, a request under that sub-section may be made on behalf of that beneficiary by another person who is not under a legal disability. 25

(3) A request under sub-section (1) shall—

- (a) be in writing signed by each of the persons making the request; and 30
- (b) be sent to or lodged with the Commissioner.

(4) On receipt of a request under sub-section (1), the Commissioner may grant the request or he may refuse the request.

(5) In deciding whether to grant or refuse the request, the Commissioner shall have regard to— 35

- (a) 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; and
- (b) any other matters that he considers relevant.

(6) Where the Commissioner grants a request made in accordance with sub-section (1) in relation to a dividend that is deemed to have been paid by a company and is included in the assessable income of a trust estate, the trustee shall, for the purposes of the Assessment Act, be taken to have paid or applied the dividend, or the part of the dividend to which the request relates, in 40

accordance with the request, on the day on which the dividend is deemed to have been paid by the company.

**Notification of company tax liability**

**15. (1) Where—**

- 5 (a) under the Assessment Act, the Commissioner is required or permitted to serve a notice of assessment on a company in relation to the liability of the company to pay ordinary company tax or undistributed profits tax in relation to a year of income; and
- 10 (b) recoupment tax is payable, or the Commissioner is of the opinion that recoupment tax is likely to become payable, by a person or persons in relation to ordinary company tax or undistributed profits tax, as the case may be, that is payable or may become payable by the company in relation to that year of income,

15 the notice shall, notwithstanding section 174 of the Assessment Act, be served on the company by being served on the person or any of the persons referred to in paragraph (b).

20 (2) A person on whom a notice of assessment is served under sub-section (1) in relation to the liability of a company to pay company tax in relation to a year of income has the same rights under Division 2 of Part V of the Assessment Act in relation to that liability as the company has and, for the purpose of the exercise of those rights by the person, the provisions of that Division apply in like manner as those provisions would apply in relation to the exercise of those rights by the company.

**(3) Where—**

- 25 (a) a notice of assessment in respect of the liability of a company to pay ordinary company tax or undistributed profits tax in relation to a year of income has been served, or purported to have been served, on the company before the commencement of this Act; and
- 30 (b) the Commissioner is of the opinion that recoupment tax is likely to become payable by a person or persons in relation to ordinary company tax or undistributed profits tax, as the case may be, that is payable or may become payable by the company in relation to that year of income,

35 the Commissioner shall serve a copy of the notice of assessment on the person or any of the persons referred to in paragraph (b) and, if the notice of assessment was not validly served on the company, the service of the copy of the notice shall be deemed to be service on the company of the notice of assessment.

40 (4) Sub-section (3) does not apply in relation to a notice that has been served or purported to have been served on a company if the Commissioner has reason to believe that the service or purported service brought the contents of the notice to the attention of the person, or any of the persons, as the case may be, referred to in paragraph (3) (b).

(5) A person on whom a copy of a notice of assessment is served under sub-section (3) in relation to the liability of a company to pay company tax in relation to a year of income has the same rights under Division 2 of Part V of the Assessment Act in relation to that liability as the company would have had if the notice of assessment had been served on the company on the date on which the copy of the notice was served on the person and, for the purpose of the exercise of those rights by the person, the provisions of that Division apply in like manner as those provisions would apply in relation to the exercise of those rights by the company. 5

(6) In this section— 10

“ordinary company tax”, in relation to a company, includes additional tax payable by the company under section 226 of the Assessment Act in relation to income tax referred to in paragraph (a) of the definition of “ordinary company tax” in sub-section 3 (1);

“undistributed profits tax”, in relation to a company, includes additional tax payable by the company under section 226 of the Assessment Act in relation to additional tax referred to in paragraph (a) of the definition of “undistributed profits tax” in sub-section 3 (1). 15

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

16. (1) Where— 20

(a) a scheme entered into or carried out by a person after 25 July 1982 would, but for this section, have the effect of in any way, directly or indirectly, defeating, evading or avoiding any liability of the person to pay recoupment tax; and

(b) it would be reasonable to conclude or infer that the person entered into or carried out the scheme for the purpose of in any way, directly or indirectly, defeating, evading or avoiding any liability of the person to pay recoupment tax or future recoupment tax, 25

then, in any prescribed recovery proceedings, the scheme shall be treated as being void in so far as it would, but for this section, have the effect mentioned in paragraph (a) but without prejudice to such validity as the scheme may have for any other purpose. 30

(2) Without limiting the generality of sub-section (1), where—

(a) a person (in this sub-section referred to as the “taxpayer”) is liable to pay an amount of recoupment tax to the Commissioner; 35

(b) after 25 July 1982, the taxpayer has transferred or transfers property to another person;

(c) the transfer would, but for this section, have the effect of rendering the taxpayer unable to pay the recoupment tax, or any part of the recoupment tax; 40

(d) having regard to—

(i) the manner and circumstances in which the transfer was made;



(ii) the nature of any connection (whether of a business, family or other nature) between the taxpayer and the other person referred to in paragraph (b); and

(iii) any other relevant circumstances,

5 it would be reasonable to conclude or infer that the transfer was made by the taxpayer for the purpose of rendering the taxpayer unable to pay the recoument tax, a part of the recoument tax or any future recoument tax; and

(e) either of the following conditions is satisfied:

10 (i) the transfer was made by way of gift; or

(ii) having regard to the circumstances referred to in paragraph (d), it would be reasonable to conclude or infer that the person to whom the property was transferred believed or suspected that the transfer was made by the taxpayer for the purpose referred to in paragraph (d),

15 then, in any prescribed recovery proceedings, the transfer shall be treated as being void in so far as it would, but for this section, have the effect mentioned in paragraph (c) but without prejudice to such validity as the transfer may have for any other purpose.

20 (3) A reference in this section to a scheme being entered into or carried out or a transfer of property being made by a person for a particular purpose shall be read as including a reference to the scheme being entered into or carried out or the transfer being made, as the case may be, by the person for 2 or more purposes of which that particular purpose is the dominant purpose.

25 (4) In this section—

(a) a reference to a transfer of property by a person includes a reference to—

(i) the execution by the person of a charge on property of the person in favour of another person;

30 (ii) the incurring by the person of an obligation in favour of another person; and

(iii) any scheme that has the effect, directly or indirectly, of diminishing the value of any property of the person and increasing the value of the property of another person or persons; and

(b) a reference, in relation to a transfer of property to which paragraph (a) applies, to the person to whom the property was transferred is a reference to—

40 (i) in a case to which sub-paragraph (a) (i) applies—the person in whose favour the charge referred to in that sub-paragraph was executed;

(ii) in a case to which sub-paragraph (a) (ii) applies—the person in whose favour the obligation referred to in that sub-paragraph was incurred; and

(iii) in a case to which sub-paragraph (a) (iii) applies—the person, or any of the persons, referred to in that paragraph the value of whose property was increased by reason of the transfer.

(5) A reference in sub-section (4) to a scheme that has the effect, directly or indirectly, of increasing the value of the property of a person includes a reference to a scheme that has the effect, directly or indirectly, that the person becomes the owner of property of which the person would not have been the owner but for the scheme, whether or not the property would have existed but for the scheme.

(6) In this section—

“future recoupment tax”, in relation to a person in relation to a scheme, means recoupment tax that could reasonably have been expected by the person at the time when the scheme was entered into or carried out to become payable by the person after that time;

“prescribed recovery proceedings”, in relation to recoupment tax, means—

(a) proceedings by the Commissioner or a Deputy Commissioner for recovery of the recoupment tax or part of the recoupment tax or of an amount that includes the recoupment tax or part of the recoupment tax;

(b) proceedings for enforcement of a judgment given in proceedings referred to in paragraph (a); or

(c) proceedings by a trustee within the meaning of the *Bankruptcy Act* 1966 or by a liquidator, being proceedings for the benefit of the Crown, the Commissioner or a Deputy Commissioner or for the benefit of persons including the Crown, the Commissioner or a Deputy Commissioner;

“recoupment tax” includes late payment tax.

**Evidence**

17. (1) For the purposes of this Act, 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 is due and payable by a company and that, on a date specified in the certificate, that company tax remained unpaid, is conclusive evidence of the matters stated in the certificate.

(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) A reference in sub-section (1) to company tax due and payable by a company and remaining unpaid at a particular time includes a reference to notional company tax applicable in relation to a company at a particular time in accordance with sub-section 12 (8).

**Regulations**

18. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.











