

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**TAXATION LAWS AMENDMENT BILL (No. 4) 1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 31 May 1989

*(Minister Assisting the Treasurer)*

**A BILL**

FOR

**An Act to amend the law relating to taxation**

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

**PART 1—PRELIMINARY**

**Short title**

5       1. This Act may be cited as the *Taxation Laws Amendment Act (No. 4) 1989*.

**Commencement**

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

10       (2) Section 31 is to be taken to have commenced on 19 January 1989.

(3) Part 4 is to be taken to have commenced on 25 January 1989.

**PART 2—AMENDMENT OF THE INCOME TAX ASSESSMENT  
ACT 1936**

**Principal Act**

3. In this Part, “Principal Act” means the *Income Tax Assessment Act 1936*. 5

**Exemption of pay and allowances of members of Defence Force serving in special areas**

4. Section 23AC of the Principal Act is amended:

(a) by omitting from paragraph (3) (c) “1 July 1965” and substituting “18 February 1989”; 10

(b) by omitting subsection (4) and substituting the following subsection:

“(4) The regulations may provide that, by reason of a state of disturbance in or affecting Namibia, an area outside Australia:

(a) is to become a special area, for the purposes of this section, on a specified date; or 15

(b) is to be taken to have become a special area, for the purposes of this section, on a specified date (which may be a date before the commencement of the regulations or before the commencement of this subsection but not before 18 February 1989).” 20

**Interpretation**

5. Section 27A of the Principal Act is amended:

(a) by omitting from subsection (1) the definitions of “approved deposit fund” and “approved trustee” and substituting the following definitions: 25

“‘approved deposit fund’ means:

(a) a fund that is, or has at any time after the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1989* been, an approved deposit fund within the meaning of the *Occupational Superannuation Standards Act 1987*; or 30

(b) a fund:

(i) that was established before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 4) 1989*; and 35

(ii) that was an approved deposit fund for the purposes of this Subdivision as in force immediately before that commencement;

‘approved trustee’ has the same meaning as in the *Occupational Superannuation Standards Act 1987*;” 40

- (b) by omitting from subsection (1) the definitions of “approved purposes”, “approved rules”, “eligible bank”, “eligible financial corporation”, “registered auditor” and “related entity”;
- (c) by omitting subsections (2) and (15).

#### 5 Expenditure on scientific research

6. Section 73A of the Principal Act is amended by adding at the end the following subsection:

10 “(9) This section does not apply in relation to payments made, or expenditure incurred, after 30 June 1995 and, without limiting the generality of the foregoing, subsection (5) does not apply in relation to plant acquired after that date.”.

#### Expenditure on research and development activities

7. Section 73B of the Principal Act is amended:

15 (a) by inserting before subsection (1) the following subsection:  
“(1AA) This section has effect subject to sections 73C and 73D.”;

(b) by omitting “and” from the end of paragraph (b) of the definition of “aggregate research and development amount” in subsection (1);

20 (c) by adding at the end of the definition of “aggregate research and development amount” in subsection (1) the following word and paragraph:

“and (d) the amount of any deduction that has been allowed, or is allowable, under Division 10D in the assessment of the company in respect of income of the year of income because of the use by the company of a building for the purpose of carrying on research and development activities;”;

25 (d) by omitting paragraphs (a) and (b) of the definition of “deduction acceleration factor” in subsection (1) and substituting the following paragraphs:

30 “(a) in the case of the year of income ending on 30 June 1993 or an earlier year of income:

35 (i) where the aggregate research and development amount in relation to the company in relation to the year of income is less than \$50,000—the factor ascertained in accordance with the formula:

$$\frac{11A - 100,000}{6A},$$

40 where A is the number of whole dollars in the aggregate research and development amount in relation to the company in relation to the year of income; or

(ii) otherwise—1.5; or

(b) in the case of the year of income ending on 30 June 1994 or a later year of income:

(i) where the aggregate research and development amount in relation to the company in relation to the year of income is less than \$50,000—the factor ascertained in accordance with the formula: 5

$$\frac{17A - 100,000}{12A},$$

where A is the number of whole dollars in the aggregate research and development amount in relation to the company in relation to the year of income; or 10

(ii) otherwise—1.25;”;

(e) by omitting from the definition of “deduction period” in subsection (1) “1991” and substituting “1995”; 15

(f) by omitting “of plant” and “the plant” from the definition of “pilot plant” in subsection (1) and substituting “of other plant” and “the other plant”, respectively;

(g) by omitting the definition of “plant” in subsection (1) and substituting the following definition: 20

“ ‘plant’ means:

(a) things that are plant or articles within the meaning of subsection 54 (1) (whether or not depreciation is allowable under that subsection in respect of the things); or 25

(b) things to which subsection 54 (2) would apply if the carrying on of research and development activities were the carrying on of a business for the purpose of producing assessable income; or

(c) pilot plant;” 30

(h) by inserting after subsection (1B) the following subsection:

“(1C) For the purposes of the application of the definition of ‘plant expenditure’ in subsection (1), or for the purposes of the application of paragraph (31) (a), in relation to an eligible company, a unit of plant is not to be taken not to be for use by the company exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities merely because the company has, on or after 21 November 1987, entered into an agreement with another person (whether or not an eligible company) for that person to use the unit of plant exclusively for the purpose of the carrying on by or on behalf of that person of research and development activities (whether or not the same as the first-mentioned activities).” 35 40

(j) by adding at the end of subsection (3) “other than expenditure incurred by the company on or after 1 July 1988 in the capacity of 45

a trustee of a public trading trust for the purposes of Division 6C in relation to the year of income in which the expenditure was incurred”;

(k) by inserting after subsection (3) the following subsections:

5 “(3A) Where expenditure (whether incurred wholly, or only partly, on research and development activities) has, on or after 21 November 1987, been incurred by a partnership in which, when the expenditure was incurred:

(a) at least one partner was an eligible company; and

10 (b) each other partner was an eligible company or was a body corporate that was, or is taken to have been, registered under section 39F of the *Industry Research and Development Act 1986* as a research agency in respect of the class of research and development activities on which the expenditure was incurred;

15 this section and sections 73C and 73D apply as if the partnership were an eligible company.

20 “(3B) In determining whether a relationship between persons for the purpose of engaging in research and development activities constitutes a partnership for the purposes of this Act, the engaging by those persons in those activities is to be taken to constitute carrying on a business with a view to profit.”;

(m) by omitting from subsection (4) “1991” and substituting “1995”;

(n) by inserting after subsection (5) the following subsections:

25 “(5AA) Subject to subsection (5AB), an eligible company is not to be taken for the purposes of paragraph (5) (b) to have ceased during a year of income to use a unit of plant exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities merely because on or after 21  
30 November 1987 and during the whole or a part of the year of income another person (whether or not an eligible company) used the unit of plant, with the consent of the company, exclusively for the purpose of the carrying on by or on behalf of that other person of research and development activities (whether or not the same as  
35 the activities for which the unit of plant has been used by the company).

40 “(5AB) Subsection (5AA) does not apply in relation to a unit of plant owned by an eligible company in relation to a year of income unless the only reason for any failure of the company to use the unit of plant during the whole or a part of the year of income for the purpose of the carrying on by or on behalf of the company of research and development activities was the use made of the unit of plant during the year of income by another person as mentioned in that subsection.”;

45 (o) by omitting subsection (8);

(p) by inserting after subsection (9) the following subsection:

“(9A) Subsection (9) does not apply in relation to expenditure incurred on or after 21 November 1987 on behalf of a partnership by a partner in the partnership in that partner’s capacity as such a partner.”;

5

(q) by omitting subsection (13) and substituting the following subsection:

“(13) Subject to this section, where an eligible company incurs contracted expenditure during a year of income, the amount of that expenditure multiplied by:

(a) in the case of the year of income ending on 30 June 1993 or an earlier year of income—1.5; or

10

(b) in the case of the year of income ending on 30 June 1994 or a later year of income—1.25;

is allowable as a deduction from the assessable income of the company of the year of income.”;

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(r) by inserting after subsection (15) the following subsection:

“(15A) Where an eligible company has, whether before or after the commencement of this subsection, received, or become entitled to receive, any consideration in respect of the use, by another person, as mentioned in subsection (5AA), of a unit of plant, one-half of the total amount or value of that consideration shall be applied in the reduction of any deduction or deductions that has or have been allowed, or would but for this subsection be allowable, under subsection (15) from the assessable income of the company of any year of income in respect of that unit of plant.”;

20

25

(s) by omitting from subsection (16) “1991” (wherever occurring) and substituting “1995”;

(t) by omitting from subsection (16) “1992” and substituting “1996”;

(u) by omitting from subsection (16) “1993” (wherever occurring) and substituting “1997”;

30

(w) by inserting after subsection (24) the following subsection:

“(24A) For the purposes of paragraph (23) (c) or (24) (c), a company is not to be taken not to have used a unit of plant before it was disposed of, lost or destroyed exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities merely because of either or both of the following:

35

(a) another person used the unit of plant as mentioned in subsection (5AA);

(b) the company failed to use the unit of plant for the reason mentioned in subsection (5AB).”.

40

8. After section 73B of the Principal Act the following sections are inserted:

**Recouped expenditure on research and development activities**

5 “73C. (1) For the purposes of interpretation, this section is to be read and construed as if it were part of section 73B.

“(2) This section applies where:

- 10 (a) an eligible company has, at any time during the deduction period, incurred expenditure (in this section called the ‘relevant expenditure’) on research and development activities that formed or form part of a particular project carried on by or on behalf of the company; and
- 15 (b) the company has, whether before or after the commencement of this section, received, or become entitled to receive, a recoupment of, or a grant in respect of, the whole or any part of the relevant expenditure by or from the Commonwealth, a State or a Territory or an authority constituted by or under a law of the Commonwealth, of a State or of a Territory.

“(3) Where this section applies to a company in respect of relevant expenditure in relation to a particular project:

- 20 (a) the relevant expenditure is subject to the application of clawback in accordance with this section; and
- 25 (b) for the purposes of this section the initial clawback amount in relation to the relevant expenditure is an amount equal to twice the amount, or twice the total of the amounts, as the case may be, that the company has received, or become entitled to receive, as a recoupment of, or as a grant in respect of, any of the relevant expenditure as mentioned in paragraph (2) (b).

30 “(4) A deduction is not allowable, and is to be taken never to have been allowable, under section 73B in respect of any relevant expenditure that was incurred before 21 November 1987 and that expenditure is, subject to the provisions of this section relating to clawback, to be disregarded for the purposes of the application of section 73B to the company.

“(5) The following subsections apply only if the relevant expenditure includes, or consists wholly of, expenditure incurred on or after 21 November 1987.

35 “(6) Where the relevant expenditure includes both expenditure incurred before 21 November 1987 and expenditure incurred on or after that date:

- 40 (a) if the initial clawback amount is equal to or less than the relevant expenditure that was incurred before that date, clawback applies to so much of the relevant expenditure that was incurred before that date as does not exceed the initial clawback amount; or
- (b) if the initial clawback amount exceeds the relevant expenditure that was incurred before that date, the following provisions have effect:
- 45 (i) clawback applies to so much of the relevant expenditure as was incurred before that date;
- (ii) if the excess (in the following subparagraphs called the ‘excess clawback amount’) is equal to or greater than so

much of the relevant expenditure as was or is incurred on or after that date (in this subsection called the 'deductible relevant expenditure')—clawback applies to the whole of the deductible relevant expenditure;

- (iii) if the excess clawback amount is less than the deductible relevant expenditure—clawback applies to so much of the deductible relevant expenditure as does not exceed the excess clawback amount; 5
- (iv) for the purpose of applying clawback to deductible relevant expenditure as mentioned in subparagraph (iii): 10
  - (A) regard is to be had first to the earliest year of income of the company in which any deductible relevant expenditure was incurred and then, if necessary, in chronological order to each later year of income; and
  - (B) to the extent that clawback is applied to deductible relevant expenditure incurred in a year of income of the company, the excess clawback amount to be applied to such expenditure incurred in a later year of income is reduced accordingly; and 15
  - (C) if the part of the excess clawback amount that is applicable to deductible relevant expenditure incurred in a year of income is less than that expenditure and that expenditure comprises 2 or more kinds of expenditure—that part of the excess clawback amount is to be apportioned among those kinds of expenditure in such manner as the Commissioner determines, being an apportionment that will minimise any reduction in the deduction allowable to the company under section 73B in respect of that expenditure. 20 25

“(7) Where the relevant expenditure consists wholly of expenditure incurred on or after 21 November 1987 the following provisions have effect: 30

- (a) if the initial clawback amount is equal to or greater than the relevant expenditure—clawback applies to the whole of that expenditure;
- (b) if the initial clawback amount is less than the relevant expenditure—clawback applies to so much of the relevant expenditure as does not exceed the initial clawback amount; 35
- (c) for the purpose of applying clawback to relevant expenditure as mentioned in paragraph (b):
  - (i) subject to subparagraph (ii), regard is to be had to the years of income of the company in the following order: 40
    - (A) the year of income, or, in chronological order, each year of income, in which the company received, or became entitled to receive, an amount that is taken

into account in ascertaining the initial clawback amount;

(B) in reverse chronological order, each year of income before the year, or the earliest year, of income referred to in sub-subparagraph (A);

(C) in chronological order, each year of income to which regard has not been had under sub-subparagraph (A) or (B); and

(ii) if the company did not receive, or become entitled to receive, any part of the initial clawback amount until after the last year of income in which any of the relevant expenditure was incurred, regard is to be had first to the latest year of income in respect of which a deduction was allowed, or is allowable, under section 73B in respect of any of that expenditure and then, in reverse chronological order, to each of the earlier years of income; and

(iii) to the extent that clawback is applied to relevant expenditure incurred in a year of income of the company, the initial clawback amount to be applied to such expenditure incurred in another year of income is reduced accordingly; and

(iv) if the part of the initial clawback amount that is applicable to relevant expenditure incurred in a year of income is less than that expenditure and that expenditure comprises 2 or more kinds of expenditure—that part of the initial clawback amount is to be apportioned among those kinds of expenditure in such manner as the Commissioner determines, being an apportionment that will minimise any reduction in the deduction allowable to the company under section 73B in respect of that expenditure.

“(8) Where clawback applies to contracted expenditure incurred on or after 21 November 1987, subsection 73B (13) has effect in relation to that expenditure as if there were omitted from that subsection the following words and paragraphs:

‘multiplied by:

(a) in the case of the year of income ending on 30 June 1993 or an earlier year of income—1.5; or

(b) in the case of the year of income ending on 30 June 1994 or a later year of income—1.25;’.

“(9) Where clawback applies to expenditure (other than contracted expenditure) incurred on or after 21 November 1987, no deduction acceleration factor applies in respect of that expenditure for the purposes of section 73B.

“(10) Except as provided by subsections (8) and (9), the application of clawback to any expenditure does not have any effect for the purposes of section 73B.

**Reduction of deductions**

“73D. (1) For the purposes of interpretation, this section is to be read and construed as if it were part of section 73B.

“(2) Where:

- (a) an eligible company has, on or after 21 November 1987, incurred expenditure on research and development activities that formed or form part of a particular project carried on by or on behalf of the company; and 5
- (b) the company has, whether before or after the commencement of this section, received, or become entitled to receive, as a recoupment of, or as a grant in respect of, any of that expenditure an amount or amounts that has not or have not been, and will not be, included in the assessable income of the company of any year of income; 10

the deduction, or the sum of the deductions, that, but for this subsection, would be allowable under section 73B (as affected by section 73C) in respect of the expenditure referred to in paragraph (a) in the assessment or assessments of the company in respect of income of any year or years of income is reduced by an amount equal to so much of that deduction or sum as does not exceed the amount or the total of the amounts referred to in paragraph (b). 15 20

“(3) In applying subsection (2):

- (a) subject to paragraph (b), regard is to be had to the years of income of the company in the following order:
  - (i) the year of income, or, in chronological order, each year of income, in which the company received, or became entitled to receive, an amount referred to in paragraph (2) (b); 25
  - (ii) in reverse chronological order, each year of income before the year, or the earliest year, of income referred to in subparagraph (i);
  - (iii) in chronological order, each year of income to which regard has not been had under subparagraph (i) or (ii); and 30
- (b) if the company did not receive, or become entitled to receive, any amount referred to in paragraph (2) (b) until after the last year of income in which any of the expenditure referred to in paragraph (2) (a) was incurred, regard is to be had first to the latest year of income in respect of which a deduction was allowed, or is allowable, under section 73B in respect of any of that expenditure and then, in reverse chronological order, to each of the earlier years of income.”. 35

**Election expenses of candidates for Parliament 40**

9. Section 74 of the Principal Act is amended by inserting in subsection (1) “, of the Legislative Assembly for the Australian Capital Territory” after “State”.

**Election expenses of candidates for local governments**

10. Section 74A of the Principal Act is amended by omitting “or the Australian Capital Territory House of Assembly” from the definition of “eligible election expenditure” in subsection (1).

5 **Money paid before 1 July 1991 on shares in management and investment companies**

11. Section 77F of the Principal Act is amended:

- (a) by inserting in paragraph (2) (b) “and before 1 July 1991” after “after 13 September 1983” (first occurring);
- 10 (b) by omitting “and” from the end of paragraph (15) (a);
- (c) by inserting after paragraph (15) (a) the following paragraph:  
“(aa) the company is granted a licence before 1 July 1991; and”.

**Interpretation**

12. Section 82KT of the Principal Act is amended:

- 15 (a) by omitting from the end of paragraph (1A) (b) “and”;
- (b) by omitting from paragraph (1A) (c) “transport allowance payment or” (wherever occurring);
- (c) by inserting in subparagraph (1A) (c) (ii) “, or any transport allowance payment in respect of that travel,” after “that travel”;
- 20 (d) by adding at the end of subsection (1A) the following word and paragraph:  
“; and (d) where, as a result of alterations after 29 October 1986 to an industrial instrument (not being alterations that are taken by paragraph (b) to have been made on  
25 29 October 1986), an additional amount is paid to an employee under the instrument as a transport allowance payment in respect of travel:
  - (i) the additional amount is not an eligible transport payment; and
  - 30 (ii) the question of whether any other transport allowance payment in respect of that travel, or any car expense reimbursement payment in respect of that travel, is an eligible transport payment shall be determined as if the additional amount had not been paid or payable in respect  
35 of the travel.”.

**Log book year of income**

13. Section 82KTG of the Principal Act is amended by omitting from sub-subparagraph (g) (iii) (A) “his or her return” and substituting “the taxpayer’s car records”.

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**Retention, and production, of documents**

**14** Section 82KZA of the Principal Act is amended:

(a) by inserting in paragraphs (1) (b), (3) (e), (5) (b) and (7) (a) “car records,” before “log book records”;

(b) by inserting after subsection (7A) the following subsection: 5

“(7B) For the purposes of this section, car records of a taxpayer for a year of income (in this subsection called the ‘records year of income’) in relation to a car shall be taken to relate to a car expense incurred by the taxpayer in a year of income (in this subsection called the ‘current year of income’) in relation to the car if, and only if: 10

(a) the records year of income is the same as the current year of income; or

(b) both of the following conditions are satisfied:

(i) the current year of income is not a log book year of income of the taxpayer in relation to the car; 15

(ii) the records year of income is:

(A) the last log book year of income of the taxpayer in relation to the car before the current year of income; or 20

(B) a year of income later than that last log book year of income and earlier than the current year of income.”.

**Interpretation**

**15.** Section 124ZA of the Principal Act is amended by adding at the end the following subsection: 25

“(25) For the purposes of the application of this Division, other than paragraph (5) (a), in determining the amount of a deduction allowable under section 124ZC or 124ZE in respect of an amount of qualifying expenditure in respect of a building, where: 30

(a) because of section 160ZSA, a person is taken for the purposes of Part IIIA to have disposed of an asset, being:

(i) a building or a part of a building; or

(ii) the whole or a part of an estate in fee simple; or

(iii) the whole or a part of a lease or sublease; and 35

(b) immediately before the grant of the new lease mentioned in section 160ZSA, the person is the owner for the first-mentioned purposes (whether because of one or more previous applications of this subsection or otherwise) of whichever of the following is applicable: 40

(i) if subparagraph (a) (i) of this subsection applies—the building or the part of the building, as the case may be;

(ii) if subparagraph (a) (ii) or (iii) of this subsection applies—any building or part of a building that is in the area to which the asset relates;

then, subject to any subsequent application of this subsection, the following provisions have effect:

- (c) the holder of the new lease is to be taken to be and to have been, at all times during the subsistence of the new lease, the owner of the building or the part of the building mentioned in paragraph (b) of this subsection;
- (d) no other person is to be taken to be the owner of that building or that part of that building at any time during the subsistence of the new lease.”.

### 10 **Heading to Division 10D of Part III**

16. The heading to Division 10D of Part III of the Principal Act is amended by omitting “*Income-Producing*”.

### **Interpretation**

17. Section 124ZF of the Principal Act is amended:

- (a) by inserting in subsection (1) the following definition:

“‘research and development activities’ means activities that:

- (a) in the case of activities carried on by an eligible company as defined by section 73B—are research and development activities for the purposes of that section;

- or
- (b) in the case of activities carried on by a person other than an eligible company as so defined—would be research and development activities for the purposes of section 73B if references in subsection (2A) of that section to an eligible company included references to a person other than an eligible company;

and in either case are carried on by the eligible company or other person in connection with a business carried on by that company or person for the purpose of gaining or producing assessable income;”;

- (b) by adding at the end of subsection (3) “or, if that time occurred or occurs on or after 21 November 1987, for the purpose of carrying on research and development activities”;
- (c) by adding at the end the following subsection:

“(16) For the purposes of the application of this Division in determining the amount of a deduction allowable under section 124ZH or 124ZK in respect of an amount of qualifying expenditure in respect of a building, where:

- (a) because of section 160ZSA, a person is taken for the purposes of Part IIIA to have disposed of an asset, being:
  - (i) a building or a part of a building; or

- (ii) the whole or a part of an estate in fee simple; or
  - (iii) the whole or a part of a lease or sublease; and
  - (b) immediately before the grant of the new lease mentioned in section 160ZSA, the person is the owner for the first-mentioned purposes (whether because of one or more previous applications of this subsection or otherwise) of whichever of the following is applicable:
    - (i) if subparagraph (a) (i) of this subsection applies—the building or the part of the building, as the case may be;
    - (ii) if subparagraph (a) (ii) or (iii) of this subsection applies—any building or part of a building that is in the area to which the asset relates;
- then, subject to any subsequent application of this subsection, the following provisions have effect:
- (c) the holder of the new lease is to be taken to be and to have been, at all times during the subsistence of the new lease, the owner of the building or the part of the building mentioned in paragraph (b) of this subsection;
  - (d) no other person is to be taken to be the owner of that building or that part of that building at any time during the subsistence of the new lease.”

### Qualifying expenditure

18. Section 124ZG of the Principal Act is amended:

- (a) by omitting from paragraph (2A) (d) “or was for residential use” (wherever occurring) and substituting “was for residential use, or, in the case of a building, or an extension, alteration or improvement, that commenced to be constructed on or after 21 November 1987, was for use for the purpose of the carrying on by or on behalf of that person of research and development activities or was for disposal by that person to another person for use for the purpose of the carrying on by or on behalf of that other person of research and development activities”;
- (b) by adding at the end of subsection (3) “or expenditure in respect of which a deduction is allowable, or would be allowable if the property were for use for the purpose of the carrying on of research and development activities, under section 73B”.

### Deductions in respect of qualifying expenditure

19. Section 124ZH of the Principal Act is amended by adding at the end the following subsection:

“(6) Where a taxpayer that is an eligible company for the purposes of section 73B would, but for this subsection, be entitled to a deduction under this section by virtue of its using the whole or a part of the prescribed part, or of a part of the prescribed part, of a building for the purpose of carrying

on research and development activities during the whole or a part of a year of income, the company is not entitled to that deduction unless the company was, during the whole or that part, as the case may be, of that year of income, registered under section 39J or 39P of the *Industry Research and Development Act 1986* in relation to that year of income.”

### **Reduction of deductions**

20. Section 124ZJ of the Principal Act is amended by inserting in subparagraphs (1) (b) (i) and (ii) “or carrying on research and development activities” after “income”.

### 10 **Deduction in respect of destruction of building**

21. Section 124ZK of the Principal Act is amended by inserting in paragraphs (1) (e) and (2) (e) “or carrying on research and development activities” after “income”.

22. After section 124ZK of the Principal Act the following section is inserted in Division 10D of Part III:

### **Determination binding on Commissioner**

20 “124ZL. If the Industry Research and Development Board established by the *Industry Research and Development Act 1986* gives to the Commissioner a certificate stating whether particular activities carried on by or on behalf of a specified person were research and development activities, that certificate is binding on the Commissioner for the purpose of making an assessment of the person’s taxable income of any year of income in which those activities were carried on.”

### **Interpretation**

25 23. Section 160APA of the Principal Act is amended by omitting “registered organisations within the meaning of Division 8A of Part III” from the definition of “general company tax rate” and substituting “registered organizations or life assurance companies”.

30 24. After section 160ZS of the Principal Act the following section is inserted:

### **Election to treat grant of long term lease as disposal of freehold interest or head lease**

“160ZSA. (1) If:

(a) either of the following subparagraphs applies:

35 (i) after 16 November 1988, a taxpayer (in this section called the ‘lessor’) who holds an estate in fee simple (in this section called the ‘freehold interest’) grants a lease (in this section called the ‘new lease’) of the whole or a part of the area to which the freehold interest relates;

40 (ii) after 16 November 1988, a taxpayer (in this section also called the ‘lessor’) who holds a lease of land (in this section

called the 'head lease') grants a sublease (in this section also called the 'new lease') of the whole or a part of the area to which the head lease relates; and

- (b) the new lease is an eligible long term lease; and
- (c) the lessor makes an election in accordance with subsection (2) that this section apply in relation to the grant of the new lease;

the following provisions have effect for the purposes of this Part:

- (d) section 160ZS does not apply in relation to the lessor in relation to the grant of the new lease;
- (e) subsection 160ZT (1) does not apply in relation to the lessor in relation to the new lease;
- (f) this subsection (other than paragraph (n)) is to be disregarded for the purposes of the application of this Part (including section 160ZS and subsection 160ZT (1)) in relation to the lessee under the new lease;
- (g) the lessor is to be taken, at the time of the grant of the new lease, to have disposed of:
  - (i) in a case where the area to which the new lease relates is only part of the area to which the freehold interest or head lease relates:
    - (A) the part of the freehold interest or head lease that corresponds to that area; and
    - (B) any building or other improvement that is taken to be an asset separate from the freehold interest or head lease and that is in that area; or
  - (ii) in a case where the area to which the new lease relates is the whole of the area to which the freehold interest or head lease relates:
    - (A) the freehold interest or head lease; and
    - (B) any building or other improvement that is taken to be an asset separate from the freehold interest or head lease and that is in that area;
- (h) the consideration received by the lessor in respect of each of those disposals is whichever is the greatest of the following:
  - (i) so much of the market value of the freehold interest or head lease, immediately before the grant of the new lease, as is attributable to the area, building or improvement concerned;
  - (ii) so much of the market value of the freehold interest or head lease, immediately before the grant of the new lease, (ascertained on the assumption that the grant of the new lease was never proposed to take place) as is attributable to the area, building or improvement concerned;
  - (iii) so much of the premium paid or payable for the grant of the new lease as is attributable to the area, building or improvement concerned;

- (j) the lessor is to be taken to have immediately re-acquired each asset, or part of an asset, disposed of without having paid or given any consideration in respect of the re-acquisition;
- (k) in determining the cost base, indexed cost base or reduced cost base to the lessor of a re-acquired asset or part of an asset, no account is to be taken of any liability that arose before the re-acquisition or any costs or expenditure that were incurred before the re-acquisition;
- (m) any expenditure incurred by the lessor in obtaining:
- (i) the consent of the lessee to the variation or waiver of any of the terms of the new lease; or
  - (ii) the forfeiture or surrender of the new lease;
- is to be taken, for the purposes of ascertaining the cost base, the indexed cost base or the reduced cost base to the lessor of the re-acquired asset covered by sub-subparagraph (g) (i) (A) or (ii) (A), to be expenditure to which paragraph 160ZH (1) (c), (2) (c) or (3) (c), as the case may be, applies;
- (n) if the new lease relates to one or more units of property for which depreciation is or was allowable to the lessor under section 54 in respect of any year of income:
- (i) the new lease is not to be taken to relate to any such unit of property; and
  - (ii) the lessor is to be taken, in addition to granting the new lease, to have granted a separate lease of each such unit of property; and
  - (iii) the lessor is not to be taken to have disposed of any such unit of property because of paragraph (g); and
  - (iv) in determining the market value or premium mentioned in subparagraph (h) (i), (ii) or (iii), any such unit of property is to be disregarded.

“(2) An election for the purposes of subsection (1) must be lodged with the Commissioner on or before the date of lodgment of the lessor’s return of income for the later of the following years of income:

- (a) the year of income in which the grant of the new lease took place;
- (b) the year of income in which this section commenced;

or within such further period as the Commissioner allows.

“(3) The new lease is an eligible long term lease if, and only if:

- (a) the new lease was granted for a term of at least 50 years; and
- (b) at the time the new lease was granted, it was reasonable to expect that the new lease would continue for at least 50 years; and
- (c) the terms of the new lease are substantially the same as:
  - (i) if the new lease is a sublease—the terms of the head lease; or
  - (ii) if the new lease is not a sublease—the terms applying to the lessor in respect of the land to which the new lease relates.

“(4) A reference in this section to a building includes a reference to a part of a building.”.

#### **Amendment of assessments**

25. Section 170 of the Principal Act is amended by inserting in subsection (10) “sections 73C and 73D,” before “subsection 75B (4)”. 5

#### **Sending of employment declaration to Commissioner**

26. Section 202CD of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:

“(6) The employer shall retain the copy of an employment declaration until the second 1 July after the day on which the declaration ceases to have effect.”. 10

#### **Group certificates**

27. Section 221F of the Principal Act is amended:

(a) by inserting after subsection (5G) the following subsection:

“(5H) If:

(a) an employer issues a group certificate to an employee in respect of an eligible termination payment made by the employer; and 15

(b) the employee has, in accordance with the regulations, quoted his or her tax file number in a document given to the employer in relation to that eligible termination payment; 20

the employer shall include the number in the group certificate.”;

(b) by omitting “or” from the end of paragraph (15) (aa);

(c) by inserting after paragraph (15) (aa) the following paragraph:

“(ab) subsection (5H); or”.

25

#### **Employers other than group employers**

28. Section 221G of the Principal Act is amended:

(a) by omitting “and” from the end of subparagraph (2B) (e) (ia);

(b) by inserting after subparagraph (2B) (e) (ia) the following subparagraph: 30

“(ib) include, on each such tax check sheet in respect of an employee who has, in accordance with the regulations, quoted his or her tax file number in a document given to the employer in connection with such an eligible termination payment, the employee’s tax file number; and”.

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#### **Application of amendments**

29. (1) In this section:

“amended Act” means the Principal Act as amended by this Act.

(2) The amendments made by section 4 apply to special service on or after 18 February 1989. 40

(3) The amendments made by paragraphs 7 (f) and (g) apply in relation to expenditure incurred on or after 21 November 1987.

(4) The amendment made by section 9 applies to assessments in respect of income of the year of income commencing on 1 July 1988 and of all subsequent years of income.

(5) The amendment made by section 10 applies in relation to expenditure incurred after the commencement of this subsection.

(6) The amendments made by section 12 apply in relation to an expense incurred by a taxpayer in the year of income commencing on 1 July 1988 or in a subsequent year of income.

(7) The amendment made by section 13 applies in relation to an expense incurred by a taxpayer in a year of income commencing on or after 1 July 1986.

(8) Subject to this section, the amendments made by section 14 apply in relation to an expense incurred by a taxpayer in the year of income commencing on 1 July 1989 or in a subsequent year of income.

(9) Subsection 82KZA (3) of the amended Act does not apply in relation to a notice served before the commencement of this subsection.

(10) The amendment made by section 26 does not apply in relation to declarations that ceased to have effect before 1 July 1989.

**Transitional—car records lost or destroyed on or before 31 May 1989**

30. If a document (in this subsection called the “original document”), being car records of a taxpayer for a year of income:

- (a) is lost or destroyed on or before 31 May 1989; and
- (b) the Commissioner is satisfied that the taxpayer has a document (in this subsection called the “substitute document”) that:
  - (i) is a copy of the original document; or
  - (ii) properly records all of the matters set out in the original document;

the substitute document shall be taken for the purposes of Subdivision F of Division 3 of Part III of the Principal Act as amended by this Act to be, and to have been at all times after the original document was lost or destroyed, the original document.

**Transitional—modification of dividend imputation provisions resulting from reduction in the company tax rate**

31. (1) In this section:

“amended Act” means the Principal Act as amended by this Act.

(2) In spite of paragraph (a) of the definition of “applicable general company tax rate” in section 160APA of the amended Act, where an original company tax assessment, or an amended company tax assessment, for the year of income commencing on 1 July 1988 is served on the company

concerned after 18 January 1989 and before 1 July 1989, a reference in Part IIIAA of the amended Act to the applicable general company tax rate in relation to the assessment or amended assessment is a reference to 49%.

#### **Amendment of assessments**

32. Nothing in section 170 of the Principal Act prevents the amendment of an assessment made before the commencement of this section for the purpose of giving effect to this Part. 5

### **PART 3—AMENDMENT OF THE INDUSTRY RESEARCH AND DEVELOPMENT ACT 1986**

#### **Principal Act** 10

33. In this Part, “Principal Act” means the *Industry Research and Development Act 1986*<sup>2</sup>.

#### **Certificate as to research and development activities**

34. Section 39L of the Principal Act is amended by omitting “an eligible company” and substituting “a person”. 15

### **PART 4—AMENDMENT OF THE SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT 1935**

#### **Principal Act**

35. In this Part, “Principal Act” means the *Sales Tax (Exemptions and Classifications) Act 1935*<sup>3</sup>. 20

#### **Amendment of First Schedule**

36. The First Schedule to the Principal Act is amended by adding at the end the following item:

“154. Receptacles that:

- (a) are for repeated use on ships for the purpose of transporting cargo by sea; and Nos. 1 to 9 25
- (b) are designed to be loaded from one mode of transport to another without the contents being re-packed; and
- (c) are of a kind used as part of an international containerised cargo transport system; and 30
- (d) have a minimum capacity of 14 cubic metres”.

#### **Application of amendment**

37. The amendment made by this Part applies in relation to transactions, acts and operations effected or done in relation to goods on or after 25 January 1989. 35

**PART 5—AMENDMENT OF THE TAXATION ADMINISTRATION  
ACT 1953****Principal Act**

5 38. In this Part, "Principal Act" means the *Taxation Administration Act 1953*⁴.

39. After section 13C of the Principal Act the following Division is inserted in Part III:

**"Division 6—Setting Aside etc. of Conviction or Order on Application of  
Commissioner****10 Setting aside etc. of conviction or order on application of Commissioner**

"13CA. (1) Where a person has been convicted in his or her absence of a prescribed taxation offence (whether before or after the commencement of this section), the Commissioner may apply to a court (in this section called the 'quashing court') for:

- 15 (a) an order setting aside the conviction or setting aside the order of the convicting court in respect of the conviction; or  
(b) an order varying the order of the convicting court in respect of the conviction so as to reduce its severity.

"(2) The application shall be made in writing:

- 20 (a) to the convicting court; or  
(b) to any other court of summary jurisdiction that would have had jurisdiction to make the conviction or order.

"(3) The proper officer of the quashing court shall, without delay, cause notice of the making of the application to be given to each party to the application (other than the Commissioner).

"(4) Any person who was a party to the proceedings in which the defendant was convicted shall be made a party to the proceedings in respect of the application.

"(5) If the quashing court is satisfied that:

- 30 (a) the conviction or order was made in circumstances that, in the opinion of the court, make it desirable, in the interests of justice, that:  
(i) the conviction or order be set aside; or  
(ii) the order be varied by reducing its severity; or  
35 (b) because of other special circumstances (whether or not existing at the time the conviction or order was made) it is desirable, in the interests of justice, or in order to avoid undue hardship, that:  
(i) the order be set aside; or  
(ii) the order be varied so as to reduce its severity;

40 the court may set aside the conviction, or set aside or vary the order, as the case may be, on such terms as to costs or otherwise as the court thinks just.

“(6) If the court sets aside the conviction, or sets aside or varies the order in respect of the conviction, the court shall also set aside any warrant issued in consequence of the conviction.

“(7) If the quashing court:

(a) is not the convicting court; and

(b) sets aside the conviction, or sets aside or varies the order, of the convicting court;

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the proper officer of the quashing court shall without delay cause notice of the setting aside or variation to be given to the convicting court.

“(8) A reference in this section to a conviction includes a reference to the making of an order under section 19B of the *Crimes Act 1914*.

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“(9) The setting aside of a conviction or order under this section is a bar to any further legal proceeding against the defendant for the same matter in any court (other than on appeal).

“(10) This section is in addition to, and not in derogation of, any other law of the Commonwealth or any law of a State or Territory.”

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NOTES

1. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148; 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 51, 109, 112 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); No. 52, 1986 (as amended by No. 141, 1987); No. 90, 1986 (as amended by No. 141, 1987); Nos. 23, 58, 61, 120, 145 and 163, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 8, 11, 59, 75, 78, 80, 87, 95, 97, 127 and 153, 1988; and Nos. 2 and 000, 1989.
2. No. 89, 1986, as amended. For previous amendments, see No. 59, 1988.
3. No. 60, 1935, as amended. For previous amendments, see No. 41, 1936; No. 78, 1938; No. 32, 1939; Nos. 29 and 76, 1940; No. 32, 1941; No. 6, 1942; Nos. 35 and 44, 1943; No. 31, 1944; No. 36, 1945; Nos. 12 and 67, 1946; No. 65, 1947; No. 42,

**NOTES—continued**

- 1948; No. 54, 1949; No. 37, 1950; No. 42, 1951; No. 44, 1952; No. 53, 1953; No. 45, 1954; No. 5, 1956; No. 71, 1957; Nos. 17 and 92, 1959; Nos. 65 and 88, 1960; Nos. 1 and 76, 1961; No. 4, 1962; No. 44, 1963; No. 30, 1965; Nos. 26 and 62, 1966; Nos. 21, 29 and 80, 1967; No. 78, 1970; Nos. 67 and 87, 1972; Nos. 17, 181 and 216, 1973; No. 24, 1975; No. 175, 1976; No. 107, 1978; Nos. 3, 94 and 157, 1979; No. 142, 1981; Nos. 64, 93 and 115, 1982; Nos. 63, 84 and 136, 1983; Nos. 81, 123 and 165, 1984; Nos. 65 and 67, 1985; Nos. 28, 76 and 98, 1986; Nos. 42, 135 and 140, 1987; Nos. 78, 89 and 152, 1988; and No. 000, 1989.
4. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; Nos. 41, 46, 48, 112, 144 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); Nos. 120 and 145, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); and Nos. 95 and 97, 1988.

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