

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a first time)

TAXATION LAWS AMENDMENT BILL (NO. 5) 1990

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement

**PART 2—AMENDMENT OF THE FRINGE BENEFITS TAX ASSESSMENT
ACT 1986**

3. Principal Act
4. Exempt residual benefits
5. Application of amendments

PART 3—AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936

6. Principal Act
7. Exemption of pay and allowances of members of Defence Force serving in operational areas
8. Interpretation
9. Components of an ETP
10. Gifts, pensions etc.
11. Rebates for members of Defence Force serving overseas
12. Interpretation
13. Deductions for superannuation contributions by eligible persons
14. Insertion of new Subdivision:

Subdivision AAC—Rebate for Personal Superannuation Contributions

- 159T. Object of Subdivision
- 159TA. Interpretation
- 159TB. Parts of schemes may be treated as separate schemes

TABLE OF PROVISIONS—*continued*

Section

- 159TC. Statutory reporting period of scheme
- 159TD. Commissioner may determine that a period be treated as a statutory reporting period
- 159TE. Eligible scheme
- 159TF. Recognised average level of employer support
- 159TG. Individual level of employer support
- 159TH. Notional average level of employer support
- 159TJ. Expected level of employer support
- 159TK. Potential recipient of an ineligible superannuation benefit
- 159TL. Rebate for personal superannuation contributions
- 15. Involuntary disposal
- 16. Principal residence
- 17. Interpretation
- 18. Operation of Part
- 19. Tax benefits
- 20. Cancellation of tax benefits etc.
- 21. Interpretation
- 22. Certain employees to be subject to provisional tax
- 23. Liability to provisional tax
- 24. Provisional tax on estimated income
- 25. Additional tax where income under-estimated or where PAYE deductions over-estimated
- 26. Keeping of records
- 27. Taxable contributions
- 28. Application of amendments
- 29. Transitional—section 23AC and subsection 79B (3A) of the Principal Act
- 30. Transitional—section 82AAT of the amended Act
- 31. Transitional—applicable date for superannuation schemes
- 32. Transitional—penalties under section 221YDB of the amended Act
- 33. Amendment of assessments

PART 4—AMENDMENT OF THE OCCUPATIONAL SUPERANNUATION STANDARDS ACT 1987

- 34. Principal Act
- 35. Interpretation
- 36. Quotation etc. of tax file numbers

PART 5—AMENDMENTS RELATING TO SEX DISCRIMINATION

- 37. Amendment of Acts
- 38. Application of amendments
- 39. Amendment of assessments

SCHEDULE

AMENDMENTS RELATING TO SEX DISCRIMINATION

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 8 November 1990

(Minister assisting the Treasurer)

A BILL

FOR

An Act to amend the law relating to taxation

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Taxation Laws Amendment Act*
 (No. 5) 1990.

Commencement

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

(2) Part 4 commences on the 28th day after the day on which this Act receives the Royal Assent. 5

(3) Subsections 38 (3) and 39 (2) and the amendments made by Part 3 of the Schedule commence on 1 July 1993.

(4) If the date of commencement of the *Taxation Laws Amendment (Foreign Income) Act 1990* is a later day than the date of commencement of this section, subsections 38 (4) and 39 (3) and the amendments made by Part 4 of the Schedule commence at the commencement of that Act. 10

PART 2—AMENDMENT OF THE FRINGE BENEFITS TAX ASSESSMENT ACT 1986

Principal Act

3. In this Part, “Principal Act” means the *Fringe Benefits Tax Assessment Act 1986*¹. 15

Exempt residual benefits

4. Section 47 of the Principal Act is amended by omitting subsection (8) and substituting the following subsection:

“(8) Where: 20

(a) a residual benefit provided in respect of the employment of an employee arose out of priority of access, for a child or children of the employee, to a place that is an eligible child care centre for the purposes of any provision of the *Child Care Act 1972*; and 25

(b) in order to obtain that priority of access, the employer of the employee, or an associate of the employer, made a contribution under the program administered by the Commonwealth and known as Services for Families with Children;

the residual benefit is an exempt benefit.”. 30

Application of amendments

5. The amendment made by this Part applies to residual benefits provided on or after 1 January 1991.

PART 3—AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936 35

Principal Act

6. In this Part, “Principal Act” means the *Income Tax Assessment Act 1936*².

Exemption of pay and allowances of members of Defence Force serving in operational areas

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

(a) by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Pay and allowances earned by a person as a member of the Defence Force are exempt from income tax where:

(a) the pay and allowances are earned during a period of operational service of the person; and

(b) the person served in the operational area during the whole or a part of that period.

“(2) Subject to this section, the operational service of a member of the Defence Force, for the purposes of this section, is the member’s service where all of the following conditions are satisfied:

(a) the member’s service was while:

(i) a member of, or attached to, a body, contingent or detachment of the Naval, Military or Air Forces of the Commonwealth at a time when it was allotted for duty in the operational area; or

(ii) a member of the Naval, Military or Air Forces of the Commonwealth allotted for duty in the operational area; or

(iii) a member of the Naval, Military or Air Forces of the Commonwealth attached to a particular part of the armed forces of the United Kingdom or of the United States of America at a time when that part was allotted, by the appropriate authority of the country concerned, for duty in the operational area;

(b) if:

(i) subparagraph (a) (i) or (ii) applies; or

(ii) subparagraph (a) (iii) applies and the member was not serving in the operational area on 2 August 1990;

there is in force a certificate in writing issued by the Chief of the Defence Force to the effect that the allotment concerned was in response to Iraq’s invasion of Kuwait;

(c) if paragraph (b) does not apply—the member was serving in the operational area on 2 August 1990;

(d) the member’s service was not as or under an attaché at an Australian embassy or legation.”;

(b) by omitting from subsection (3) “special” (first occurring) and substituting “operational”;

- (c) by omitting from paragraphs (3) (a) and (b) “shall be deemed” and substituting “is taken”;
- (d) by omitting from subsection (3) “a special area” (wherever occurring) and substituting “the operational area”;
- (e) by omitting paragraph (3) (c) and substituting the following paragraph: 5
 “(c) is taken to include a period of hospital treatment consequent upon an illness contracted or injuries sustained during the person’s operational service.”;
- (f) by omitting subsections (4), (5), (6) and (7) and substituting the following subsections: 10
 “(4) The Chief of the Defence Force may, by signed instrument, delegate to an officer of the Defence Force the powers conferred by paragraph (2) (b).
 “(5) Applications may be made to the Tribunal for review of decisions of the Chief of the Defence Force under paragraph (2) (b). 15
 “(6) For the purposes of this section, the area comprising the following countries and sea areas:
 (a) Bahrain, Oman, Qatar, Saudi Arabia, the United Arab Emirates and the island of Cyprus; 20
 (b) the sea areas contained within the Gulf of Suez, the Gulf of Aqaba, the Red Sea, the Gulf of Aden, the Persian Gulf and the Gulf of Oman;
 (c) the sea area contained within the Arabian Sea north of the boundary formed by joining each of the following points to the next: 25
 (i) 20° 30’N 70° 40’E;
 (ii) 14° 30’N 67° 35’E;
 (iii) 8° 30’N 60° 00’E; 30
 (iv) 6° 20’N 53° 52’E;
 (v) 5° 48’N 49° 02’E;
 (d) the sea areas contained within the Suez Canal and the Mediterranean Sea east of 30°E;
 is taken to have become the operational area on 2 August 1990. 35
 “(7) In this section:
 ‘operational area’ has the meaning given by subsection (6);
 ‘port’ includes airport.”.

Interpretation

8. Section 27A of the Principal Act is amended: 40

- (a) by inserting “(except in the case of an ISC-directed commutation payment)” after “reduced” in paragraphs (d) and (g) of the definition of “eligible termination payment” in subsection (1);
- 5 (b) by omitting “that part (if any) of the ETP that” (wherever occurring) from the definition of “excessive component” in subsection (1) and substituting “so much of the ETP as”;
- (c) by inserting “the whole or a” after “lump sum of” in paragraph (b) of the definition of “excessive component” in subsection (1);
- 10 (d) by inserting in subsection (1) the following definition:
 “**ISC-directed commutation payment**’ means a lump sum that represents the commutation of the whole or a part of an annuity or pension in compliance with an advice or request of the Insurance and Superannuation Commissioner under section 15S of the *Occupational Superannuation Standards Act 1987*.”;
- 15 (e) by inserting after subsection (12D) the following subsection:
 “(12E) In spite of anything in subsection (12), no part of an ISC-directed commutation payment is taken to be a qualifying eligible termination payment.”.

20 **Components of an ETP**

9. Section 27AA of the Principal Act is amended by omitting subsections (4) and (5).

Gifts, pensions etc.

10. Section 78 of the Principal Act is amended:

- 25 (a) by inserting after subparagraph (1)(a)(cv) the following subparagraph:
 “(cvi) The Friends of the Duke of Edinburgh’s Award in Australia Incorporated.”;
- 30 (b) by omitting from subsection (6AK) “1 July 1990” and substituting “1 January 1991”.

Rebates for members of Defence Force serving overseas

11. Section 79B of the Principal Act is amended by omitting from subsection (3A) “special service” and substituting “operational service”.

Interpretation

35 12. Section 82AAS of the Principal Act is amended:

- (a) by inserting in subsection (1) the following definitions:
 “**eligible person**’ has the meaning given by subsection (2);
unsupported eligible person’, in relation to a year of income, means a person who:
 40 (a) is an eligible person in relation to the year of income;
 and

- (b) would have been an eligible person in relation to the year of income if subsection (2A) had not been enacted.”;
- (b) by omitting from subsection (2) “Subject to subsection (3), a” and substituting “A”;
- (c) by omitting subsection (3).

5

Deductions for superannuation contributions by eligible persons

13. Section 82AAT of the Principal Act is amended by omitting from subsection (2) “not exceed \$3,000” and substituting the following words and paragraphs:

“not exceed:

10

- (a) if the taxpayer is an unsupported eligible person in relation to the year of income—the lesser of the following:

- (i) the sum of:

- (A) \$3,000; and

- (B) 75% of the amount (if any) by which the total amount of the contributions exceeds \$3,000;

15

- (ii) the amount ascertained in accordance with the regulations as the taxpayer’s maximum deductible contributions for the year of income;

20

- (b) in any other case—\$3,000.”.

14. After section 159SY of the Principal Act the following Subdivision is inserted:

“Subdivision AAC—Rebate for Personal Superannuation Contributions

Object of Subdivision

25

“159T. The object of this Subdivision is to provide for rebates for certain non-deductible, personal superannuation contributions (the rebate provision is section 159TL).

Interpretation

“159TA. In this Subdivision, unless the contrary intention appears: ‘active member’, in relation to a scheme, in relation to a period, means a member of the scheme where, assuming that:

30

- (a) the period was a year of income of the member; and

- (b) the member was not a member of any other scheme during that year of income;

35

the member would not have been an eligible person in relation to that year of income;

‘actuary’ means a Fellow or Accredited Member of The Institute of Actuaries of Australia;

'average number of active members', in relation to a scheme, in relation to a period, means the average of the number of active members of the scheme as at:

(a) the later of the following times:

- 5 (i) the beginning of the period;
 (ii) the time of establishment of the scheme; and

(b) the earlier of the following times:

- (i) the end of the period;
 (ii) the time the scheme ceased to exist;
- 10 **'complying superannuation fund'** has the same meaning as in Part IX;
'daily threshold component', in relation to a day in a financial year, means the amount calculated using the formula:

$$\frac{\text{Annual rate}}{\text{No. of days in financial year}}$$

where:

15 **'Annual rate'** means:

- (a) \$1,600; or
 (b) if a higher amount is prescribed in relation to the financial year—that higher amount;

20 **'No. of days in financial year'** means the number of days in the financial year;

'defined benefit scheme' means a scheme where:

(a) in all cases—members of the scheme are entitled, on retirement, to be paid a benefit defined in terms of, or in terms that include, either or both of the following:

- 25 (i) the amount of the member's annual salary:
 (A) at the date of the member's retirement; or
 (B) at a date before retirement; or
 (C) averaged over a period of employment before retirement;

30 (ii) a specified amount; and

(b) if the scheme is not a public sector scheme—some or all of the contributions to the scheme (out of which, together with earnings on those contributions, the benefits are to be paid) are not paid into the scheme, or accumulated in it, in respect of any individual member but are paid into and accumulated in the scheme in the form of an aggregate amount;

'dependant' has the same meaning as in the *Occupational Superannuation Standards Act 1987*;

'eligible person' has the same meaning as in Subdivision AB of Division 3;

40 **'eligible scheme'** has the meaning given by section 159TE;

‘employer contributions’, in relation to a scheme, means contributions made to the scheme in relation to a member of the scheme by a person other than the member;

‘employer support threshold’, in relation to a scheme, in relation to a period, means the amount obtained by:

- (a) calculating the daily threshold component for each day in the period when the scheme was in existence; and
- (b) aggregating those daily threshold components; and
- (c) if the result is not an amount of whole dollars—rounding up the result to the nearest whole dollar;

‘expected individual level of employer support’ has the meaning given by subsection 159TJ (2);

‘expected recognised average level of employer support’ has the meaning given by subsection 159TJ (1);

‘funded scheme’ means a scheme that is funded in advance to provide for all present and prospective liabilities in respect of superannuation benefits under the scheme;

‘governing rules’, in relation to a fund, means any of the following:

- (a) a trust instrument;
- (b) any other document or legislation;
- (c) a combination of the above;

governing the establishment and operation of the fund;

‘individual level of employer support’ has the meaning given by section 159TG;

‘individual superannuation salary’, in relation to a member of a scheme, in relation to a statutory reporting period, means the member’s salary for the purposes of the scheme determined as at the last salary determination date before the beginning of the next following statutory reporting period;

‘ineligible superannuation benefit’ means a superannuation benefit other than:

- (a) a superannuation benefit provided under an eligible scheme; or
- (b) a superannuation benefit excluded from subsection 82AAS (2) by subsection 82AAS (2A);

‘normal accounting period’, in relation to a scheme, means the accounting period used by the trustee of the scheme in preparing the scheme’s general accounts;

‘normal employer cost’, in relation to a scheme, in relation to a statutory reporting period, means the cost to the sponsors of the scheme of funding superannuation benefits under the scheme to the extent that:

- (a) the benefits would be attributable to the statutory reporting period; and
- (b) the benefits are not attributable to superannuation agreement contributions;

where:

(c) the cost is expressed as a percentage of the sum of the individual superannuation salaries of the active members of the scheme for the statutory reporting period; and

(d) it is assumed that the scheme is in equilibrium (that is, the scheme is neither in surplus nor in deficit);

'notifiable member', in relation to a notice given to a member of a scheme in respect of a year of income of the member, means a member of the scheme where, assuming that the member was not a member of any other scheme during the year of income, the member would not have been an eligible person in relation to the year of income;

'notional average level of employer support' has the meaning given by section 159TH;

'potential recipient of an ineligible superannuation benefit' has the meaning given by section 159TK;

'public sector scheme' means a scheme established:

(a) by or under a law of the Commonwealth or of a State or Territory; or

(b) under the authority of:

(i) the Commonwealth or the government of a State or Territory; or

(ii) a municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth or of a State or Territory;

'recognised average level of employer support' has the meaning given by section 159TF;

'recognised member' has the meaning given by section 159TE;

'salary determination date', in relation to a member of a scheme, means the date as at which the member's salary for the purposes of the scheme is determined;

'scheme' means:

(a) a scheme embodied in the governing rules of a fund; or

(b) a scheme for the payment of benefits upon retirement or death, being a scheme constituted by or under a law of the Commonwealth or of a State or Territory;

'sponsor', in relation to a scheme, means a person who makes employer contributions to the scheme;

'statutory reporting period' has the meaning given by section 159TC (subject to subsection 159TB (6) and section 159TD);

'superannuation agreement contributions' has the same meaning as in Subdivision AB of Division 3;

'trustee', in relation to a scheme, means:

(a) if:

(i) the scheme is embodied in the governing rules of a fund; and

- (ii) there is a trustee of the fund;
the trustee of the fund; or
- (b) in any other case—the person who manages the scheme.

Parts of schemes may be treated as separate schemes

“159TB. (1) Subject to this section, the trustee of a scheme (in this section called the ‘**main scheme**’) may, by notice in writing, elect that so much of the main scheme as relates to a specified class of members of the main scheme is taken, for the purposes of the application of this Subdivision in relation to a specified year of income of those members, to be a separate scheme (which separate scheme is in this section called the ‘**subscheme**’). 5 10

“(2) The trustee must not make an election in relation to a main scheme that is a subscheme in relation to another scheme.

“(3) The trustee must not make an election in relation to a specified class of members of the main scheme where one or more of the members of that class are also members of another subscheme in relation to the main scheme. 15

“(4) The election has effect according to its tenor.

“(5) Except with the consent of the Commissioner, the election is irrevocable. 20

“(6) The statutory reporting period of the subscheme is taken to be the statutory reporting period of the main scheme.

Statutory reporting period of scheme

“159TC. (1) Subject to this Subdivision, a reference in this Subdivision to a statutory reporting period in relation to a scheme is a reference to: 25

- (a) if the scheme relates, in whole or in part, to an eligible superannuation fund within the meaning of Part IX:

- (i) if:

- (A) the trustee of the eligible superannuation fund gives a statement under subregulation 17 (4) of the Occupational Superannuation Standards Regulations relating to a 12-month period beginning on a day in a year of income; and 30

- (B) the trustee of the scheme has not elected that subparagraph (ii) apply in relation to the year of income; 35

the 12-month period to which the statement relates; or

- (ii) in any other case—a year of income of the eligible superannuation fund; or 40

- (b) in any other case:

- (i) if the scheme has a normal accounting period that is a 12-month period—that normal accounting period; or
- (ii) in any other case—a financial year.

5 “(2) The election (other than an election that is taken to have been made by virtue of subsection (3)) is to be in writing and is irrevocable.

“(3) Except with the consent of the Commissioner, an election in relation to a year of income (including an election that is taken to have been made by virtue of one or more applications of this subsection) also applies in relation to the next following year of income.

10 **Commissioner may determine that a period be treated as a statutory reporting period**

“159TD. (1) For the purpose of ensuring the effective operation of this Subdivision in relation to a scheme that does not have continuous successive 12-month statutory reporting periods, the Commissioner
15 may, by notice in writing served on the trustee of the scheme, determine that a period specified in the notice is to be treated as a statutory reporting period in relation to the scheme.

“(2) The period specified in the notice may:

- (a) commence earlier than the date of service of the notice; and
- 20 (b) be shorter or longer than a period of 12 months.

Eligible scheme

“159TE. For the purposes of this Subdivision:

- (a) a scheme is an eligible scheme in relation to a taxpayer in relation to a year of income of the taxpayer (in this section
25 called the ‘current year of income’); and
- (b) the taxpayer is taken to be a recognised member of the scheme in relation to the current year of income;

if the following conditions are satisfied:

- (c) during the whole or a part of the current year of income
30 circumstances existed because of which it was reasonable to expect that superannuation benefits would be provided under the scheme for:

- (i) the taxpayer upon retirement; or
- 35 (ii) for dependants of the taxpayer in the event of the death of the taxpayer;

(whether or not any condition other than the retirement or death of the taxpayer would be required to be satisfied in order that those benefits be provided);

- (d) if the scheme is a funded scheme—the funding is maintained
40 by way of a fund that is a complying superannuation fund in relation to each year of income of the fund any part of which occurs during the current year of income;

- (e) any of the following conditions is satisfied:
- (i) in the last statutory reporting period of the scheme that ended before the current year of income, the recognised average level of employer support in that scheme did not exceed the employer support threshold for that statutory reporting period; 5
 - (ii) in the last statutory reporting period of the scheme that ended before the current year of income, the taxpayer's individual level of employer support in that scheme did not exceed the employer support threshold for that statutory reporting period; 10
 - (iii) both of the following conditions are satisfied:
 - (A) the scheme is not a defined benefit scheme;
 - (B) the scheme was established in the current year of income; 15
 - (iv) all of the following conditions are satisfied:
 - (A) the scheme is not a defined benefit scheme;
 - (B) the scheme was established before the current year of income;
 - (C) the first statutory reporting period of the scheme ends after the beginning of the current year of income; 20
 - (D) in the period commencing at the establishment of the scheme and ending immediately before the current year of income, the notional average level of employer support in that scheme did not exceed the employer support threshold for that period; 25
 - (v) all of the following conditions are satisfied:
 - (A) the scheme is not a defined benefit scheme;
 - (B) the scheme was established before the current year of income; 30
 - (C) the first statutory reporting period of the scheme ends after the beginning of the current year of income;
 - (D) in the period commencing at the establishment of the scheme and ending immediately before the current year of income, the total employer contributions (other than superannuation agreement contributions) made to the scheme in respect of the taxpayer did not exceed the employer support threshold for that period; 35
 - (vi) all of the following conditions are satisfied:
 - (A) the scheme is a defined benefit scheme; 40

(B) the first statutory reporting period of the scheme ends after the beginning of the current year of income;

5 (C) the expected recognised average level of employer support in the scheme in that statutory reporting period does not exceed the employer support threshold for that period;

(vii) all of the following conditions are satisfied:

(A) the scheme is a defined benefit scheme;

10 (B) the first statutory reporting period of the scheme ends after the beginning of the current year of income;

15 (C) the taxpayer's expected individual level of employer support in the scheme in that statutory reporting period does not exceed the employer support threshold for that period;

(f) before whichever of the following dates is applicable:

20 (i) if the scheme was established in the current year of income—the 90th day after the establishment of the scheme, or such later date as the Commissioner allows;

(ii) if:

(A) the scheme was established before the current year of income; and

25 (B) the first statutory reporting period of the scheme ends after the beginning of the current year of income;

the 90th day of the current year of income, or such later date as the Commissioner allows;

30 (iii) in any other case—the 90th day after the end of the last statutory reporting period of the scheme that ended before the current year of income, or such later date as the Commissioner allows;

the trustee of the scheme:

(iv) in all cases—gives the following notices:

35 (A) a notice to the taxpayer stating that, in the opinion of the trustee, the scheme is, or will be, an eligible scheme in relation to the taxpayer and in relation to the current year of income;

40 (B) a notice to each other notifiable member of the scheme stating that, in the opinion of the trustee, the scheme is, or will be, an eligible scheme in relation to that other member and in relation to the year of income of that other member that corresponds to the current year of income; and

- (v) if the scheme is a defined benefit scheme—obtains a certificate by an actuary to the effect that one of the relevant conditions in paragraph (e) is satisfied.

Recognised average level of employer support

“159TF. (1) The recognised average level of employer support in a scheme in a statutory reporting period, being a scheme that is not a defined benefit scheme, is calculated using the formula: 5

$$\frac{\text{Employer contributions}}{\text{No. of active members}}$$

where:

‘**Employer contributions**’ means the total employer contributions (other than superannuation agreement contributions) made to the scheme during the statutory reporting period; 10

‘**No. of active members**’ means the average number of active members of the scheme for the statutory reporting period.

“(2) The recognised average level of employer support in a scheme in a statutory reporting period, being a scheme that is a defined benefit scheme and a funded scheme, is calculated using the formula: 15

$$\text{Normal employer cost} \times \frac{\text{Total superannuation salaries}}{\text{No. of active members}}$$

where:

‘**Normal employer cost**’ means the normal employer cost of the scheme for the statutory reporting period; 20

‘**Total superannuation salaries**’ means the sum of the individual superannuation salaries of the active members of the scheme for the statutory reporting period;

‘**No. of active members**’ means the average number of active members of the scheme for the statutory reporting period. 25

“(3) The recognised average level of employer support in a scheme in a statutory reporting period, being a scheme that is a defined benefit scheme but not a funded scheme, is calculated using the formula:

$$\text{Notional normal employer cost} \times \frac{\text{Total superannuation salaries}}{\text{No. of active members}} \quad 30$$

where:

‘**Notional normal employer cost**’ means the percentage that would have been the normal employer cost of the scheme for the statutory reporting period if the scheme had been a funded scheme;

‘**Total superannuation salaries**’ means the sum of the individual superannuation salaries of the active members of the scheme for the statutory reporting period; 35

‘**No. of active members**’ means the average number of active members of the scheme for the statutory reporting period.

Individual level of employer support

“159TG. (1) A person’s individual level of employer support in a scheme in a statutory reporting period, being a scheme that is not a defined benefit scheme, is the total employer contributions (other than superannuation agreement contributions) made to the scheme during the statutory reporting period in respect of the person.

“(2) A person’s individual level of employer support in a scheme in a statutory reporting period, being a scheme that is a defined benefit scheme, is:

(a) if the scheme is a funded scheme—the amount calculated using the formula:

$$\text{Normal employer cost} \times \text{Individual superannuation salary}$$

where:

‘Normal employer cost’ means the normal employer cost of the scheme for the statutory reporting period;

‘Individual superannuation salary’ means the person’s individual superannuation salary for the statutory reporting period; or

(b) if the scheme is not a funded scheme—the amount calculated using the formula:

$$\text{Notional normal employer cost} \times \text{Individual superannuation salary}$$

where:

‘Notional normal employer cost’ means the percentage that would have been the normal employer cost of the scheme for the statutory reporting period if the scheme had been a funded scheme;

‘Individual superannuation salary’ means the person’s individual superannuation salary for the statutory reporting period.

Notional average level of employer support

“159TH. The notional average level of employer support in a scheme in a particular period is calculated using the formula:

$$\frac{\text{Employer contributions}}{\text{No. of active members}}$$

where:

‘Employer contributions’ means the total employer contributions (other than superannuation agreement contributions) made to the scheme during the period;

‘No. of active members’ means the average number of active members of the scheme for the period.

Expected level of employer support

“159TJ. (1) The expected recognised average level of employer support in a scheme in a statutory reporting period is the amount that the certifying actuary expects will be the recognised average level of employer support in the scheme in the statutory reporting period, assuming that: 5

- (a) the scheme continued in existence throughout the remainder of the period; and
- (b) the individual superannuation salaries of the members of the scheme were the salaries of the members as at the date of establishment of the scheme. 10

“(2) A person’s expected individual level of employer support in a scheme in a statutory reporting period is the amount that the certifying actuary expects will be the person’s individual level of employer support in the scheme in the statutory reporting period, assuming that: 15

- (a) the scheme continued in existence throughout the remainder of the period; and
- (b) the person’s individual superannuation salary was the salary of the person as at the date of establishment of the scheme.

“(3) A reference in this section to the certifying actuary is a reference to the actuary who gives the certificate referred to in paragraph 159TE (f) in relation to the statutory reporting period. 20

Potential recipient of an ineligible superannuation benefit

“159TK. For the purposes of this Subdivision, a person (in this section called the ‘**first person**’) is a potential recipient of ineligible superannuation benefits in relation to a year of income if: 25

- (a) during the whole or a part of the year of income, circumstances existed because of which it was reasonable to expect that ineligible superannuation benefits would be provided: 30
 - (i) for the first person upon retirement; or
 - (ii) for the dependants of the first person in the event of the death of the first person;

(whether or not any condition other than the retirement or death of the first person would be required to be satisfied in order that those benefits be provided); and 35

- (b) to the extent to which those benefits would be attributable to the year of income: 40
 - (i) the benefits would be wholly or partly attributable to contributions made to a superannuation fund in relation to the first person by a person other than the first person; or
 - (ii) the benefits would, in whole or in part, be paid out of moneys that would not represent:

- (A) contributions made by the first person to a superannuation fund; or
- (B) contributions made by the first person under a scheme for the payment of benefits upon retirement or death, being a scheme constituted by or under a law of the Commonwealth or of a State or Territory; or
- (C) income or accretions arising from contributions referred to in sub-subparagraph (A) or (B).

10 **Rebate for personal superannuation contributions**

“159TL. Where the following conditions are satisfied in relation to a taxpayer and in relation to a year of income of the taxpayer (in this section called the ‘taxpayer’s year of income’):

- 15 (a) the taxpayer is a recognised member of a scheme that is an eligible scheme in relation to the taxpayer and in relation to the taxpayer’s year of income;
- (b) the taxpayer is not an eligible person in relation to the taxpayer’s year of income;
- 20 (c) the taxpayer was not a potential recipient of ineligible superannuation benefits in relation to the taxpayer’s year of income;
- (d) during the taxpayer’s year of income, the taxpayer makes one or more contributions (in this section called the ‘rebatable contributions’) to:
 - 25 (i) a scheme that is an eligible scheme in relation to the taxpayer and in relation to the taxpayer’s year of income; or
 - (ii) a fund where both of the following conditions are satisfied:
 - 30 (A) the fund is a complying superannuation fund in relation to the year of income of the fund in which the contributions are made;
 - (B) the taxpayer would have been an eligible person in relation to the taxpayer’s year of income if the taxpayer had not been a member of any other fund or scheme during the taxpayer’s year of income;

to obtain superannuation benefits for the taxpayer or, in the event of the death of the taxpayer, for dependants of the taxpayer;

40 the taxpayer is entitled to a rebate of tax in the taxpayer’s assessment in respect of income of the taxpayer’s year of income equal to 25% of the lesser of the following:

- (e) \$3,000 reduced by 50 cents for each \$1 of the amount (if any) by which the taxpayer’s assessable income of the taxpayer’s year of income exceeds \$25,000;

(f) the amount of the rebatable contributions.”.

Involuntary disposal

15. Section 160ZZK of the Principal Act is amended:

(a) by omitting subsections (4) and (5) and substituting the following subsections: 5

“(4) If the original asset was acquired before 20 September 1985 and expenditure of a capital nature was incurred in repairing or restoring the original asset, the original asset as repaired or restored is taken, for the purposes of this Part, to have been acquired before that date. 10

“(5) Where the original asset was acquired before 20 September 1985, the replacement asset is taken, for the purposes of this Part, to have been acquired before that date if:

(a) the consideration in respect of the acquisition of the replacement asset did not exceed 120% of the market value of the original asset immediately before the disposal of the original asset; or 15

(b) both of the following conditions are satisfied:

(i) the act or event referred to in paragraph (1)(a) was a natural disaster that occurred on or after 28 December 1989; 20

(ii) having regard to all relevant circumstances, including the location, size, value, quality, composition and utility of the original asset and of the replacement asset, it would be reasonable to treat the replacement asset as substantially the same as the original asset.”; 25

(b) by inserting in subsection (7D) the following definition:

“‘**natural disaster**’ includes the following: 30

(a) a bushfire; 30

(b) a cyclone;

(c) an earthquake;

(d) a flood;

(e) a storm.”.

Principal residence

16. Section 160ZZQ of the Principal Act is amended by omitting subsections (11) and (11A) and substituting the following subsections: 35

“(11) Where:

(a) at a particular time (in this subsection called the ‘**cessation time**’), a dwelling owned by a taxpayer ceases to be the sole or principal residence of the taxpayer; and 40

(b) an election that this subsection is to apply in relation to the taxpayer and in relation to the dwelling is made in accordance with subsection (11A) by:

(i) if the taxpayer died before the end of the period allowed for making an election without having made an election:

(A) if the taxpayer and another person owned the dwelling as joint tenants—the surviving joint tenant; or

(B) otherwise—the trustee of the estate of the taxpayer; or

(ii) in any other case—the taxpayer;

then, for the purposes of this section (other than this subsection), during the period:

(c) commencing at the cessation time; and

(d) ending at the earliest of the following later times:

(i) the time when the dwelling again became the sole or principal residence of the taxpayer;

(ii) the end of the relevant period;

(iii) the end of the period of 6 years (whether that period is continuous or represents the aggregation of 2 or more periods):

(A) commencing at or after the cessation time; and

(B) during which the part of the dwelling that was the sole or principal residence of the taxpayer before the cessation time was used for the purpose of gaining or producing assessable income;

the following provisions have effect:

(e) the dwelling is taken to have been the sole or principal residence of the taxpayer;

(f) no other dwelling is taken as having been the sole or principal residence of the taxpayer;

(g) any use for the purpose of gaining or producing assessable income of the part of the dwelling that was the sole or principal residence of the taxpayer before the cessation time is to be disregarded.

“(11A) An election for the purposes of subsection (11) must be lodged with the Commissioner:

(a) in the case of an election by a taxpayer—on or before the date of lodgment of the taxpayer’s return of income for the later of the following years of income:

(i) the year of income in which the disposal of the dwelling takes place;

(ii) the year of income in which this subsection commenced; or

(b) in the case of an election by a surviving joint tenant, or a trustee, in relation to a deceased taxpayer—on or before whichever is the later of the following dates:

- (i) the date of lodgment of the return of income of the deceased taxpayer’s estate for the year of income in which the taxpayer died; 5
- (ii) the last day of the year of income in which this subsection commenced;

or, in either case, within such further period as the Commissioner allows.”. 10

Interpretation

17. Section 177A of the Principal Act is amended:

- (a) by inserting in subsection (1) the following definition:
“‘**section 159TL rebate**’ means a rebate under section 159TL;”;
- (b) by adding at the end the following subsection: 15
“(6) For the purposes of this Part, where a taxpayer is entitled to a section 159TL rebate, the rebate is taken to be allowable to the taxpayer.”.

Operation of Part

18. Section 177B of the Principal Act is amended by adding at the end the following subsections: 20

“(5) Where a provision of this Act other than this Part is expressed to have effect where a section 159TL rebate would be allowable to a taxpayer but for or apart from a provision or provisions of this Act, the reference to that provision or to those provisions, as the case may be, is to be read as including a reference to subsection 177F (1). 25

“(6) Where a provision of this Act other than this Part is expressed to have effect where a section 159TL rebate would otherwise be allowable to a taxpayer, that provision is taken to be expressed to have effect where a section 159TL rebate would, apart from subsection 177F (1), be otherwise allowable to the taxpayer.”. 30

Tax benefits

19. Section 177C of the Principal Act is amended:

- (a) by omitting from paragraph (1) (b) “carried out,” and substituting “carried out; or”; 35
- (b) by inserting after paragraph (1) (b) the following paragraph:
“(ba) a section 159TL rebate being allowable to the taxpayer in relation to a year of income where the whole or a part of that rebate would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out;”; 40

(c) by adding at the end of subsection (1) the following word and paragraph:

“; and (e) in a case to which paragraph (ba) applies—the amount of the whole of the rebate or of the part of the rebate, as the case may be, referred to in that paragraph.”;

(d) by adding at the end of subsection (2) the following word and paragraph:

“; or (c) a section 159TL rebate being allowable to the taxpayer in relation to a year of income the whole or a part of which would not have been, or might reasonably be expected not to have been, allowable to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out where:

(i) the allowance of the rebate to the taxpayer is attributable to the making of an election or the giving of a notice by any person, being an election or notice expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the election or notice to be made or given, as the case may be.”;

(e) by omitting from subsection (3) “or (b) (i)” and substituting “, (b) (i) or (c) (i)”;

(f) by inserting in subsection (3) “or a section 159TL rebate” after “a deduction”;

(g) by inserting in subsection (3) “or the section 159TL rebate” after “the deduction”.

Cancellation of tax benefits etc.

20. Section 177F of the Principal Act is amended:

(a) by omitting from the end of paragraph (1) (b) “income,” and substituting “income; or”;

(b) by inserting after paragraph (1) (b) the following paragraph:

“(c) in the case of a tax benefit that is referable to a section 159TL rebate or a part of a section 159TL rebate being allowable to the taxpayer in relation to a year of income—determine that the whole or a part of the section 159TL rebate or the part of the section 159TL rebate, as the case may be, is not to be allowable to the taxpayer in relation to that year of income;”;

(c) by omitting from the end of paragraph (3) (b) “income,” and substituting “income; or”;

(d) by inserting after paragraph (3) (b) the following paragraph:

“(c) if, in the opinion of the Commissioner:

(i) an amount would have been allowed or would be allowable to the relevant taxpayer as a section 159TL rebate in relation to a year of income if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as a section 159TL rebate to the relevant taxpayer in relation to that year of income; and

(ii) it is fair and reasonable that the amount or a part of that amount should be allowable as a section 159TL rebate to the relevant taxpayer in relation to that year of income;

determine that that amount or that part, as the case may be, should have been allowed or is to be allowable, as the case may be, as a section 159TL rebate to the relevant taxpayer in relation to that year of income;”.

Interpretation

21. Section 221YA of the Principal Act is amended by inserting the following definitions in subsection (1):

“**‘estimated PAYE deductions’**, in relation to a year of income, means the amount of the estimated deductions made from the taxpayer’s salary or wages during the year of income in accordance with sections 221C and 221D, as shown in the statement furnished to the Commissioner under section 221YDA;

‘section 221YAB taxpayer’, in relation to a year of income, means a taxpayer to whom section 221YAB applies in relation to the year of income;”.

Certain employees to be subject to provisional tax

22. (1) Section 221YAB of the Principal Act is amended:

(a) by omitting from subsection (1) all of the words from and including “This section” to and including “**‘current year of income’**.” and substituting the following:

“This section applies to a taxpayer (not being a taxpayer in the capacity of a trustee) in relation to a year of income (in this section called the **‘current year of income’**) where both of the following conditions are satisfied in relation to the year of income (in this section called the **‘preceding year of income’**) that immediately preceded the current year of income;”;

(b) by omitting subsections (2) and (3).

(2) Section 221YAB of the Principal Act is amended by omitting “and 159L” from the definition of “Qualifying rebates” in paragraph (1) (b) and substituting “, 159L and 159TL”.

Liability to provisional tax

23. Section 221YB of the Principal Act is amended by omitting from subsection (1) “deriving assessable income, not being salary or wages, is liable to pay provisional tax in accordance with this Division.”

5 and substituting the following words and paragraphs:

“is liable to pay provisional tax in accordance with this Division if either of the following conditions is satisfied:

(a) the taxpayer is a section 221YAB taxpayer in relation to the year of income concerned;

10 (b) the taxpayer derives assessable income, not being salary or wages.”.

Provisional tax on estimated income

24. Section 221YDA of the Principal Act is amended by inserting in paragraph (1)(da) and subparagraph (2)(a)(ii) “AAC,” after “Subdivision A,”.

15

Additional tax where income under-estimated or where PAYE deductions over-estimated

25. Section 221YDB of the Principal Act is amended:

20

(a) by omitting subsection (1) and substituting the following subsections:

“(1) Where both of the following conditions are satisfied in relation to a taxpayer and in relation to a year of income:

(a) either of the following conditions is satisfied:

25

(i) if the taxpayer is a section 221YAB taxpayer in relation to the year of income—the amount of the taxpayer’s estimated taxable income is less than 90% of the amount of the taxpayer’s taxable income;

30

(ii) in any other case—the amount of the taxpayer’s estimated taxable income, reduced by the amount (if any) representing salary or wages that is included in that estimated taxable income, is less than 90% of the amount remaining after deducting from the taxpayer’s taxable income the amount of any assessable income of the taxpayer that consists of salary or wages;

35

(b) the taxpayer is not liable to pay instalments of provisional tax in respect of the year of income;

40

the taxpayer is liable to pay to the Commissioner additional tax, by way of penalty, equal to 20% of the lesser of:

(c) the amount by which the tax payable in respect of the taxable income exceeds the amount of provisional tax payable in respect of the estimated taxable income; or

- (d) the amount by which the provisional tax that would, apart from section 221YDA, be payable in respect of the taxable income exceeds the amount of provisional tax payable in respect of the estimated taxable income.
- “(1AAA) Where all of the following conditions are satisfied in relation to a taxpayer and in relation to a year of income: 5
- (a) the taxpayer is a section 221YAB taxpayer in relation to the year of income;
- (b) the taxpayer is not liable to pay instalments of provisional tax in respect of the year of income; 10
- (c) the amount of the taxpayer’s estimated taxable income is not less than 90% of the amount of the taxpayer’s taxable income;
- (d) the amount of the taxpayer’s estimated PAYE deductions exceeds 110% of the amount of the deductions which have been made from the taxpayer’s salary or wages during the year of income in accordance with sections 221C and 221D; 15
- the taxpayer is liable to pay to the Commissioner additional tax, by way of penalty, equal to 20% of whichever of the following is the least: 20
- (e) the amount by which the amount of deductions made from the taxpayer’s salary or wages during the year of income in accordance with sections 221C and 221D is less than whichever is the lesser of the following amounts: 25
- (i) the estimated PAYE deductions;
- (ii) so much of the amount of the estimated PAYE deductions as is estimated by the Commissioner, under paragraph 221YDA (2) (b), to represent deductions that have been, and will be, made in accordance with sections 221C and 221D; 30
- (f) the amount by which the tax payable in respect of the taxable income exceeds the amount of provisional tax payable in respect of the estimated taxable income;
- (g) the amount by which the provisional tax that would, apart from section 221YDA, be payable in respect of the taxable income exceeds the amount of provisional tax payable in respect of the estimated taxable income.”; 35
- (b) by inserting in subsection (1A) “or (1AAA)” after “subsection (1)”; 40
- (c) by omitting from paragraph (1A) (b) “reference in paragraph (a) of that subsection” and substituting “references in paragraphs (1) (c) and (1AAA) (f)”; 40
- (d) by omitting paragraph (1AA) (b) and substituting the following paragraph: 45

“(b) either of the following conditions is satisfied:

- 5 (i) if the taxpayer is a section 221YAB taxpayer in relation to the year of income—the amount of the taxpayer’s estimated taxable income is less than 90% of the amount of the taxpayer’s taxable income;
- 10 (ii) in any other case—the amount of the taxpayer’s estimated taxable income, reduced by the amount (if any) representing salary or wages that is included in that estimated taxable income, is less than 90% of the amount remaining after deducting from the taxpayer’s taxable income the amount of any assessable income of the taxpayer that consists of salary or wages;”;

15 (e) by inserting after subsection (1AA) the following subsection:

“(1ABA) Where all of the following conditions are satisfied in relation to a taxpayer and in relation to a year of income:

- 20 (a) the taxpayer is a section 221YAB taxpayer in relation to the year of income;
- (b) an instalment of provisional tax for the year of income was calculated by reference to:
- 25 (i) the amount of the taxpayer’s estimated taxable income for the year of income as shown in an instalment estimate; or
- (ii) an application of subsection 221YDA (4) in relation to the taxpayer’s estimated taxable income for the year of income as shown in an instalment estimate;
- 30 (c) the taxpayer’s estimated taxable income is not less than 90% of the taxpayer’s taxable income;
- (d) the amount of the taxpayer’s estimated PAYE deductions, as shown in the instalment estimate, exceeds 110% of the amount of the deductions which have been made from the taxpayer’s salary or wages during the year of income in accordance with sections 221C and 221D;

35 additional tax, by way of penalty, in respect of the penalty period, is due and payable by the taxpayer to the Commissioner at the rate of 20% per annum on whichever is the lesser of the following amounts:

- 40 (e) the amount by which the instalment is less than the amount that would have been the amount of the instalment if:
- (i) the estimated PAYE deductions had been equal to the amount of the deductions which were made from the taxpayer’s salary or wages during that

year of income in accordance with sections 221C and 221D; and

- (ii) the Commissioner had accepted that estimate for the purposes of paragraph 221YDA (2) (b); and
 - (iii) subsection 221YDA (4) had not applied; 5
- (f) the amount by which the instalment is less than the amount calculated using the formula:

$$\left(\begin{matrix} \text{Relevant} \\ \text{amount} \end{matrix} \times \begin{matrix} \text{Relevant} \\ \text{percentage} \end{matrix} \right) - \begin{matrix} \text{Previous} \\ \text{instalments} \end{matrix}$$

where:

‘Relevant amount’ means the lesser of: 10

- (i) the amount that would have been the applicable provisional tax amount in relation to the instalment if no instalment estimate had been furnished by the taxpayer in respect of the year of income; or
- (ii) the amount of tax payable by the taxpayer in 15 respect of the taxable income of the year of income reduced by:

- (A) where the income of the taxpayer of the year of income includes salary or wages and sub-subparagraph (C) does not apply—the amount of the deductions made from that salary or wages in accordance with sections 221C and 221D; and 20

- (B) where the income of the taxpayer of the year of income includes prescribed payments and sub-subparagraph (C) does not apply—the amount of any deductions made under Division 3A from those prescribed payments; and 25

- (C) where the income of the taxpayer of the year of income includes salary or wages and prescribed payments—the amounts that, apart from this sub-subparagraph, would be applicable under sub-subparagraphs (A) and (B) in relation to the salary or wages and the prescribed payments; 30 35

‘Relevant percentage’ means the relevant percentage;

‘Previous instalments’ means the amount of any previous instalments of provisional tax for the year of income.”;

(f) by inserting in subsection (1AB) “or (1ABA)” after “subsection (1AA)”;

(g) by inserting in subsection (1AC) “or (1ABA)” after “(1AA)”;

(h) by omitting from subsection (1B) “or (1AA)” and substituting “, (1AAA), (1AA) or (1ABA)”;

- (j) by omitting from subsection (2) “or (1AA)” and substituting “, (1AAA), (1AA) or (1ABA)”;
- (k) by omitting subsection (4) and substituting the following subsection:

5 “(4) Where the Commissioner is satisfied that additional tax under this section became payable by a taxpayer in relation to provisional tax, or an instalment of provisional tax, for a year of income because of circumstances where both of the following conditions are satisfied:

10 (a) the circumstances affected:

- (i) the taxpayer’s taxable income of that year of income; or
- (ii) the amount of the deductions made from the taxpayer’s salary or wages during that year of income in accordance with sections 221C and 221D;

15 (b) the taxpayer was not aware of the circumstances earlier than the time at which the taxpayer was required or permitted by section 221YDA to furnish a statement of estimated taxable income;

20 the Commissioner may remit the whole or a part of the additional tax.”.

Keeping of records

25 26. Section 262A of the Principal Act is amended:

(a) by inserting after subsection (4) the following subsection:

“(4A) A person who makes an election under Subdivision AAC of Division 17 of Part III must retain the election until the end of 5 years after the election was made.”;

30 (b) by inserting in subsection (5) “or an election” after “records” (first occurring);

(c) by inserting in paragraph (5) (a) “or election” after “records”.

Taxable contributions

27. Section 274 of the Principal Act is amended:

35 (a) by omitting from subsection (4) “, apart from subsection 82AAS (3),”;

(b) by omitting from subsection (4) “would not be” and substituting “is not”;

(c) by omitting subsection (6).

Application of amendments

40 28. (1) In this section:

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

(2) The amendments made by sections 7 and 11 apply to operational service on or after 2 August 1990.

(3) The amendments made by sections 8 and 9 apply in relation to payments made on or after 1 July 1990.

(4) Subparagraph 78 (1) (a) (cvi) of the amended Act applies to gifts made on or after 20 September 1990.

(5) The amendments made by sections 12, 13, 14 and 27 apply in relation to contributions made on or after 1 July 1990. 5

(6) The amendments made by section 16 apply to assessments in respect of income of the year of income in which 20 September 1985 occurred and of all subsequent years of income.

(7) The amendments made by sections 17, 18, 19 and 20 apply in relation to schemes that were entered into after 8 November 1990. 10

(8) The amendments made by section 21, subsection 22 (1) and sections 23 and 25 apply in relation to provisional tax (including instalments) payable for the year of income commencing on 1 July 1990 and for all subsequent years of income. 15

Transitional—section 23AC and subsection 79B (3A) of the Principal Act

29. In spite of the amendments made by sections 7 and 11 of this Act, section 23AC and subsection 79B (3A) of the Principal Act continue to apply in relation to special service that commenced before the commencement of this section as if those amendments had not been made. 20

Transitional—section 82AAT of the amended Act

30. The first regulations made for the purposes of subsection 82AAT (2) of the Principal Act as amended by this Act may be expressed to apply in relation to a year of income any part of which occurred before the notification of those regulations. 25

Transitional—applicable date for superannuation schemes

31. (1) In this section:

“amended Act” means the Principal Act as amended by this Act. 30

(2) For the purposes of the application of Subdivision AAC of Division 17 of Part III of the amended Act to a scheme, if, apart from this section, the date (in this section called the “applicable date”) applicable to the scheme under paragraph 159TE (f) of the amended Act is an earlier day than the 90th day after the date of commencement of this section, the applicable date is taken to be: 35

(a) the 90th day after the date of commencement of this section;
or

(b) such later date as the Commissioner allows.

Transitional—penalties under section 221YDB of the amended Act

32. (1) In this section:

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

5 (2) In spite of anything in Division 3 of Part VI of the amended Act, where both of the following conditions are satisfied in relation to an estimate furnished by a taxpayer under section 221YDA of the amended Act:

(a) the estimate relates to the year of income commencing on 1 July 1990;

10 (b) the estimate was furnished before the day on which the *Taxation Laws Amendment (Rates and Provisional Tax) Act 1990* received the Royal Assent;

subparagraphs 221YDB (1) (a) (i) and (1AA) (b) (i) of the amended Act do not apply in relation to that estimate.

15 (3) In spite of anything in Division 3 of Part VI of the amended Act, where both of the following conditions are satisfied in relation to an estimate furnished by a taxpayer under section 221YDA of the amended Act:

20 (a) the estimate relates to the year of income commencing on 1 July 1990;

(b) the estimate was furnished before 9 November 1990;

subsections 221YDB (1AAA) and (1ABA) of the amended Act do not apply in relation to that estimate.

Amendment of assessments

25 33. Section 170 of the Principal Act does not prevent the amendment of an assessment made before the commencement of this section for the purpose of giving effect to this Part.

PART 4—AMENDMENT OF THE OCCUPATIONAL SUPERANNUATION STANDARDS ACT 1987**Principal Act**

34. In this Part, “Principal Act” means the *Occupational Superannuation Standards Act 1987*.

Interpretation

35 35. Section 15E of the Principal Act is amended by inserting “, or is liable to make,” after “that makes” in the definition of “payer” in subsection (1).

Quotation etc. of tax file numbers

36. Section 15H of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

40 “(2) Where a person becomes entitled to receive from a payer:

- (a) an eligible termination payment; or
- (b) the first payment of a superannuation pension; or
- (c) the first payment of an annuity;

the person may quote his or her tax file number to the payer.”.

PART 5—AMENDMENTS RELATING TO SEX DISCRIMINATION

5

Amendment of Acts

37. The Acts specified in the Schedule are amended as set out in that Schedule.

Application of amendments

10

38. (1) The amendments made by Part 1 of the Schedule, insofar as they apply to assessments under the *Income Tax Assessment Act 1936*, apply to assessments in respect of income of the year of income commencing on 1 July 1991 and of all subsequent years of income.

(2) In ascertaining the provisional tax (including instalments) payable for the year of income commencing on 1 July 1991 and for all subsequent years of income, the definition of “spouse” in subsection 6 (1) of the *Income Tax Assessment Act 1936* applies for the purposes of determining:

- (a) whether a person is an associate of another person within the meaning of section 221YBA of that Act; and
- (b) whether a person is an associate of another person within the meaning of Subdivision B of Division 3 of Part VI of that Act.

(3) The amendments made by Part 3 of the Schedule apply to assessments in respect of income of the year of income commencing on 1 July 1993 and of all subsequent years of income.

(4) In spite of anything in subsection (1) of this section, the definition of “spouse” in subsection 6 (1) of the *Income Tax Assessment Act 1936* applies in determining any of the following:

- (a) whether a trust estate is a non-resident family trust in relation to a natural person at a particular time (within the meaning of section 102AAH of that Act);
- (b) the associates of an entity as at a particular time (within the meaning of section 318 of that Act);
- (c) whether a trust is a non-resident family trust in relation to a natural person at a particular time (within the meaning of section 328 of that Act);

whether that time occurred before, at or after the commencement of this subsection.

Amendment of assessments

5 **39. (1)** Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this subsection for the purpose of giving effect to the amendments made by Part 1 of the Schedule.

(2) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this subsection for the purpose of giving effect to the amendments made by Part 3 of the Schedule.

10 **(3)** Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this subsection for the purpose of giving effect to the amendments made by Part 4 of the Schedule.

SCHEDULE

Section 37

AMENDMENTS RELATING TO SEX DISCRIMINATION

PART 1

*Income Tax Assessment Act 1936***Subsection 6 (1):**

- (a) Omit the definition of “daughter”.
- (b) Insert the following definition:

“‘spouse’, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person;”.

Paragraph 23 (1):

Omit “, within the meaning of subsection 27A (1),” (wherever occurring).

Subsection 27A (1) (definition of “spouse”):

Omit the definition.

Subsection 51AE (1) (definition of “eligible relative”):

Omit the definition.

Paragraph 51AE (7) (a):

Omit “an eligible relative”, substitute “a relative”.

Paragraph 51AE (7) (b):

Omit “eligible”.

Paragraph 51AE (7) (c):

Omit “eligible”.

Subsection 51AF (1):

Omit “an eligible relative” (wherever occurring), substitute “a relative”.

Subsection 51AG (1):

- (a) Omit “an eligible relative”, substitute “a relative”.
- (b) Omit “the eligible relative” (wherever occurring), substitute “the relative”.

Subsection 51AG (2):

Omit “‘eligible relative’,”.

SCHEDULE—continued

Subsection 65 (2):

Omit “, within the meaning of subsection 27A (1)”.

Section 65:

Add at the end the following subsection:

“(3) In subsection (2), a reference to the spouse of a person (in this subsection called the ‘**first person**’) does not include a reference to a person who is legally married to the first person but is living separately and apart from the first person on a permanent basis.”.

Subsection 73B (1A):

Omit the subsection.

Subsection 82KT (1) (definition of “eligible relative”):

Omit the definition.

Paragraph 82KV (5) (c):

Omit “an eligible relative”, substitute “a relative”.

Paragraph 102 (1) (b):

Omit “21 years”, substitute “18 years”.

Paragraph 102 (2) (c):

Omit “21 years”, substitute “18 years”.

Subsection 108 (4):

Omit the subsection.

Subsection 109 (3):

Omit the subsection.

Subsection 124ZF (1) (definition of “spouse”):

Omit the definition.

Subsection 158B (2):

Omit the subsection.

Subsection 159GZC (2):

Omit the subsection, substitute the following subsection:

“(2) In subsection (1) or in any other provision of this Act insofar as that provision has effect for the purposes of subsection (1), a reference to the spouse of a person (in this subsection called the ‘**first person**’) does not include a reference to a person who is legally married to the first person but is living separately and apart from the first person on a permanent basis.”.

SCHEDULE—continued**Subsection 159GZZZC (2):**

Omit the subsection, substitute the following subsection:

“(2) For the purposes of the definition of ‘associate’ in subsection (1), any reference in subsection 26AAB (14), or in any other provision of this Act that has effect for the purposes of that subsection, to the spouse of a person (in this subsection called the ‘**first person**’) does not include a reference to a person who is legally married to the first person but is living separately and apart from the first person on a permanent basis.”.

Subsection 159H (3):

Omit the subsection.

Subsection 159J (2):

Omit “Daughter-housekeeper”, substitute “Child-housekeeper”.

Paragraph 159J (3) (c):

Omit “married to”, substitute “the spouse of”.

Paragraph 159J (3) (d):

Omit “daughter-housekeeper”, substitute “child-housekeeper”.

Subsection 159J (5D):

Omit “daughter”, substitute “child”.

Subsection 159J (6) (definition of “daughter-housekeeper”):

Omit the definition.

Subsection 159J (6):

Insert the following definition:

“‘**child-housekeeper**’ means the child of a taxpayer who is wholly engaged in keeping house for the taxpayer;”.

Paragraph 159K (1) (a):

Omit “daughter-housekeeper”, substitute “child-housekeeper”.

Paragraph 159K (1) (b):

Omit “daughter-housekeeper”, substitute “child-housekeeper”.

Subsection 159L (4):

Omit “is married”, substitute “has a spouse”.

Subsection 159ZA (1) (definition of “spouse”):

Omit the definition.

SCHEDULE—continued

Section 159ZA:

Add at the end the following subsection:

“(3) In this Subdivision, a reference to the spouse of a person (in this subsection called the ‘**first person**’) does not include a reference to a person who is legally married to the first person but is living separately and apart from the first person on a permanent basis.”.

Subsection 159ZR (1) (definition of “associate”):

Omit “, as affected by subsection (2) of this section”.

Subsection 159ZR (2):

Omit the subsection.

Subsection 160K (2):

Omit the subsection, substitute the following subsection:

“(2) In this Part (other than sections 160ZZM and 160ZZMA), or in a provision of this Act other than this Part insofar as that provision has effect for the purposes of this Part, a reference to the spouse of a person (in this subsection called the ‘**first person**’) does not include a reference to a person who is legally married to the first person but is living separately and apart from the first person on a permanent basis.”.

Subsection 221YBA (11):

Omit the subsection.

Subsection 221YHAAA (2):

Omit the subsection.

Subsection 251R (2):

Omit “legally” (last occurring).

Medicare Levy Act 1986

Subsection 3 (3):

Omit “legally” (wherever occurring).

Section 8:

Omit “legally” (wherever occurring).

PART 2

Fringe Benefits Tax Assessment Act 1986

Subsection 159 (1):

Omit the subsection.

SCHEDULE—continued

*Taxation (Unpaid Company Tax) Assessment Act 1982***Subsection 4 (1):**

Insert “(other than the definition of ‘spouse’ in subsection (1))” after “sections 6”.

PART 3

*Income Tax Assessment Act 1936***Paragraph 102 (1) (b):**

Omit “and unmarried”.

Paragraph 102 (2) (c):

Omit “and unmarried”.

Paragraph 102AC (2) (a):

Omit the paragraph.

PART 4

*Income Tax Assessment Act 1936***Section 102AAB (definition of “spouse”):**

Omit the definition.

Subsection 318 (7):

Omit the subsection, substitute the following subsection:

“(7) In this section, and in any other provision of this Act insofar as that provision has effect for the purposes of this section, a reference to the spouse of a person (in this subsection called the ‘**first person**’) does not include a reference to a person who is legally married to the first person but is living separately and apart from the first person on a permanent basis.”.

NOTES

1. No. 39, 1986, as amended. For previous amendments, see Nos. 48 and 112, 1986; Nos. 23 and 145, 1987; No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 6, 78, 95, 97 and 153, 1988; and Nos. 2, 11, 97 and 107, 1989.
2. 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;

NOTES—continued

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, 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; Nos. 2, 11, 56, 70, 73, 105, 107, 129, 163 and 167, 1989; No. 97, 1989 (as amended by No. 105, 1989); and Nos. 20, 35, 37, 45, 57, 58, 60, 61 and 00, 1990.

3. No. 97, 1987, as amended. For previous amendments, see No. 138, 1987; Nos. 97 and 105, 1989; and No. 61, 1990.

NOTE ABOUT SECTION HEADINGS

On the day on which this Act receives the Royal Assent:

- (a) the heading to section 51AG of the *Income Tax Assessment Act 1936* is altered by omitting “**eligible**”; and
- (b) the heading to section 159 of the *Fringe Benefits Tax Assessment Act 1986* is altered by omitting “**and relatives**”.



9 780644 212663