

# Income Tax Assessment (No. 2)

No. 54 of 1971

An Act to amend the Law relating to Income Tax in respect of Interest paid by Companies on Bearer Debentures and in respect of Interest paid to Non-residents.

[Assented to 25 May 1971]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Income Tax Assessment Act* (No. 2) 1971. Short title  
and citation.

(2.) The *Income Tax Assessment Act* 1936–1970,† as amended by the *Income Tax Assessment Act* 1971,‡ is in this Act referred to as the Principal Act.

(3.) Section 1 of the *Income Tax Assessment Act* 1971 is amended by omitting sub-section (2.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1936–1971.

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\* Act No. 99, 1962, as amended by No. 24, 1964; No. 93, 1966; No. 32, 1967; and No. 50, 1970.

† Act No. 27, 1936, as amended by 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, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; and No. 87, 1970.

‡ Act No. 6, 1971.

Commence-  
ment.

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

Parts.

3. Section 5 of the Principal Act is amended by omitting the words—

“ Division 11.—Interest paid by Companies on Bearer Debentures (Sections 126–128).

Division 11A.—Dividends and Interest paid to Non-residents (Sections 128A–128E).”

and inserting in their stead the words—

“ Division 11.—Interest paid by Companies on Bearer Debentures (Sections 125–128).

Division 11A.—Dividends and Interest paid to Non-residents (Sections 128A–128R).”.

Interpretation.

4. Section 6 of the Principal Act is amended by inserting in sub-section (1.), after the definition of “ daughter ”, the following definition:—

“ ‘ debenture ’, in relation to a company, includes debenture stock, bonds, notes and any other securities of the company, whether constituting a charge on the assets of the company or not;”.

5. After section 124z of the Principal Act the following section is inserted in Division 11 of Part III.:—

“ 125. This Division does not apply, and shall be deemed not to have applied, in relation to interest to which section one hundred and twenty-eight F or one hundred and twenty-eight G of this Act applies.”.

Division not  
to apply to  
certain  
interest.

6. Section 126 of the Principal Act is amended by omitting sub-sections (1.) and (2.) and inserting in their stead the following sub-sections:—

“ (1.) Where an amount of interest is paid or credited by a company in respect of a debenture payable to bearer the name and address of the holder of which is not supplied to the Commissioner by the company, the company is liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay income tax, as imposed by the *Income Tax (Bearer Debentures) Act 1971*, upon the amount so paid or credited, or, where the company deducts an amount, in accordance with the next succeeding sub-section, from the amount of interest that would otherwise have been so paid or credited, upon that last-mentioned amount.

“ (2.) The company may deduct and retain for its own use from an amount payable to a person in respect of which the company is liable to pay tax in accordance with the last preceding sub-section an amount equal to that tax.”.

7. Section 128 of the Principal Act is repealed and the following section inserted in its stead:—

“ 128. An assessment of tax payable in accordance with this Division by a company may be an assessment of the amount of tax so payable

Assessments  
of tax.

upon interest in respect of a number of debentures, whether held by the one holder or not.”.

8. Section 128A of the Principal Act is amended—

Interpretation.

(a) by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“(1.) In this Division, unless the contrary intention appears—

‘ associated persons ’, in relation to interests in, or rights in respect of, an entity, means two or more persons who, in the opinion of the Commissioner, are so associated, related or connected that it is reasonable to assume that they will or may exercise rights, or take other action, in relation to the entity in the one way or in accordance with understandings or arrangements between them;

‘ bearer debenture ’ means a debenture in respect of which—

(a) the principal and interest moneys are expressed to be payable to the bearer of the debenture; and

(b) there does not exist any right or option, whether absolute or contingent, by virtue of which any of those moneys could become payable otherwise than to the bearer of the debenture;

‘ dividend ’ includes part of a dividend;

‘ enterprise ’ means a business or other industrial or commercial undertaking;

‘ entity ’ means—

(a) the Commonwealth, a State or an authority of the Commonwealth or of a State;

(b) a natural person;

(c) a company;

(d) the partners in a partnership, in their capacity as partners;

(e) the persons carrying on a joint venture, in their capacity as such persons; or

(f) the trustees of a trust, in their capacity as such trustees;

‘ interest ’ includes an amount in the nature of interest, not being an amount referred to in sub-section (1.) of section twenty-six C of this Act;

‘ joint venture ’ means an enterprise carried on by two or more persons in common otherwise than as partners;

‘ non-resident ’ does not include a resident of a Territory of the Commonwealth.”; and

(b) by adding at the end thereof the following sub-sections:—

“(5.) For the purposes of this Division—

- (a) the borrowing of moneys by a company by means of the issue of a number of debentures in one borrowing operation shall be deemed to be the raising of a loan;
- (b) subject to the last preceding paragraph, each receipt of moneys by a borrower under a contract under which moneys are to be, or may be, advanced by way of loan shall be deemed to be the raising of a loan; and
- (c) the moneys received by the raising of a loan, less the expenses of borrowing, shall be deemed to be the loan moneys in respect of the loan.

“(6.) A reference in this Division to beneficial interests in relation to an entity shall be read—

- (a) in the case of an entity being a company or the partners in a partnership—as a reference to beneficial interests in respect of the capital of, and in respect of any profits or income of, the company or partnership;
- (b) in the case of an entity being persons carrying on a joint venture—as a reference to beneficial interests in respect of the enterprise; and
- (c) in the case of an entity being the trustees of a trust—as a reference to beneficial interests under the trust.

“(7.) A reference in this Division to the use of moneys for the purposes of an enterprise shall be read as not including use of those moneys in the course of carrying on an enterprise—

- (a) by way of providing capital for another enterprise; or
- (b) by way of the making of loans.

“(8.) For the purposes of this Division—

- (a) a reference to a qualifying use, in relation to loan moneys, shall be read as a reference to use of those moneys for the purposes of an enterprise at a time when the enterprise is or was (whether by reason of the transaction by which those moneys became available for that use or otherwise) an enterprise owned by an Australian entity or an enterprise in which there is substantial Australian participation; and
- (b) where any loan moneys have been put to a qualifying use, the qualifying use shall be deemed to continue until—
  - (i) the enterprise ceases to be an enterprise of a kind referred to in the last preceding paragraph; or

- (ii) the moneys are repaid to, or otherwise received back by, the person by whom they were made available to the entity that has used them for the purposes of the enterprise, or the moneys are used otherwise than for the purposes of the enterprise,  
and no longer.

“ (9.) For the purposes of this Division—

- (a) a reference to particular loan moneys (including the reference in the next succeeding paragraph) includes a reference to moneys that, in the opinion of the Commissioner, represent those loan moneys; and
- (b) without limiting the generality of the last preceding paragraph—
  - (i) moneys received by way of repayment of a loan made out of particular loan moneys; and
  - (ii) moneys received in respect of shares in the capital of a company, being shares purchased or subscribed for by the expenditure of particular loan moneys, upon a sale of the shares, a return of capital by the company or liquidation of the company,

shall be deemed to represent those loan moneys.”.

9.—(1.) Section 128B of the Principal Act is amended—

- (a) by omitting sub-paragraph (i) of paragraph (h) of sub-section (3.); and
- (b) by omitting sub-paragraph (iv) of that paragraph and inserting in its stead the following sub-paragraph:—

“ (iv) interest specified in section one hundred and twenty-eight E, or in sub-section (1.) of section one hundred and twenty-eight F or one hundred and twenty-eight G of this Act.”.

(2.) The sub-paragraph omitted by paragraph (a) of the last preceding sub-section continues to apply in respect of interest on money lodged at interest before the twenty-ninth day of April, One thousand nine hundred and seventy-one, or in pursuance of a contractual obligation entered into with the bank concerned before that date.

10. Section one hundred and twenty-eight D of the Principal Act is amended by inserting before the words “ of this Act ” the words “, section one hundred and twenty-eight F or section one hundred and twenty-eight G ”.

Liability to withholding tax.

Certain income not included in assessable income.

**11.** After section 128E of the Principal Act the following sections are inserted in Division 11A of Part III. :—

Division not to apply to interest on certain bearer debentures.

“ 128F.—(1.) This section applies to interest paid by a company in respect of debentures where—

- (a) the company was, at the time when the debentures were issued, and is or was, at the time when the interest is or was paid, a resident of Australia;
- (b) the debentures were issued by the company outside Australia for the purposes of the raising of a loan outside Australia in a currency other than the currency of Australia;
- (c) the debentures were, at the time of their issue, and have continued at all times up to the time at which the interest became due and payable, bearer debentures;
- (d) the interest is or was paid outside Australia in a currency other than the currency of Australia; and
- (e) the Commissioner has issued a certificate under sub-section (4.) of this section in respect of the loan.

“ (2.) Tax is not payable, and shall be deemed not to have been payable, in accordance with this Division in respect of interest to which this section applies.

“ (3.) A company that has raised a loan by the issue of bearer debentures the interest on which could, subject to the issue of a certificate under the next succeeding sub-section in respect of the loan, be interest referred to in sub-section (1.) of this section may apply in writing to the Commissioner for the issue of such a certificate.

“ (4.) Where an application is made in accordance with the last preceding sub-section and the Commissioner is satisfied that—

- (a) having regard to—
  - (i) the arrangements under which the debentures were offered for subscription, and any arrangements that were made, or action taken, for the offering of all or any of the debentures for sale by subscribers;
  - (ii) the ordinary business practices of agents or other persons who took part in the arrangements for the raising of the loan;
  - (iii) the arrangements that were made for dealing with offers to subscribe for the debentures; and
  - (iv) any circumstances indicating the existence, at the time of the raising of the loan, of any arrangements for any of the debentures to be offered for subscription, or purchased after subscription, by persons connected with each other,

with the company raising the loan or with a person by whom the loan moneys, or moneys derived directly or indirectly from the loan moneys, were intended to be used, it is reasonable to regard the debentures as having been issued with a view to public subscription or purchase or other wide distribution among investors; and

- (b) the borrowing operation was undertaken by the company for the purpose of raising money—
- (i) to be used by that company in an Australian business; or
  - (ii) for expenditure by that company, by way of loan or otherwise, for the purpose of making those moneys, or moneys derived directly or indirectly from those moneys, available to another person or persons for use by that other person or those other persons in an Australian business or Australian businesses,

the Commissioner shall issue to the company a certificate containing particulars of the loan and stating that the loan complies with this sub-section, but otherwise he shall refuse the application.

“(5.) If the Commissioner refuses the application, he shall serve by post or otherwise on the company notice in writing that the application has been refused.

“(6.) Where—

- (a) the beneficial ownership of the whole of the issued shares in the capital of a company that is not a resident (in this sub-section referred to as ‘the subsidiary’) is vested in another company (in this sub-section referred to as ‘the parent company’) and the subsidiary is wholly controlled by the parent company;
- (b) the only business of the subsidiary is the borrowing of money for the purposes of the parent company;
- (c) the subsidiary raises a loan outside Australia by the issue of debentures outside Australia in a currency other than the currency of Australia;
- (d) the interest on the debentures is payable outside Australia in a currency other than the currency of Australia; and
- (e) the subsidiary lends the loan moneys to the parent company on terms that do not result in a profit to the subsidiary,

the preceding provisions of this section have effect as if—

- (f) the loan raised by the issue of the debentures had been raised, and the debentures had been issued, by the parent company;
- (g) the interest payable to the subsidiary by the parent company in respect of the loan by the subsidiary to the parent company were interest in respect of the debentures and were paid outside Australia in a currency other than the currency of Australia; and

- (h) the moneys received by the parent company under the loan made to it by the subsidiary were the loan moneys raised by the issue of the debentures.

“(7.) A reference in this section to the use of moneys in an Australian business shall be read as a reference to—

- (a) use of those moneys in Australia, by a person who is a resident of Australia, for the purposes of, or for the establishment or acquisition of, or of an interest in, a business carried on, or to be carried on, by that person wholly or partly in Australia; or
- (b) use of those moneys outside Australia by a person who is a resident of Australia for purposes connected with the operations in Australia of a business carried on by that person wholly or partly in Australia.

Division not to apply to interest on certain loans.

“128G.—(1.) This section applies to interest in respect of a loan where—

- (a) the loan was raised outside Australia;
- (b) if the loan was raised by the issue of bearer debentures, the debentures were issued outside Australia by a company, the loan was raised in a currency other than the currency of Australia and the interest is or was paid outside Australia in a currency other than the currency of Australia; and
- (c) the Commissioner has issued a certificate under the next succeeding section in respect of the loan.

“(2.) Tax is not payable, and shall be deemed not to have been payable, in accordance with this Division in respect of interest to which this section applies.

Issue of certificates.

“128H.—(1.) An entity that has raised a loan the interest on which could, subject to the issue of a certificate under the next succeeding sub-section in respect of the loan, be interest referred to in the last preceding section may apply to the Commissioner in writing for the issue of such a certificate.

“(2.) Where an application is made in accordance with the last preceding sub-section and the Commissioner is satisfied that—

- (a) the applicant was an Australian entity throughout the period of sixty days that ended—
- (i) in the case of a loan raised by the offering of securities for subscription—on the sixtieth day before the earliest day on which any person was or persons were invited to subscribe to the loan; or
- (ii) in any other case—on the sixtieth day before the day on which the contract for the making of the loan was made;
- (b) the loan moneys have been employed, and are intended to be employed, only for a qualifying use or for making moneys available for a qualifying use;

- (c) in a case in which an amount being the whole or part of the loan moneys has been lent, or is intended to be lent, for use for the purposes of an enterprise in which there is substantial Australian participation, that amount did not exceed, or will not exceed, an amount that can reasonably be regarded, having regard to the extent of that participation, as an appropriate amount to be contributed (in addition to any other contribution) by the Australian entity or Australian entities concerned to the funds required for the purposes of that enterprise; and
- (d) every entity (other than the applicant) that has lent or otherwise expended, or that will lend or otherwise expend, any of the loan moneys in the course of the arrangements by which any of the loan moneys have been or will be made available for the purposes of a qualifying use was or will be an Australian entity throughout the period of sixty days ending on the sixtieth day before the day on which it received or receives the moneys that it so lends or otherwise expends,

the Commissioner shall issue to the applicant a certificate containing particulars of the loan and stating that the loan complies with this sub-section, but otherwise he shall refuse the application.

“(3.) For the purposes of paragraph (b) of the last preceding sub-section, the Commissioner may disregard a deposit or investment of any loan moneys during the period of a temporary delay that was reasonably involved in the making of arrangements for a qualifying use of those moneys.

“(4.) At the request of the applicant, the Commissioner may, by reason of special circumstances, apply paragraph (a) or paragraph (d) of sub-section (2.) of this section as if another period was, or other periods were, substituted for either or both of the periods referred to in the paragraph.

“(5.) Where an application is made for a certificate under this section in relation to a loan and it appears to the Commissioner that the loan was raised in accordance with arrangements, being arrangements made having regard to the operation of the last preceding section, under which the person to whom the loan was made, or some other person, was to make moneys other than the loan moneys available, or to arrange for moneys other than the loan moneys to be made available, by way of loan or otherwise, for a purpose that would not constitute a qualifying use in relation to the loan moneys, the Commissioner may refuse the application.

“(6.) If the Commissioner refuses the application, he shall serve by post or otherwise on the applicant notice in writing that the application has been refused.

Australian  
entities.

“ 128J.—(1.) For the purposes of this Division, the following are Australian entities:—

- (a) the Commonwealth, a State or an authority of the Commonwealth or of a State and the trustees of a fund established by the Commonwealth, a State or such an authority; and
- (b) a natural person who is ordinarily resident in Australia.

“ (2.) For the purposes of this Division but subject to this section, an entity (not being an entity referred to in the last preceding sub-section) is an Australian entity if, and only if—

- (a) the beneficial interests in relation to the entity of persons who are themselves Australian entities are, and the capacity of such persons to participate, whether directly or indirectly, according to their own judgment, in the control of the entity, is, substantially preponderant; and
- (b) the beneficial interests in relation to the entity of persons other than Australian entities are not, and the capacity of persons other than Australian entities to participate, whether directly or indirectly, according to their own judgment, in the control of the entity, is not, concentrated to a significant extent in one such person, or in two or more such persons who are associated persons,

and, in the case of an entity being a company, it is a resident of Australia.

“ (3.) In the application of the last preceding sub-section, but subject to the succeeding provisions of this section, the Commissioner shall regard a company having a share capital as an Australian entity if, and only if, he is satisfied that the company is a resident of Australia and that—

- (a) the beneficial interests in—
  - (i) the paid-up capital of the company;
  - (ii) distributions of capital on liquidation of the company or on a return of capital by the company; and
  - (iii) dividends paid by the company,

and the rights to cast votes on every question arising at a meeting of the company, are vested, to the extent of not less than sixty per centum, in persons who are themselves Australian entities and are able to exercise their voting rights according to their own judgment;

- (b) no person who is not an Australian entity is, and no two or more such persons who are associated persons are, beneficially interested to the extent of more than twenty per centum in any of the matters referred to in sub-paragraphs (i), (ii) and (iii) of the last preceding paragraph, or entitled to exercise, according to his or their own judgment, more than twenty per centum of the total number of votes that could be cast on a question arising at a meeting of the company; and

- (c) no person who is not an Australian entity has rights, otherwise than by virtue of the voting rights in respect of shares, to be a director of the company or to affect the appointment of the directors of the company or any of them.

“(4.) In determining whether a company having a share capital is an Australian entity, redeemable shares in the capital of the company that are beneficially owned by an Australian entity, and the capital represented by, dividends payable in respect of, and voting rights attributable to, any such shares so owned, shall be disregarded.

“(5.) In determining whether an entity other than a company having a share capital is an Australian entity, the Commissioner shall have regard to the provisions made by the last two preceding sub-sections in relation to such a company.

“(6.) The Commissioner may, for the purposes of this Division, regard an entity as an Australian entity notwithstanding that it may not, or does not, fully comply with the foregoing provisions of this section that are applicable in relation to it, or that there is a difficulty in applying those provisions in relation to the entity, if, having regard to the general effect of those provisions and to the circumstances giving rise to the difficulty or other special circumstances that exist in relation to the entity, the Commissioner considers that it would be inappropriate not to regard the entity as an Australian entity.

“(7.) The Commissioner may, for the purposes of this Division, regard an entity as not being an Australian entity notwithstanding that it does comply with the foregoing provisions of this section that are applicable to it if, having regard to the general effect of those provisions and to special circumstances that exist in relation to the entity, the Commissioner considers that it would be inappropriate to regard the entity as an Australian entity.

“(8.) The special circumstances to which regard may be had under the last two preceding sub-sections include the existence of—

- (a) options or other rights, including contractual or equitable rights, whether absolute or contingent, to receive or acquire, whether presently or in the future, shares in the capital of a company or other rights or interests; or
- (b) abnormal arrangements made for the purpose of securing benefits under this Division.

“(9.) In determining, for the purposes of this Division, whether an entity is to be regarded as an Australian entity as at a particular time, the Commissioner shall apply the provisions of this section as if a reference in those provisions to a matter were a reference to that matter as subsisting at that time.

“128k.—(1.) For the purposes of this Division but subject to this section, an enterprise is one in which there is substantial Australian participation if it is an enterprise in the ownership and control of which

Meaning of  
Australian  
participation  
in enterprise.

there is substantial participation by an Australian entity or Australian entities and the extent and concentration of that participation are such as to represent an effective Australian influence in the carrying on of the enterprise.

“(2.) In the application of the last preceding sub-section, but subject to the succeeding provisions of this section, the Commissioner shall regard an enterprise carried on by a company having a share capital as one in which there is substantial Australian participation if, and only if, the beneficial interests in respect of—

- (a) the paid-up capital of the company;
- (b) distributions of capital on liquidation of the company or on a return of capital by the company; and
- (c) dividends paid by the company,

and the rights to cast votes on every question arising at a meeting of the company, are vested—

- (d) to the extent of not less than twenty per centum, in one Australian entity;
- (e) to the extent of not less than thirty per centum, in Australian entities to the number of not more than five; or
- (f) to the extent of not less than forty per centum, in any number of Australian entities,

being an entity which, or entities each of which, is able to exercise its voting rights according to its own judgment.

“(3.) For the purposes of the last preceding sub-section, two or more Australian entities that are associated persons shall be deemed to be one Australian entity.

“(4.) For the purposes of the application of this section in relation to an enterprise carried on by a company having a share capital, redeemable shares in the capital of the company that are beneficially owned by an Australian entity, and the capital represented by, dividends payable in respect of, and voting rights attributable to, any such shares so owned shall be disregarded.

“(5.) In determining whether an enterprise carried on otherwise than by a company having a share capital is an enterprise in which there is substantial Australian participation, the Commissioner shall have regard to the provisions made by the preceding sub-sections of this section in relation to such a company.

“(6.) The Commissioner may, for the purposes of this Division, regard an enterprise as one in which there is substantial Australian participation notwithstanding that it may not, or does not, fully comply with the foregoing provisions of this section that are applicable to it, or that there is a difficulty in applying those provisions in relation to the enterprise, if, having regard to the general effect of those provisions and to the circumstances giving rise to the difficulty or other special circumstances that exist in relation to the enterprise, the Commissioner considers that it

would be inappropriate not to regard the enterprise as one in which there is substantial Australian participation.

“(7.) The Commissioner may, for the purposes of this Division, regard an enterprise as not being one in which there is substantial Australian participation notwithstanding that it does comply with the foregoing provisions of this section that are applicable in relation to it, if, having regard to the general effect of those provisions and to special circumstances that exist in relation to the enterprise, the Commissioner considers that it would be inappropriate to regard the enterprise as one in which there is substantial Australian participation.

“(8.) The special circumstances to which regard may be had under the last two preceding sub-sections include the existence of—

- (a) options or other rights, including contractual or equitable rights, whether absolute or contingent, to receive or acquire, whether presently or in the future, shares in the capital of a company or other rights or interests; or
- (b) abnormal arrangements made for the purposes of securing benefits under this Division.

“(9.) In determining whether an enterprise is to be regarded, as at a particular time, as an entity in which there is substantial Australian participation, the Commissioner shall apply the provisions of this section as if a reference in those provisions to a matter were a reference to that matter as subsisting at that time.

“ 128L. Where—

- (a) two or more steps in the production and distribution of goods involve the operations of two or more enterprises, or the operations of two or more enterprises are otherwise related; and
- (b) the Commissioner is satisfied that the beneficial interests of Australian entities and entities that are not Australian entities in relation to the entities carrying on those enterprises have been arranged in a particular way with a view to obtaining benefits under this Division that would not otherwise be obtainable,

the Commissioner may, for the purposes of this Division, treat those enterprises as if they were one enterprise.

“ 128M. A body corporate in respect of which there is in force, and was in force on the date of commencement of the *Income Tax Assessment Act (No. 2) 1971*, an authority referred to in section nine of the *Banking Act 1959–1967*, not being a body corporate that was, on that date, a prescribed bank for the purposes of section twenty-five of the last-mentioned Act—

- (a) is a resident of Australia for the purposes of section one hundred and twenty-eight F and one hundred and twenty-eight J of this Act; and
- (b) is (if it is not, apart from this section, an Australian entity for all purposes of this Division) an Australian entity for the purposes

Treatment of two or more enterprises as one.

Certain banks to be treated as Australian entities and Australian residents.

of this Division other than the purposes of section one hundred and twenty-eight K of this Act or the purpose of determining whether another entity is, or was at any time, an Australian entity.

Special tax payable in respect of exempt interest in certain circumstances.

“ 128N.—(1.) In this section—

‘ period of disqualification ’, in relation to a loan, means—

- (a) a period, being the whole or a part of a financial year, during which, in respect of an amount being the whole or a part of the loan moneys, there has not subsisted a qualifying use of that amount; or
- (b) a period, being the whole or a part of a financial year, during which, in respect of an amount being the whole or a part of the loan moneys, although there has subsisted a qualifying use of that amount, being a qualifying use arising from the making of a loan for use for the purposes of an enterprise in which there is substantial Australian participation, the amount exceeds the amount that, in the opinion of the Commissioner, can reasonably be regarded, having regard to the extent of that participation during that period, as an appropriate amount of contribution (in addition to any other contribution) by the Australian entity or Australian entities concerned to the funds required for the purposes of that enterprise; and

‘ the relevant part ’, in relation to a loan, means—

- (a) in respect of a period of disqualification referred to in paragraph (a) of the definition of ‘ period of disqualification ’ in this sub-section—the amount referred to in that paragraph; or
- (b) in respect of a period of disqualification referred to in paragraph (b) of that definition—so much of the amount first referred to in that paragraph as exceeds the amount last referred to in that paragraph,

less such amount, if any, as the Commissioner determines to be an amount that should reasonably be deducted, having regard to the extent to which interest in respect of the loan would not, apart from section one hundred and twenty-eight G of this Act, have been subject to withholding tax or tax payable in accordance with section one hundred and twenty-six of this Act.

“ (2.) Notwithstanding anything contained in this Act, where—

- (a) a certificate has been issued under section one hundred and twenty-eight H of this Act in respect of a loan;
- (b) any interest in respect of the loan has become payable in respect of a period that is, or includes, a period of disqualification; and
- (c) that interest, or any of it, was interest upon which, by reason of the certificate, tax in accordance with this Division or section one hundred and twenty-six of this Act was not payable,

the person who raised the loan is liable, or, if there is more than one such person, those persons are jointly and severally liable, to pay the tax imposed by the *Income Tax (Withholding Tax Recoupment) Act 1971* in respect of so much of that interest as is interest in respect of the relevant part of the loan and is attributable to the period of disqualification.

“(3.) For the purposes of the last preceding sub-section, where different rates of interest are payable in respect of different portions of the loan, the relevant part of the loan shall be deemed to be divided amongst those portions in the proportions that they bear to one another.

“(4.) For the purposes of the definition of ‘period of disqualification’ in sub-section (1.) of this section, the Commissioner may, if he thinks fit, disregard the fact that a qualifying use of an amount did not subsist during a period where that circumstance is attributable to—

- (a) a temporary delay that was reasonably involved in the making of arrangements for a qualifying use of that amount; or
- (b) a temporary failure of an entity to satisfy the conditions upon which an entity is an Australian entity or a temporary failure of an enterprise to satisfy the conditions upon which an enterprise is an enterprise in which there is substantial Australian participation.

“(5.) The notice of assessment of tax payable in accordance with this section that is required by section one hundred and seventy-four of this Act to be served shall be addressed to the person or persons liable to pay the tax at an address ascertained in accordance with the regulations.

“(6.) The Commissioner may, in any case, for reasons that he thinks sufficient, and either before or after making an assessment, remit, in whole or in part, so much of any tax payable in accordance with this section as is ascertained in accordance with paragraph (b) of section 6 of the *Income Tax (Withholding Tax Recoupment) Act 1971*.

“128P.—(1.) Subject to this section, the provisions of Division 2 of Part V. apply to and in relation to a refusal by the Commissioner of an application for a certificate under this Division in like manner as they apply to and in relation to assessments and, for the purposes of those provisions as so applying—

Reviews and appeals.

- (a) a reference in those provisions to an assessment shall be read as a reference to such a refusal;
- (b) a reference in those provisions to a taxpayer shall be read as a reference to a person who has applied for such a certificate; and
- (c) the reference in section one hundred and ninety of this Act to the assessment being excessive shall be read as a reference to the refusal of the application being unjustified.

“(2.) Upon a reference in accordance with this section to a Board of Review, the Board may either confirm the refusal of the application or direct the issue of a certificate.

Power of  
Commissioner  
to obtain  
information.

“128Q. Section two hundred and sixty-four of this Act applies, for the purposes of this Division, as if the reference in paragraph (b) of subsection (1.) of that section to a person’s income or assessment were a reference to a matter relevant to the administration or operation of this Division.

Informal  
arrangements.

“128R. For the purposes of this Act, the Commissioner may have regard to arrangements, understandings and practices not having legal force in the same manner as if they had legal force.”.

Application of  
amendments.

12.—(1.) Section 128F or 128G of the Principal Act, as amended by this Act, does not apply in relation to debentures issued before the date of commencement of this Act or issued for the purposes of a loan in respect of which an invitation to persons to subscribe was made before that date.

(2.) Section 128G of the Principal Act, as amended by this Act, does not apply in relation to a loan made before the date of commencement of this Act, or made in pursuance of a contract entered into before that date.

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