

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time

(Treasury)

TAXATION LAWS AMENDMENT BILL (NO. 3) 1995

CONTENTS

Section

1. Short title
2. Commencement
3. Schedules

SCHEDULE 1

AMENDMENT OF THE *INCOME TAX ASSESSMENT ACT 1936*

PART 1—FOREIGN INCOME

- Division 1—CGT cost base uplift*
- Division 2—Dissolution of CFCs*
- Division 3—Refunds etc. of foreign tax*
- Division 4—Tainted income*

PART 2—REBATABLE AND FRANKABLE DIVIDENDS

PART 3—BANKRUPTCY AND LOSSES

CONTENTS—*continued*

- PART 4—REDUCTION OF PAYE EARLY REMITTER THRESHOLD
- PART 5—DEPRECIATION ON TRADING SHIPS
- PART 6—INFRASTRUCTURE BORROWINGS
- PART 7—AMENDMENT OF ASSESSMENTS

SCHEDULE 2

AMENDMENTS RELATING TO GROUP CERTIFICATES AND OTHER PAYE PROVISIONS

- PART 1—*INCOME TAX ASSESSMENT ACT 1936*
- PART 2—*BANKRUPTCY ACT 1966*
- PART 3—VARIOUS ACTS
 - Division 1—Bankruptcy Act 1966*
 - Division 2—Child Support (Registration and Collection) Act 1988*
 - Division 3—Crimes (Taxation Offences) Act 1980*
 - Division 4—Crown Debts (Priority) Act 1981*
 - Division 5—Taxation (Interest on Overpayments and Early Payments) Act 1983*
 - Division 6—Application of Part*

SCHEDULE 3

SUPERANNUATION GUARANTEE CHARGE

- PART 1—AMENDMENT OF THE *SUPERANNUATION GUARANTEE (ADMINISTRATION) ACT 1992* RELATING TO NOTIONAL EARNINGS BASE
- PART 2—EXCESS BENEFITS
 - Division 1—Superannuation Guarantee (Administration) Act 1992*
 - Division 2—Income Tax Assessment Act 1936*

SCHEDULE 4

AMENDMENT OF THE *TAXATION LAWS AMENDMENT (DROUGHT RELIEF MEASURES) ACT 1995*

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Treasury)

A BILL

FOR

An Act to amend the law relating to taxation

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Taxation Laws Amendment Act (No. 3)*
1995.

Commencement

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

(2) Schedule 4 is taken to have commenced immediately after the commencement of the *Taxation Laws Amendment (Drought Relief Measures) Act 1995*.

Schedules

3. The Acts specified in the Schedules to this Act are amended in accordance with the applicable items in the Schedules, and the other items in the Schedules have effect according to their terms. 5

SCHEDULE 1

Section 3

AMENDMENT OF THE *INCOME TAX ASSESSMENT ACT 1936*

PART 1—FOREIGN INCOME

*Division 1—CGT cost base uplift***1. Subsection 160M(12B):**

Omit the definition of *30 June 1990 non-taxable Australian asset*.

2. Subsection 160M(12B):

Insert the following definitions:

“commencing day has the same meaning as in Subdivision C of Division 7 of Part X.

commencing day non-taxable Australian asset has the same meaning as in Subdivision C of Division 7 of Part X.”.

3. Subsection 405(1) (definition of *30 June 1990 non-taxable Australian asset*):

Omit the definition.

4. Subsection 405(1):

Insert the following definitions:

“commencing day has the meaning given by section 406.

commencing day non-taxable Australian asset has the meaning given by section 406.”.

5. Section 406:

Repeal the section, substitute:

Meaning of *commencing day* and *commencing day non-taxable Australian asset*

“406.(1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the eligible CFC’s *commencing day* is:

- (a) if paragraph (b) does not apply—30 June 1990; or
- (b) if the eligible CFC was not a CFC at the end of 30 June 1990—the first day after 30 June 1990 at the end of which the eligible CFC was a CFC.

“(2) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, a *commencing day non-taxable Australian asset* of the eligible CFC is an asset (other than a taxable Australian asset) owned by the eligible CFC at the end of its commencing day.”.

SCHEDULE 1—continued**6. After section 408:**

Insert:

**Part IIIA not to apply to certain disposals
before end of commencing day**

“408A. For the purposes of applying this Act in calculating the attributable income of an eligible CFC, if the eligible CFC’s commencing day is after 30 June 1995, Part IIIA does not apply to a disposal of an asset of the eligible CFC before the end of the commencing day.”.

7. Subsection 411(1):

Omit “on 30 June 1990”, substitute “on its commencing day”.

Note: The heading to section 411 is replaced by the heading “**Commencing day non-taxable Australian assets taken to have been acquired on commencing day**”.

8. Subsection 412(3):

Omit “before 1 July 1990” (wherever occurring), substitute “on or before the eligible CFC’s commencing day”.

Note: The heading to section 412 is replaced by the heading “**Cost base of commencing day non-taxable Australian asset**”.

9. Subsections 413(2), 414(2) and 415(2):

Omit “30 June 1990 non-taxable Australian assets”, substitute “commencing day non-taxable Australian assets”.

10. Subsections 413(2) and (3):

Omit “at 30 June 1990”, substitute “at the eligible CFC’s commencing day”.

Note: The heading to section 413 is altered by omitting “**30 June 1990**” and substituting “**commencing day**”.

11. The whole of the Act:

Amend the Act in accordance with the following table, making amendment number 1 before amendment number 2:

SCHEDULE 1—continued

Amendment number	Provisions to be amended	Amendment
1	Paragraph 102AAZBA(g), subsections 160M(12AA) and (12AB) and 411(1), paragraphs 412(2)(a) and 413(3)(a), subsections 416(2) and 417(2), paragraph 418A(1)(d) and subsection 418A(2).	Omit “30 June 1990 non-taxable Australian asset”, substitute “commencing day non-taxable Australian asset”.
2	Paragraphs 102AAZBA(h) and 160M(12AB)(b), sub-subparagraphs 412(2)(a)(i)(A) and (B) and 412(2)(a)(ii)(A) and (B), paragraph 412(2)(b), subsection 412(3), paragraphs 413(2)(b) and (3)(b) and 414(2)(a) and (b), subsection 414(3), paragraphs 415(2)(a) and (b), subsection 415(3), paragraphs 416(2)(a) and (b), subsection 416(3), paragraphs 417(2)(a) and (b), subsection 417(3) and paragraph 418A(1)(e).	Omit “30 June 1990” (wherever occurring), substitute “the eligible CFC’s commencing day”.
3	Paragraphs 102AAZBA(h) and 160M(12AB)(b), subsection 418(2) and paragraphs 418A(1)(a) and (e).	Omit “1 July 1990”, substitute “the day following the eligible CFC’s commencing day”.

12. Application

The amendments made by this Division (other than item 6) apply to the disposal of assets after 30 June 1995.

*Division 2—Dissolution of CFCs***13. Section 319:**

Add at the end:

SCHEDULE 1—continued

“(6) If:

- (a) the company is a CFC at the beginning of what is, disregarding this subsection, a statutory accounting period; and
- (b) the company ceases to exist before the end of the statutory accounting period;

the statutory accounting period ends immediately before the company ceases to exist.”.

14. Paragraph 371(5)(a):

Omit the paragraph, substitute:

- “(a) in a paragraph (1)(a) case where subsection 319(6) does not apply to the statutory accounting period referred to in that paragraph—at the end of the statutory accounting period; or
- (aaa) in a paragraph (1)(a) case where subsection 319(6) applies to the statutory accounting period referred to in that paragraph—at the beginning of the statutory accounting period; or”.

15. Paragraph 375(3)(a):

Omit the paragraph, substitute:

- “(a) in a paragraph (1)(a) case, or a paragraph (1)(da) case, where subsection 319(6) does not apply to the statutory accounting period referred to in that paragraph—at the end of the statutory accounting period; or
- (aa) in a paragraph (1)(a) case, or a paragraph (1)(da) case, where subsection 319(6) applies to the statutory accounting period referred to in that paragraph—at the beginning of the statutory accounting period; or”.

16. Application

The amendments made by this Division apply to companies that cease to exist on or after 29 June 1995, where the winding up or other process resulting in the company ceasing to exist begins on or after that day.

Division 3—Refunds etc. of foreign tax**17. After subsection 6AB(5):**

Insert:

“(5A) In spite of anything in this section, a taxpayer is taken, for the purposes of this Act, not to have been personally liable for, or to have paid, foreign tax if:

SCHEDULE 1—continued

- (a) a refund of the foreign tax becomes liable to be made to the taxpayer or any other person; or
- (b) any other benefit becomes liable to be provided to the taxpayer or any other person, where:
 - (i) the amount of the benefit is worked out by reference to the amount of the foreign tax paid by the taxpayer alone; and
 - (ii) the benefit does not consist of a reduction in foreign tax payable by the taxpayer or the other person.”.

18. Application

The amendment made by this Division applies to refunds or other benefits that become liable to be made or provided after 29 June 1995.

Division 4—Tainted income

19. Section 434:

Add at the end:

“(3) If the Commissioner considers that:

- (a) the consideration for the supply or acquisition of one or more items of property would have been taken into account in working out an amount described in any of the paragraphs of subsection (1) as being that shown in the recognised accounts of the company for the statutory accounting period; and
- (b) assuming the company were an eligible CFC whose attributable income for the statutory accounting period were being calculated, the Commissioner would make a determination under section 136AD in relation to the supply or acquisition of the items; and
- (c) as a result of the determination, the consideration for the supply or acquisition would have been different; and
- (d) if that different consideration had instead been taken into account in working out the amount shown in the recognised accounts, the amount shown in the recognised accounts would also have been different;

then the different amount is substituted for the amount shown in the recognised accounts.”.

20. Application

The amendment made by this Division applies for statutory accounting periods ending after 30 June 1995.

SCHEDULE 1—continued**PART 2—REBATABLE AND FRANKABLE DIVIDENDS****21. After section 46F:**

Insert:

Rebate not allowable for dividends debited against certain accounts

“46G.(1) If:

- (a) a company pays a dividend in respect of which a rebate under section 46 or 46A is allowable; and
- (b) the dividend is debited wholly or partly against either or both of the following:
 - (i) one or more disqualifying accounts (see subsection 46H(1)) of the company;
 - (ii) one or more non-disqualifying accounts (see subsection 46H(3)) of the company, to the extent that the debiting causes a debit against the notional disqualifying account (see section 46I) of the company in accordance with subsection 46I(5);

the rebate is, subject to subsection (2), not allowable to the extent of the debit.

“(2) If:

- (a) the dividend consists to any extent of a distribution of property other than money; and
- (b) the debiting in respect of that distribution of property is to any extent against an amount in one or more reserves or accounts that is attributable either directly, or indirectly as a result of transfers of amounts from other reserves or accounts, to profits arising from the revaluation of the property;

subsection (1) does not apply to the debiting to the extent that it is so attributable.

Meaning of *disqualifying account* and *non-disqualifying account****Disqualifying account***

“46H.(1) Each of the following is a *disqualifying account* of a company:

- (a) a share capital account;
- (b) a share premium account;
- (c) a reserve to the extent that it consists of profits from the revaluation of assets of the company that have not been disposed of by the company.

SCHEDULE 1—continued*Effect of tainting share premium accounts*

“(2) If an account ceases to be a share premium account because the thing mentioned in paragraph (a) or (b) of the definition of **share premium account** in subsection 6(1) happens, the account does not cease to be a disqualifying account.

Non-disqualifying account

“(3) Each account or reserve of a company that is not a disqualifying account is a **non-disqualifying account** of the company.

Meaning of notional disqualifying account

“46I.(1) Every company has a **notional disqualifying account**.

Surplus

“(2) The notional disqualifying account has a surplus if the sum of the amounts credited to it exceeds the sum of the amounts debited against it.

Credit for transfer from disqualifying account

“(3) If the company transfers an amount from a disqualifying account to a non-disqualifying account, the notional disqualifying account is credited at the time of the transfer by the amount transferred.

Debit for transfer to disqualifying account

“(4) If:

- (a) the company transfers an amount from a non-disqualifying account to a disqualifying account; and
- (b) immediately before the transfer, the notional disqualifying account has a surplus;

the amount transferred, to the extent that it does not exceed the amount of the surplus in the notional disqualifying account, is debited against the notional disqualifying account at the time of the transfer.

Debit for dividend payment

“(5) If:

- (a) the company pays a dividend that is debited wholly or partly against one or more non-disqualifying accounts of the company; and
- (b) immediately before the payment, the notional disqualifying account has a surplus;

the notional disqualifying account is debited at the time of the payment by the lesser of:

- (c) the sum of the debits against the non-disqualifying accounts; and
- (d) the amount of the surplus in the notional disqualifying account.

SCHEDULE 1—continued**Debit for deemed dividends**

“46J. If any provision of this Act (other than the definition of *dividend* in subsection 6(1)) deems the company to have paid a dividend as a result of a distribution, payment or crediting, the dividend is taken for the purposes of sections 46G to 46L to have been debited against the accounts against which the distribution, payment, or crediting was debited, and to the same extent.

Note: An example of a provision to which this section applies is section 47.

Apportionment of debits for dividends paid on the same day

“46K.(1) For the purposes of sections 46G to 46L, if:

- (a) the company pays 2 or more dividends on the same day; and
- (b) disregarding section 46L, one or more (each of which is an *actually debited dividend*) of the dividends is debited wholly or partly against either or both of the following:
 - (i) one or more disqualifying accounts of the company;
 - (ii) one or more non-disqualifying accounts of the company, to the extent that the debiting causes a debit against the notional disqualifying account of the company in accordance with subsection 46I(5);

then, subject to subsection (3):

- (c) each dividend paid by the company is taken to have been debited against the account or accounts mentioned in paragraph (b); and
- (d) the amount of each debiting is worked out using the formula in subsection (2); and
- (e) each actually debited dividend is (except in accordance with paragraph (c)) taken not to have been debited as mentioned in paragraph (b).

“(2) For the purposes of subsection (1), the formula is:

$$\frac{\text{Amount of dividend}}{\text{Sum of amounts of all dividends paid on the day}} \times \text{Sum of debits for each actually debited dividend}$$

“(3) If:

- (a) an actually debited dividend paid by the company on the day consists to any extent of a distribution of property other than money; and

SCHEDULE 1—continued

(b) the debiting mentioned in paragraph (1)(b) in respect of that distribution of property is to any extent against an amount in one or more reserves or accounts that is attributable either directly, or indirectly as a result of transfers of amounts from other reserves or accounts, to profits arising from the revaluation of the property; paragraph (1)(b) does not apply to the debiting to the extent that it is so attributable.

Splitting of frankable dividends

“46L.(1) If:

- (a) the company pays a dividend (the *original dividend*) that, apart from this section, is a frankable dividend as defined by section 160APA; and
- (b) apart from this section, the original dividend is debited wholly or partly against either or both of the following:
 - (i) one or more disqualifying accounts of the company;
 - (ii) one or more non-disqualifying accounts of the company, to the extent that the debiting causes a debit against the notional disqualifying account of the company in accordance with subsection 46I(5);

then the following provisions apply for the purposes of:

- (c) sections 45Z to 46L; and
- (d) Part IIIAA and any other provision of this Act whose operation depends on that Part.

“(2) If:

- (a) the original dividend consists to any extent of a distribution of property other than money; and
- (b) the debiting in respect of that distribution of property is to any extent against an amount in one or more reserves or accounts that is attributable either directly, or indirectly as a result of transfers of amounts from other reserves or accounts, to profits arising from the revaluation of the property;

subsection (1) does not apply to the debiting to the extent that it is so attributable.

“(3) If the original dividend is debited wholly as mentioned in paragraph (1)(b):

- (a) it is not a frankable dividend; and
- (b) it is not a dividend to which paragraph 160AQF(1)(c) or (1AA)(c) or section 160AQG applies.

SCHEDULE 1—continued

“(4) If subsection (3) does not apply, the original dividend is taken to consist of 2 separate dividends as follows:

(a) one dividend that:

- (i) is not a frankable dividend; and
- (ii) is not a dividend to which paragraph 160AQF(1)(c) or (1AA)(c) or section 160AQG applies; and
- (iii) is equal to the amount of the debit mentioned in paragraph (1)(b); and
- (iv) is debited against the one or more accounts, and to the same extent as the debiting, mentioned in that paragraph; and

(b) another dividend that:

- (i) is a frankable dividend; and
- (ii) is equal to the remainder of the original dividend; and
- (iii) is not debited against any disqualifying account, or any non-disqualifying account so as to cause a debit against the notional disqualifying account.”.

22. Section 159GZZZMA:

Repeal the section.

23. Subsection 159GZZZP(3):

Omit the subsection.

24. Subsection 159GZZZQ(1):

Omit “Subject to subsection (2), where”, substitute “If”.

25. Subsection 159GZZZQ(2):

Omit the subsection.

26. Section 160APA (definition of *frankable dividend*):

Add at the end the following paragraph:

“(g) a dividend that is taken by subsection 46L(3) or paragraph 46L(4)(a) not to be a frankable dividend.”.

27. Subsections 160AQF(1) and (1AA):

Add at the end:

“Note: Because of subsection 46L(3) and paragraph 46L(4)(a), paragraph (c) of this subsection does not apply to dividends that are taken by subsection 46L(3) or paragraph 46L(4)(a) not to be frankable dividends.”.

SCHEDULE 1—continued**28. Section 160AQG:**

Add at the end:

“Note: Because of subsection 46L(3) and paragraph 46L(4)(a), this section does not apply to dividends that are taken by that subsection or paragraph not to be frankable dividends.”.

29. Subsection 160ZA(4A):

Omit the subsection, substitute:

“(4A) An amount is excluded from paragraph (4)(b) if it has been, or will be, included in the taxpayer’s assessable income under a provision having effect where:

- (a) the taxpayer recoups capital expenditure that was incurred in respect of the asset; and
- (b) a deduction has been allowed or is allowable to the taxpayer in respect of the capital expenditure.”.

30. Subsection 160ZA(5A):

Omit the subsection, substitute:

“(5A) An amount is excluded from paragraph (5)(c) if it has been, or will be, included in the partnership’s assessable income under a provision having effect where:

- (a) the partnership recoups capital expenditure that was incurred in respect of the asset; and
- (b) a deduction has been allowed or is allowable to the partnership in respect of the capital expenditure.”.

31. Subsection 160ZL(5):

Omit the subsection.

32. Section 160ZLA:

Repeal the section.

33. Application

(1) Subject to item 34, the amendments made by this Part apply to dividends that are paid after 7.30p.m. (the *starting time*), by legal time in the Australian Capital Territory, on 9 May 1995 where, in the case of dividends other than those that are deemed to be paid, the dividends are declared after the starting time.

(2) Subject to item 34, credits arise under section 46I of the *Income Tax Assessment Act 1936* as amended by this Part for amounts transferred by the company from accounts after the starting time.

Note: Debits under section 46I will, as a result of subitem (1), only arise in respect of the payment of dividends covered by that subitem.

SCHEDULE 1—continued**34. Excluded transitional arrangements**

(1) The amendments made by this Part do not apply to dividends paid by the company under an excluded transitional arrangement (see subitem (3)) within the transitional period (see subitem (4)).

(2) Credits do not arise under section 46I of the *Income Tax Assessment Act 1936* as amended by this Part for amounts transferred by the company from accounts under an excluded transitional arrangement within the transitional period.

(3) An ***excluded transitional arrangement*** is an arrangement, plan or proposal under which a reduction of capital of the company occurs, where:

(a) the reduction is confirmed by a Court order; and

(b) the arrangement, plan or proposal:

(i) is announced at a general meeting of the company, or by written notice available to all shareholders in the company; and

(ii) begins to be implemented;
before 7.30p.m. (the ***starting time***), by legal time in the Australian Capital Territory, on 9 May 1995.

(4) The ***transitional period*** is the period beginning at the starting time and ending 6 months afterwards.

SCHEDULE 1—continued

PART 3—BANKRUPTCY AND LOSSES

35. After subsections 79E(8) and 79F(8):

Insert:

“(8A) If:

- (a) a taxpayer becomes a bankrupt, but the bankruptcy is later annulled; and
- (b) disregarding the annulment, subsection (8) applies to the bankruptcy; and
- (c) the annulment occurred under section 74 of the *Bankruptcy Act 1966*; and
- (d) under the composition or scheme of arrangement concerned, the taxpayer has been, will be or may be, released from any debts, from which he or she would have been released if he or she had been instead discharged from the bankruptcy;

then, for the purposes of subsection (8), the annulment is disregarded.”.

36. After subsection 80(4):

Insert:

“(4AA) If:

- (a) a taxpayer becomes a bankrupt, but the bankruptcy is later annulled; and
- (b) disregarding the annulment, subsection (4) applies to the bankruptcy; and
- (c) the annulment occurred under section 74 of the *Bankruptcy Act 1966*; and
- (d) under the composition or scheme of arrangement concerned, the taxpayer has been, will be or may be, released from any debts, from which he or she would have been released if he or she had been instead discharged from the bankruptcy;

then, for the purposes of subsection (4), the annulment is disregarded.”.

37. After subsection 80AAA(9):

Insert:

“(9A) If:

- (a) a taxpayer becomes a bankrupt, but the bankruptcy is later annulled; and
- (b) disregarding the annulment, subsection (9) applies to the bankruptcy; and

SCHEDULE 1—continued

- (c) the annulment occurred under section 74 of the *Bankruptcy Act 1966*; and
- (d) under the composition or scheme of arrangement concerned, the taxpayer has been, will be or may be, released from any debts, from which he or she would have been released if he or she had been instead discharged from the bankruptcy;

then, for the purposes of subsection (9), the annulment is disregarded.”.

38. After subsection 80AA(6):

Insert:

“(6A) If:

- (a) a taxpayer becomes a bankrupt, but the bankruptcy is later annulled; and
- (b) disregarding the annulment, subsection (6) applies to the bankruptcy; and
- (c) the annulment occurred under section 74 of the *Bankruptcy Act 1966*; and
- (d) under the composition or scheme of arrangement concerned, the taxpayer has been, will be or may be, released from any debts, from which he or she would have been released if he or she had been instead discharged from the bankruptcy;

then, for the purposes of subsection (6), the annulment is disregarded.”.

39. After subsection 160ZC(4):

Insert:

“(4A) In spite of any other provision of this section, if, during a year of income, a taxpayer:

- (a) has become a bankrupt; or
- (b) not having become a bankrupt, has been released from any debts by the operation of an Act relating to bankruptcy;

then no net capital loss incurred by the taxpayer before the year of income is allowed to be taken into account in ascertaining whether a net capital gain accrued to the taxpayer, or the taxpayer incurred a net capital loss, in respect of the year of income.

“(4B) If:

- (a) a taxpayer becomes a bankrupt, but the bankruptcy is later annulled; and
- (b) disregarding the annulment, subsection (4A) applies to the bankruptcy; and

SCHEDULE 1—continued

- (c) the annulment occurred under section 74 of the *Bankruptcy Act 1966*; and
 - (d) under the composition or scheme of arrangement concerned, the taxpayer has been, will be or may be, released from any debts, from which he or she would have been released if he or she had been instead discharged from the bankruptcy;
- then, for the purposes of subsection (4A), the annulment is disregarded.”.

40. Application

- (1) The amendments made by items 35 to 38 apply to any annulment of bankruptcy occurring after 25 February 1995.
- (2) The amendment made by item 39 applies to:
 - (a) any taxpayer who becomes a bankrupt after 25 February 1995; and
 - (b) any taxpayer who, not having become a bankrupt, has been released after 25 February 1995 from any debts by the operation of an Act relating to bankruptcy.

SCHEDULE 1—continued**PART 4—REDUCTION OF PAYE EARLY REMITTER
THRESHOLD****41. Paragraph 221EC(1)(a):**

Omit “\$5 million”, substitute “\$1 million”.

42. Subparagraph 221EC(1)(b)(ii):

Omit “\$5 million”, substitute “\$1 million”.

43. Application

The amendments made by this Part apply in relation to deduction months (within the meaning of subsection 221EC(1) of the *Income Tax Assessment Act 1936*) that begin on or after 1 December 1995.

SCHEDULE 1—continued

PART 5—DEPRECIATION ON TRADING SHIPS

44. Paragraph 57AM(4)(ba):

Omit “1 July 1997”, substitute “1 July 2002”.

SCHEDULE 1—continued**PART 6—INFRASTRUCTURE BORROWINGS****45. Paragraph 159GZZZZG(1)(d):**

Omit “33%”, substitute “36%”.

46. Paragraph 159GZZZZG(2)(e):

Omit “33%”, substitute “36%”.

47. Paragraph 159GZZZZG(3)(e):

Omit “33%”, substitute “36%”.

48. Paragraph 159GZZZZG(4)(e):

Omit “33%”, substitute “36%”.

49. Application

The amendments made by this Part apply to assessments in respect of income of the 1995-96 year of income and of all later years of income.

SCHEDULE 1—continued

PART 7—AMENDMENT OF ASSESSMENTS

50. Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this item for the purpose of giving effect to this Act.



SCHEDULE 2

Section 3

AMENDMENTS RELATING TO GROUP CERTIFICATES AND
OTHER PAYE PROVISIONSPART 1—*INCOME TAX ASSESSMENT ACT 1936***1. Subsection 221A(1) (definition of *group certificate*):**

Omit the definition, substitute the following definition:

“group certificate means a group certificate form that has been completed in accordance with this Division.”.

2. Subsection 221A(1) (definitions of *tax check*, *tax check sheet*, *tax deduction sheet*, *tax stamp*, *tax stamps certificate* and *tax stamps sheet*):

Omit the definitions.

3. Subsection 221A(1):

Insert the following definitions:

“group certificate form means a document in a form authorised by the Commissioner for the purposes of this definition.

PAYE deduction obligation means an obligation on an employer under this Division to make a deduction.

PAYE obligation means any obligation on an employer under this Division.

quarter means any quarter of a financial year, where the quarter begins on 1 July, 1 October, 1 January or 1 April.

tax voucher means a document of that name purchased under section 221K.”.

4. Paragraph 221EAA(1)(b):

Omit the paragraph, substitute:

“(b) an amount equal to 16% per annum of so much of the undeducted amount as remains unpaid, worked out from the normal due time (see subsection (1A)).”.

5. After subsection 221EAA(1):

Insert:

“(1A) In paragraph (1)(b), *normal due time* means the end of the period within which the employer would, if the employer had deducted the amount required by this Division, have been required to pay the amount deducted to the Commissioner.”.

6. Paragraph 221EC(7)(a):

Omit “subparagraph 221F(5)(a)(i)”, substitute “paragraph 221F(5)(a)”.

SCHEDULE 2—continued**7. Paragraphs 221EC(8)(a) and (b):**

Omit “paragraph 221F(5)(a) (including that paragraph as varied under subsection 221F(7))”, substitute “subsection 221F(5) (including that subsection as varied under subsection 221F(7))”.

8. After section 221ED:

Insert the following sections:

Becoming a small remitter

“221EDA.(1) This section provides that an employer may in certain circumstances become a *small remitter*.”

Application required

“(2) In order to become a small remitter, the employer must apply in writing to the Commissioner, in a form authorised by the Commissioner for the purpose.

Contents etc. of application

“(3) The application (the *small remitter application*) must specify either:

(a) the year of income in which the small remitter application is made;
or

(b) the next year of income after that year of income;
as the financial year (the *commencing year*) in which the employer wishes to become a small remitter. If the employer is not a group employer, the small remitter application must be accompanied by an application, in a form authorised by the Commissioner, for registration as a group employer.

Requirements for accepting application

“(4) Subject to subsection (5), the Commissioner must accept the small remitter application if:

(a) the employer has PAYE deduction obligations of less than \$10,000 for the financial year before the commencing year; or

(b) the employer estimates in the small remitter application that he or she will have PAYE deduction obligations of less than \$10,000 for the commencing year.

Rejection of application

“(5) The Commissioner must not accept the small remitter application if:

SCHEDULE 2—continued

- (a) the employer has, on one or more occasions within the 12 months before the application would be accepted, not complied with his or her PAYE obligations; and
- (b) the Commissioner considers that, because of the non-compliance, it is not appropriate that the employer should be a small remitter.

Notice

“(6) The Commissioner must give the employer written notice of the Commissioner’s decision whether to accept the small remitter application.

Effect of notice

“(7) If the Commissioner’s decision is to accept the small remitter application, the employer is a small remitter at all times after the notice of the Commissioner’s decision is given, other than any quarter in relation to which a revocation of the decision has effect (see subsection 221EDB(3)).

Effect of rejection on future applications

“(8) If the Commissioner’s decision is not to accept the application, the employer must not make another small remitter application:

- (a) until, at the earliest, the financial year after the one in which the decision is made; and
- (b) unless the employer’s PAYE deduction obligations for the financial year before the year specified in that other small remitter application as the commencing year are less than \$10,000.

Ceasing to be a small remitter

“221EDB.(1) This section provides that an employer who is a small remitter may in certain circumstances lose that status.

Revocation of decision

“(2) The Commissioner may at any time, by notice in writing given to the employer, revoke a decision under section 221EDA to accept a small remitter application, if:

- (a) after the decision is made, the employer does not comply with one or more of the employer’s PAYE obligations and, because of this, the Commissioner considers that it is no longer appropriate for the employer to be a small remitter; or
- (b) the Commissioner is satisfied that the employer’s PAYE deduction obligations for the financial year in which the revocation is to take place are likely to be \$10,000 or more.

SCHEDULE 2—continued*Effect of revocation*

“(3) If the Commissioner revokes the decision, the revocation has effect in relation to all quarters after the quarter in which notice of the revocation is given.

Revocation not otherwise allowed

“(4) Except as mentioned in subsection (2), the Commissioner must not revoke or vary a decision under section 221EDA.

Effect of revocation on future applications

“(5) If a decision under section 221EDA to accept an application is revoked, the employer must not make another application to become a small remitter:

- (a) until, at the earliest, the financial year after the one in which the decision is revoked; and
- (b) unless the employer’s PAYE deduction obligations for the financial year before the year specified in that other application as the commencing year are less than \$10,000.

Review of decisions under sections 221EDA and 221EDB

“221EDC. An employer who is dissatisfied with:

- (a) a decision of the Commissioner under subsection 221EDA(5) not to accept an application by the employer; or
- (b) a notice given to the employer under subsection 221EDB(2);

may object against the decision or notice in the manner set out in Part IVC of the *Taxation Administration Act 1953*.”.

9. Subsection 221F(1):

Omit the subsection, substitute:

“(1) An employer of one or more employees who, at the start of the 28th day after the day on which Schedule 2 to the *Taxation Laws Amendment Act (No. 3) 1995* commences, is not already registered as a group employer must, within a further 14 days after that 28th day, apply to the Commissioner, in a form authorised by the Commissioner, for registration as a group employer.”.

10. Subsection 221F(2):

Omit “employment 10 or more”, substitute “or her employment one or more”.

SCHEDULE 2—continued

11. Subsection 221F(2A):

Omit “commencing on or after 1 July 1983, has made 10”, substitute “, has made one”.

12. Subsection 221F(2A):

Omit “(whether before or after the commencement of this subsection)”.

13. Subsections 221F(5) to (6):

Omit the subsections, substitute:

“(5) An employer must pay to the Commissioner the amount of any deductions that the employer makes:

- (a) if the deductions were made during the first 14 days of a month and the employer is an early remitter (see section 221EC) in relation to that month—not later than the 21st day of that month; and
- (b) if paragraph (a) does not apply and the employer was a small remitter (see section 221EDA) when the deductions were made—not later than the 7th day after the end of the quarter in which the deductions were made; and
- (c) in any other case—not later than the 7th day after the end of the month in which the deductions were made.

“(5A) Subject to subsection (5E), an employer must, not later than 14 July in each year, complete a group certificate form in respect of each employee and give the employee 2 copies of the completed form.

“(5B) In completing the form, the employer must set out (in addition to any other matter required by the form):

- (a) if the employee has, for the purposes of Part VA, quoted his or her tax file number in an employment declaration given to the employer—the tax file number; and
- (b) the total salary or wages paid by the employer to the employee during the period of 12 months that ended on 30 June in the same year (other than amounts set out in a previous group certificate); and
- (c) if deductions from the salary or wages of the employee have been made by the employer during that period—the total of the deductions (other than amounts set out in a previous group certificate).

“(5C) Subject to subsection (5E), an employer must, within 7 days after an employee ceases to be employed by the employer, complete a group certificate form in respect of the employee and give 2 copies of the completed form to the employee.

“(5D) In completing the form, the employer must set out (in addition to any other matter required by the form):

SCHEDULE 2—continued

- (a) if the employee has, for the purposes of Part VA, quoted his or her tax file number in an employment declaration given to the employer—the tax file number; and
- (b) the total salary or wages paid by the employer to the employee (other than amounts set out in a previous group certificate); and
- (c) if deductions from the salary or wages of the employee have been made by the employer—the total of the deductions (other than amounts set out in a previous group certificate and amounts deducted from eligible termination payments).

“(5E) Subsection (5A) or (5C) does not apply if all of the following conditions are met:

- (a) all of the salary or wages that the employee received, or was entitled to receive, for the period were atypical (see subsection (5F)); and
- (b) the salary or wages that the employee received, or was entitled to receive, in respect of any week or part of a week within the period of 12 months did not exceed the minimum amount of atypical salary or wages in respect of which the employer was required to make deductions; and
- (c) at no time in the period of 12 months was the employee a prescribed non-resident.

“(5F) For the purposes of subsection (5E), the salary or wages are *atypical* if they do not relate to employment in, or in connection with, a trade, business, profession or undertaking carried on by the employer.

“(5G) If:

- (a) an employer is required to state an employee’s tax file number when completing a group certificate form; and
- (b) the employee has not quoted his or her tax file number in an employment declaration given to the employer; and
- (c) because of the application of subsection 202CB(2) or (4), the employee is to be taken, for the purposes of Part VA, to have quoted his or her tax file number;

the employer is taken to have stated the number in the group certificate form if, in the space provided on the form for the inclusion of the number, the employer includes, as the case requires:

- (d) the notation approved by the Commissioner as being appropriate in cases to which subsection 202CB(2) applies; or
- (e) the notation approved by the Commissioner as being appropriate in cases to which subsection 202CB(4) applies.

SCHEDULE 2—continued

“(5H) An employer must, within 7 days after making an eligible termination payment to an employee, complete a group certificate form in respect of the employee and give 2 copies of the completed form to the employee.

“(5I) In completing the form, the employer must set out (in addition to any other matter required by the form):

- (a) if the employee has, in accordance with the regulations, quoted his or her tax file number in an employment declaration given to the employer in relation to that eligible termination payment—the tax file number; and
- (b) the amount of the eligible termination payment paid by the employer to the employee; and
- (c) if a deduction from the eligible termination payment has been made by the employer as a group employer—the amount of the deduction.

“(5J) An employer must, not later than 14 August in each year, send to the Commissioner:

- (a) each group certificate completed by the employer in respect of salary or wages paid by the employer to any employee during the period of 12 months that ended on 30 June in that year; and
- (b) a statement in a form authorised by the Commissioner, signed by the employer, reconciling the total deductions shown in each of the group certificates with the total amounts paid to the Commissioner in respect of those deductions.”.

Note: The heading to section 221F is altered by adding at the end “, **group certificates etc.**”.

14. Subsection 221F(7):

Omit “a paragraph of subsection (5) or any of the requirements of subsection (5A), (5B), (5C) or (5D)”, substitute “subsections (5) to (5D) and (5H) to (5J)”.

15. Subsections 221F(8), (9), (10) and (11):

Omit the subsections.

16. Subsection 221F(12):

Omit “a group employer other than the Commonwealth by virtue of paragraph (5)(a) (including that paragraph as varied under subsection (7)) or under subsection (9)”, substitute “an employer other than the Commonwealth because of subsection (5) (including that subsection as varied by subsection (7))”.

17. Paragraphs 221F(12)(a) and (b):

Omit “group” (wherever occurring).

SCHEDULE 2—continued**18. Subsection 221F(14):**

Omit “by virtue of paragraph (a) of that subsection”, substitute “(including that subsection as varied by subsection (7))”.

19. Subsection 221F(15):

Omit all the words from and including “contravene” to and including “subsection (6)”, substitute “contravene any of subsections (5A) to (5D) and (5H) to (5J) (including any of those subsections as varied by subsection (7))”.

20. Subsection 221F(16):

Omit the subsection.

21. Section 221G:

Repeal the section.

22. Subsection 221H(1):

Omit “any tax stamps sheet and any group certificate issued to the employee”, substitute “one copy of each group certificate given to the employee”.

23. After subsection 221H(1):

Insert:

“(1A) A person who purchases tax vouchers during a year of income must send them to the Commissioner with the return that the person is required under section 161 to furnish in respect of the year of income.”.

24. Subsections 221H(2) to (5):

Omit the subsections, substitute:

“(2) Subsections (3) to (5) apply if:

- (a) an employer has made any deductions in respect of an employee under this Division, or a person has purchased one or more tax vouchers, during a year of income; and
- (b) an assessment has been made of the tax payable, or the Commissioner is satisfied that no tax is payable, by the employee or purchaser in relation to the year of income.

“(3) If the sum of the deductions or amounts of purchases is less than or equal to the tax payable, the Commissioner must credit the sum in payment or part payment of the tax.

“(4) If the sum is more than the tax, the Commissioner must:

SCHEDULE 2—continued

(a) credit so much of the sum as is required in payment of:

- (i) firstly, the tax; and
- (ii) secondly, any other liability of the employee or purchaser to the Commonwealth that arises under or because of an Act of which the Commissioner has the general administration; and

(b) pay to the employee or purchaser an amount equal to any excess.

“(4A) If there is no tax payable, the Commissioner must:

(a) credit so much of the sum as is required in payment of any other liability of the employee or purchaser to the Commonwealth that arises under or because of an Act of which the Commissioner has the general administration; and

(b) pay to the employee or purchaser an amount equal to any excess.

“(4B) The employee or purchaser is taken to have paid any amount credited by the Commissioner in payment of the tax or other liability, at the time at which the Commissioner credits the sum or at any earlier time that the Commissioner determines.

“(5) If the amount paid, or sum credited, by the Commissioner exceeds the amount to which the employee or purchaser is entitled, the Commissioner may recover the excess as if it were income tax due and payable by the employee or purchaser.”.

25. Paragraph 221H(5A)(a):

Omit the paragraph, substitute:

“(a) a deduction has been made by an employer from an eligible termination payment that a person has received, or was entitled to receive; and”.

26. Subsections 221H(5B), (6) and (7):

Omit the subsections.

27. Section 221K:

Repeal the section, substitute:

Tax vouchers

“221K. A taxpayer who is not an employee may purchase at any time a document called a *tax voucher* from a person authorised by the Commissioner to sell such documents.

Note: A taxpayer who purchases a tax voucher is entitled to a credit etc. under section 221H against the taxpayer’s tax for the purchase price.”.

28. Sections 221L and 221M:

Repeal the sections.

SCHEDULE 2—continued**29. Subsection 221N(1):**

Omit “, sub-subparagraph 221F(12)(b)(ii)(B), paragraph 221G(4A)(c) or subparagraph 221G(4A)(d)(ii)”, substitute “or sub-subparagraph 221F(12)(b)(ii)(B)”.

30. Subsection 221N(2):

Omit “, sub-subparagraph 221F(12)(b)(ii)(A) or subparagraph 221G(4A)(d)(i)”, substitute “or sub-subparagraph 221F(12)(b)(ii)(A)”.

31. Paragraphs 221NA(1)(c) and (d):

Omit “, sub-subparagraph 221F(12)(b)(ii)(B), paragraph 221G(4A)(c) or subparagraph 221G(4A)(d)(ii)”, substitute “or sub-subparagraph 221F(12)(b)(ii)(B)”.

32. Subsection 221NA(2) (paragraphs (d) and (e) of definition of *principal amount*):

Omit the paragraphs.

33. Sections 221P and 221Q:

Repeal the sections.

34. Subsection 221S(4):

Omit all the words after “paid to the Commissioner”.

35. Section 221T:

Repeal the section.

36. Paragraphs 221V(d) and (e):

Omit the paragraphs.

37. Subparagraphs 221V(f)(i) and (ii):

Omit the subparagraphs, substitute:

- “(i) a copy of a group certificate, or document purporting to be a copy of a group certificate, other than a copy duly given to him or her in respect of the amount shown in the copy; or
- (ii) a tax voucher, or document purporting to be a tax voucher, other than a tax voucher duly purchased by him or her.”.

38. Section 221Y:

Repeal the section.

39. Paragraph 221YAB(1)(a) (subparagraph (iv) of definition of *credited amounts*):

Omit “, or applied under section 221Q.”.

SCHEDULE 2—continued**40. Paragraph 221YAB(1)(a) (subparagraph (v) of definition of *credited amounts*):**

Omit the subparagraph.

41. Paragraph 221YAB(1)(b) (subparagraph (iv) of definition of *PAYE deductions*):

Omit “, or applied under section 221Q.”.

42. Paragraph 221YAB(1)(b) (subparagraph (v) of definition of *PAYE deductions*):

Omit the subparagraph.

43. Paragraphs 221YHJ(4)(a) and (b):

Omit “221P(1) or” (wherever occurring).

44. Paragraph 221YHJ(4)(b):

Omit “as the case requires.”.

45. Paragraphs 221YHZD(4)(a) and (b):

Omit “221P(1) or” (wherever occurring).

46. Paragraph 221YHZD(4)(b):

Omit “as the case requires.”.

47. Subsection 222AFB(1) (definition of *due date*):

Omit “, or affix tax stamps of a face value equal to the amount of the deduction, as the case requires”.

48. Subsection 222AFB(1) (paragraph (a) of definition of *remittance provision*):

Omit “and section 221G (except subsection 221G(4A))”.

49. Subsection 222AGF(5):

Omit the subsection, substitute:

“(5) For each amount (if any) paid or applied for the purpose of complying with that Division in relation to the deductions (if any) that the person so made, the declaration must specify the amount and the day on which it was so paid, applied or spent.”.

50. Division 2 of Part VI:

Amend the Act in accordance with the following table:

SCHEDULE 2—continued

Amendment No.	Provisions to be amended	Amendment
1	Subsections 221C(2), 221D(2), 221F(2A), 221F(3), 221F(7), 221H(5A), 221S(2) and 221W(4)	After “he” (wherever occurring) insert “or she”.
2	Subsections 221E(4), 221F(3), 221F(4) and 221S(2) and paragraph 221V(c)	After “his” (wherever occurring) insert “or her”.
3	Paragraph 221C(2)(b) and subsections 221E(3) and (4)	After “him” (wherever occurring) insert “or her”.

51. Application

(1) The amendments made by this Part, in so far as they apply in relation to group certificates, apply to the completion of group certificates or group certificate forms, and the doing of other things in relation to group certificates or group certificate forms that are required to be completed, on or after the 28th day following the day on which this Part commences.

(2) The amendments made by this Part, in so far as they apply in relation to tax deduction sheets, do not apply in relation to the keeping of such sheets, and the doing of other things in relation to such sheets that were required to be kept, before the 28th day following the day on which this Part commences.

(3) Section 221H of the *Income Tax Assessment Act 1936* as amended by this Part applies:

- (a) in relation to deductions made either before or after the commencement of this Part, other than deductions to which section 221H of that Act, as in force before its amendment by this Part, continues to apply because of subitem (1) or (2); and
- (b) in relation to tax vouchers purchased after the commencement of this Part.

(4) The amendment made by item 10 applies in relation to employers who commence to carry on business, or become employers, on or after the 28th day following the day on which this Part commences.

SCHEDULE 2—continued

(5) The amendments made by items 11 and 12 apply in relation to eligible termination payments made during any period of 12 months beginning on or after 1 July 1995.

(6) The amendments made by item 33 (in so far as it repeals section 221P of the *Income Tax Assessment Act 1936*) and items 43 to 46 do not apply to amounts that became payable under that section before the commencement of this Part.

52. Transitional—item 8

If, immediately before the commencement of this Part, a group employer was, in accordance with a notice served on the group employer under subsection 221F(7) of the *Income Tax Assessment Act 1936*, a quarterly remitter, section 221EDA of that Act as amended by this Part has effect as if the group employer were a small remitter in accordance with a notice given to the group employer on the day on which this Part commences.

53. Transitional—items 27, 40 and 42:

(1) In spite of the repeal of section 221K of the *Income Tax Assessment Act 1936* by item 27, subsection 221K(2) of that Act continues to apply in relation to the surrender of tax stamps purchased before the commencement of this Part.

(2) In spite of the amendments made by items 40 and 42, the *Income Tax Assessment Act 1936* continues to apply in relation to amounts credited or applied against income tax under section 221K of that Act, as continued in force by subitem (1), as if the amendments made by those items had not been made.

SCHEDULE 2—continued**PART 2—BANKRUPTCY ACT 1966****54. Paragraph 139U(3)(b):**

Omit “group certificate”, substitute “copy of a group certificate”.

55. Paragraph 139U(3)(b):

Omit “or tax stamps sheet”.

56. Application and transitional—item 54

(1) The amendment made by item 54 applies to contribution assessment periods beginning on or after 1 July 1995 and ending 28 days or more after the day on which this Part commences.

(2) If a contribution assessment period begins before 1 July 1995 and ends 28 days or more after the day on which this Schedule commences, paragraph 139U(3)(b) of the *Bankruptcy Act 1966* applies as if the reference in that paragraph to any group certificate that relates in whole or in part to the contribution assessment period included a reference to any copy of a group certificate that relates in whole or in part to so much of the period as occurs after 30 June 1995.

SCHEDULE 2—continued

PART 3—VARIOUS ACTS

Division 1—Bankruptcy Act 1966

57. Paragraph 109(1A)(b):

Omit “section 221P,”

Division 2—Child Support (Registration and Collection) Act 1988

58. Paragraphs 50(2)(a) and (b):

Omit “221P(1),”.

Division 3—Crimes (Taxation Offences) Act 1980

59. Subsection 3(1) (paragraph (d) of definition of *income tax*):

Omit “, subparagraph 221F(12)(b)(ii) or paragraph 221G(4A)(d)”, substitute “or subparagraph 221F(12)(b)(ii)”.

60. Subsection 3(1) (paragraph (e) of definition of *income tax*):

Omit the paragraph.

Division 4—Crown Debts (Priority) Act 1981

61. Section 4:

Omit “221P,”.

***Division 5—Taxation (Interest on Overpayments and Early Payments)
Act 1983***

62. Subsection 3(1) (paragraph (a) of definition of *income tax crediting amount*):

Omit “221K,”.

63. Subsection 3(1)(paragraph (ba) of definition of *relevant tax*):

Omit “, sub-subparagraph 221F(12)(b)(ii)(A) or subparagraph 221G(4A)(d)(i)”, substitute “or sub-subparagraph 221F(12)(b)(ii)(A)”.

Division 6—Application of Part

64. Application

The amendments made by this Part do not apply to:

SCHEDULE 2—continued

- (a) amounts that became payable under section 221F or 221P of the *Income Tax Assessment Act 1936* (the ***Tax Act***) before this Part commenced; or
 - (b) amounts payable under section 221G of the Tax Act in relation to tax deduction sheets that were required to be kept before the 28th day after the day on which this Part commences; or
 - (c) amounts credited or applied against income tax under section 221K of the Tax Act as continued in force by subitem 53(1).
-

SCHEDULE 3

Section 3

SUPERANNUATION GUARANTEE CHARGE

**PART 1—AMENDMENT OF THE *SUPERANNUATION
GUARANTEE (ADMINISTRATION) ACT 1992* RELATING TO
NOTIONAL EARNINGS BASE**

1. Subsection 13(1):

Omit the subsection, substitute:

“(1) This section deals with the meaning of the expression *notional earnings base* in relation to an employee (the *current employee*) at a particular time (the *current time*) if at the current time:

- (a) the current employee is a member of a superannuation fund (the *current fund*); and
- (b) the current employee’s employer (the *current employer*) is contributing to the current fund, in accordance with an applicable authority (see subsection (5)), for the benefit of the current employee in relation to a contribution period; and
- (c) subsection (1A) applies.

“(1A) This subsection applies at the current time if the current employer, or an employer who is, at the current time, a predecessor employer (see subsection (4A)) of the current employee, was, immediately before 21 August 1991, contributing to:

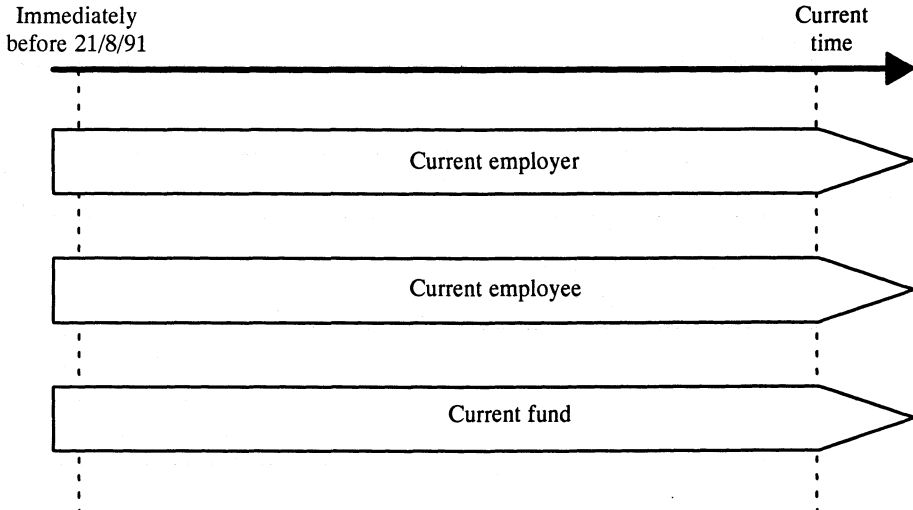
- (a) the current fund; or
- (b) another fund that, at the current time, is a predecessor fund (see subsection (4D)) in relation to the current employer or the predecessor employer, as the case may be;

in accordance with the applicable authority, for the benefit of the current employee or another employee.

SCHEDULE 3—continued

“(1B) The simplest case to which subsection (1) applies is the following:

Diagram 13.1—the simplest case



The meaning of the expression *notional earnings base*, in relation to the current employee at the current time, is determined under this section because:

Immediately before 21 August 1991, the current employer was:

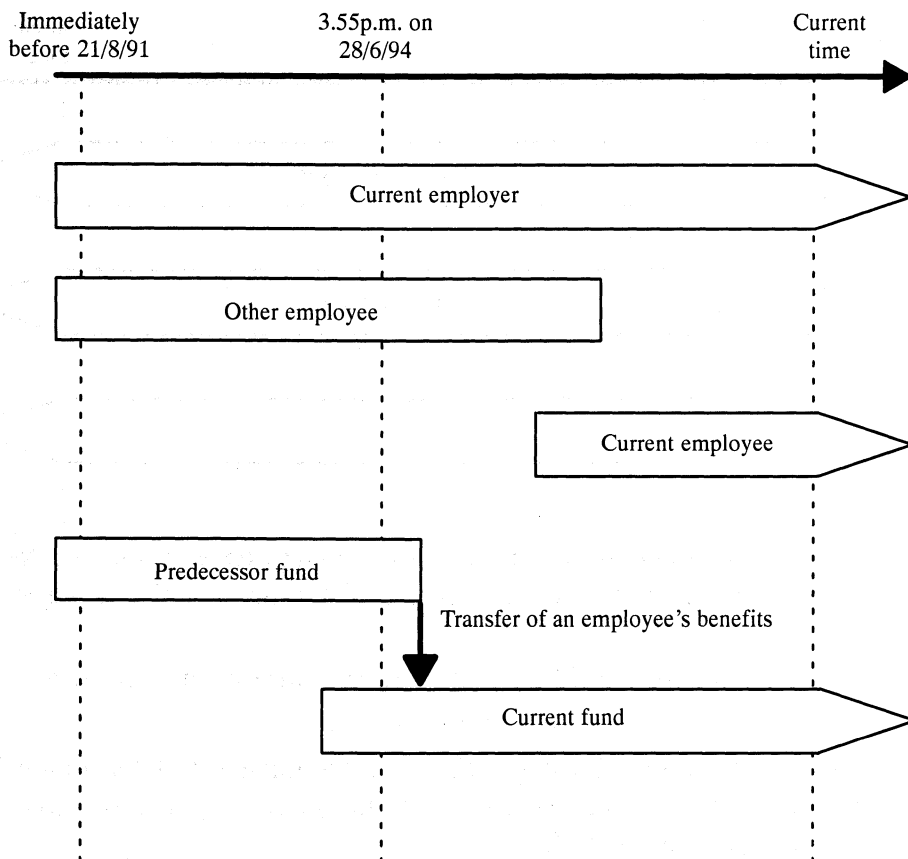
- employing the current employee; and
- contributing to the current fund, in accordance with the applicable authority, for the benefit of the current employee in relation to a contribution period.

This situation has continued until the current time.

SCHEDULE 3—continued

“(1C) An example of a typical case to which subsection (1) might apply is the following:

Diagram 13.2—a typical case



The meaning of the expression *notional earnings base*, in relation to the current employee at the current time, is determined under this section because:

- Immediately before 21 August 1991, the current employer was:
 - employing an employee other than the current employee; and
 - contributing to a fund in accordance with an applicable award, for the benefit of that other employee, in relation to a contribution period.
- After 3.55p.m. on 28 August 1994, an employee's benefits were transferred to the current fund, meeting the requirements of subsection (4E), and causing the fund, under subsection (4D), to be a predecessor fund at the current time in relation to the current employer.

SCHEDULE 3—continued

At the current time, the current employer is:

- employing the current employee; and
- contributing to the current fund, in accordance with an applicable authority, for the benefit of the current employee, in relation to a contribution period.”.

Note: The heading to section 13 is replaced by the heading “**Interpretation: notional earnings base where superannuation contributions made for benefit of certain employees immediately before 21 August 1991**”.

2. Subsection 13(2):

Before “employee” (wherever occurring) insert “current”.

3. Subsections 13(2) and (4):

Omit “award, arrangement, law or scheme”, substitute “applicable authority”.

4. After subsection 13(4):

Insert:

“(4A) For the purposes of this section, an employer (the **test employer**) is a **predecessor employer** of another employer (the **primary employer**) in relation to an employee of the primary employer at a particular time (the **test time**), if subsection (4B) or (4C) applies at that time.

“(4B) This subsection applies at the test time if, after 3.55p.m., by legal time in the Australian Capital Territory, on 28 June 1994 and before the test time:

- (a) the test employer transferred to the primary employer, for market value consideration, the whole of the business or other undertaking, or an asset of the business or other undertaking, in which the employee was employed by the test employer immediately before the transfer; and
- (b) immediately after the transfer, the employee was employed by the primary employer solely or principally in the transferred business or other undertaking, or in utilising the asset in the business or other undertaking of the primary employer.

“(4C) This subsection applies at the test time if, because of subsection (4B), the test employer is at that time, in relation to the employee, a predecessor employer of another employer who, because of an application of subsection (4B) or this subsection, is at that time, in relation to the employee, a predecessor employer of the primary employer.

SCHEDULE 3—continued

“(4D) For the purposes of this section, a fund (the *test fund*) is a *predecessor fund* of another fund (the *primary fund*) in relation to an employer at a particular time (the *test time*) if subsection (4E) or (4F) applies at that time.

“(4E) This subsection applies at the test time if:

- (a) during the period beginning at 3.55p.m., by legal time in the Australian Capital Territory, on 28 June 1994 and ending at the test time, the test fund transferred to the primary fund some or all of the benefits, of one or more employees of the employer, in the test fund; and
- (b) the primary fund conferred, on all of the employees whose benefits were transferred during the period, rights, in respect of all the benefits, that were substantially the same as, or better than, those conferred on the employees by the test fund; and
- (c) before the transfer of each of the benefits, a written agreement was in force between the trustee of the primary fund and the trustee of the test fund that the primary fund would confer those rights on the employees.

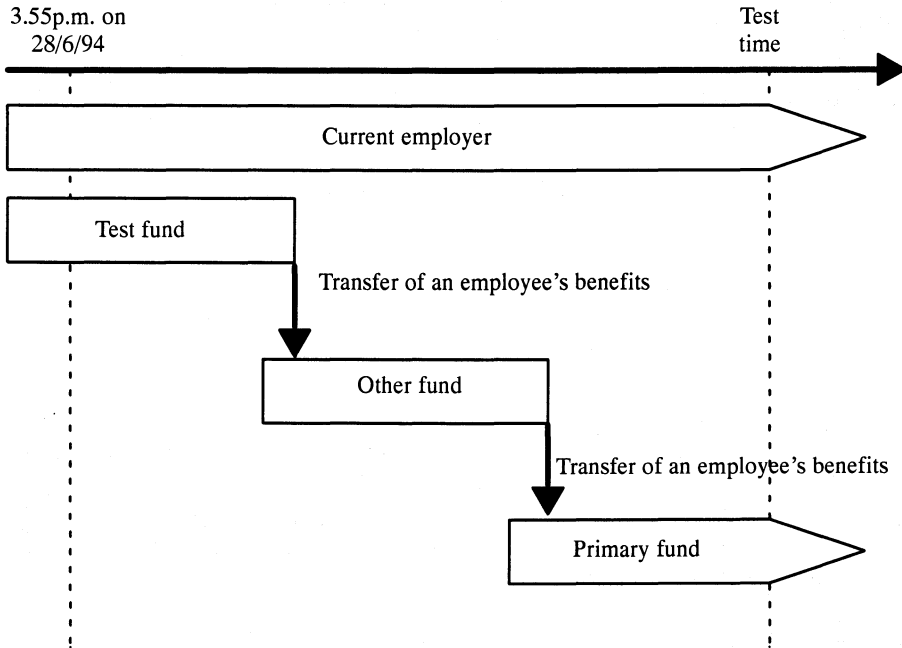
“(4F) This subsection applies at the test time if:

- (a) because of subsection (4E), the test fund is at the test time a predecessor fund, in relation to the employer, of another fund that is not the primary fund; and
- (b) because of an application of subsection (4E) or of this subsection, that other fund is at the test time a predecessor fund, in relation to the employer, of the primary fund; and
- (c) the test fund became a predecessor fund of the other fund before the other fund became a predecessor fund of the primary fund.

SCHEDULE 3—continued

“(4G) The simplest case to which subsection (4F) applies is the following:

Diagram 13.3—the simplest case



The test fund is a predecessor fund of the primary fund at the test time in relation to the employer because:

A transfer of an employee's benefits occurs between the test fund and the other fund:

- meeting the requirements of subsection (4E); and
- causing the test fund, under subsection (4D), to be a predecessor fund of the other fund at the test time in relation to the employer.

As a result, paragraph (4F)(a) is satisfied.

Later, a transfer of employee benefits occurs between the other fund and the primary fund:

- meeting the requirements of subsection (4E); and
- causing the other fund to be a predecessor of the primary fund at the test time in relation to the employer.

As a result, paragraph (4F)(b) is satisfied.

As the transfer of employee benefits from the test fund to the other fund happened before the transfer from the other fund to the primary fund, paragraph (4F)(c) is satisfied.”.

SCHEDULE 3—continued

5. Subsection 13(5) (paragraph (a) of definition of *reference earnings*):

Omit “kind referred to in paragraph (1)(ab)”, substitute “Commonwealth, a State or a Territory”.

6. Subsection 13(5):

Insert the following definition:

“***applicable authority*** means any of the following:

- (a) an industrial award;
- (b) an occupational superannuation arrangement;
- (c) a law of the Commonwealth, a State or a Territory;
- (d) the applicable superannuation scheme.”.

7. Subsection 14(1):

Omit “This”, substitute “Subject to subsection (1A), this”.

Note: The heading to section 14 is replaced by the heading “**Interpretation: notional earnings base where superannuation contributions not made for the benefit of certain employees immediately before 21 August 1991**”.

8. Paragraphs 14(1)(a), (ab) and (b):

Omit “but was not so contributing immediately before 21 August 1991 for the benefit of any employee”.

9. After subsection 14(1):

Insert:

“(1A) This section does not apply if the meaning of the expression ***notional earnings base*** in relation to the employee is dealt with in section 13 or 13A.”.

10. Application

The amendments made by this Part apply for the purpose of determining the notional earnings base of the current employee in relation to the current employer and the current fund in relation to any contribution period that commences after 30 June 1995.

SCHEDULE 3—continued**PART 2—EXCESS BENEFITS*****Division 1—Superannuation Guarantee (Administration) Act 1992*****11. After section 15:**

Insert in Part 2:

Interpretation: Entitlement amount

“15A.(1) An employee has an *entitlement amount* in relation to a benefit body at a particular time (the *test time*) in accordance with this section.

Lump sum from complying approved deposit fund

“(2) If at the test time:

- (a) the benefit body is a complying approved deposit fund; and
- (b) the employee has a benefit in the body in the form of a present or future entitlement to a lump sum;

the employee has an *entitlement amount* in relation to the body at the test time equal to the resignation RBL amount in relation to the benefit at that time.

Deferred annuity from life assurance company or registered organisation

“(3) If at the test time:

- (a) the benefit body is a life assurance company or a registered organisation; and
- (b) the employee has a benefit in the body in the form of a present or future entitlement to a deferred annuity;

the employee has an *entitlement amount* in relation to the body at the test time equal to the resignation RBL amount in relation to the benefit at that time.

Lump sum, pension, or combination of lump sum and pension, from complying superannuation fund

“(4) If at the test time:

- (a) the benefit body is a complying superannuation fund; and
- (b) the employee has a benefit in the body in the form of:
 - (i) a present or future entitlement to a lump sum; or
 - (ii) an entitlement to a pension that has not become payable; or
 - (iii) any combination of the entitlements covered by subparagraphs (i) and (ii);

SCHEDULE 3—continued

whether or not the applicable entitlement is at the election of the employee;

the employee has an **entitlement amount** in relation to the body at the test time in accordance with subsection (5).

“(5) For the purposes of subsection (4), the entitlement amount is:

- (a) if the applicable entitlement is at the election of the employee—the greatest possible amount, being a resignation RBL amount or the sum of 2 resignation RBL amounts, in respect of the applicable entitlement at the test time; or
- (b) in any other case:
 - (i) if subparagraph (4)(b)(i) applies—the resignation RBL amount in relation to the lump sum at the test time; or
 - (ii) if subparagraph (4)(b)(ii) applies—the resignation RBL amount in relation to the pension at the test time; or
 - (iii) if subparagraph (4)(b)(iii) applies—the sum of the resignation RBL amount in relation to the lump sum and the resignation RBL amount in relation to the pension at the test time.

“(6) In this section:

benefit body means a complying superannuation fund, a complying approved deposit fund, a life assurance company or a registered organisation.

deferred annuity has the meaning given by section 140C of the *Income Tax Assessment Act 1936*.

ETP has the meaning given by section 140C of the *Income Tax Assessment Act 1936*.

life assurance company has the meaning given by subsection 27A(1) of the *Income Tax Assessment Act 1936*.

pension has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

registered organisation has the meaning given by subsection 27A(1) of the *Income Tax Assessment Act 1936*.

resignation RBL amount, in relation to a benefit that exists at a particular time in a benefit body, means:

- (a) if the benefit is in the form of a present or future entitlement, of an employee, to a lump sum—the RBL amount (worked out under section 140ZH of the *Income Tax Assessment Act 1936*) of the ETP that would be payable to the employee if he or she resigned at the particular time; or

SCHEDULE 3—continued

- (b) if the benefit is in the form of a present or future entitlement, of an employee, to a deferred annuity—the RBL amount (worked out under section 140ZI of the *Income Tax Assessment Act 1936*) of the ETP that would be payable to the employee if he or she commuted the entitlement at the particular time; or
- (c) if the benefit is in the form of an entitlement, of an employee, to a pension that has not become payable—the RBL amount (worked out under section 140ZK of the *Income Tax Assessment Act 1936*) of the pension that would be payable to the employee if he or she resigned at the particular time.”.

12. Subsection 19(2):

Omit “An”, substitute “Subject to subsection (4), an”.

13. Section 19:

Add at the end:

“(4) An employer’s quarterly shortfall in respect of an employee for a quarter, and for all later quarters, is nil if, during the quarter, the employee gives the employer:

- (a) a statement in writing by the employee electing that the employer should not be liable to superannuation guarantee charge in respect of the employee; and
- (b) statements for the purposes of this paragraph in relation to the employee, where:
 - (i) the sum of the amounts specified in all of the statements; exceeds:
 - (ii) the pension RBL, under section 140ZD of the *Income Tax Assessment Act 1936*, for the year of income (within the meaning of that Act) in which the statements are given.

“(5) The election is irrevocable.

“(6) For the purposes of paragraph (4)(b), one statement that may be given is a statement in writing by the Commissioner specifying the sum of the adjusted RBL amounts of previous benefits (within the meaning of section 140ZA of the *Income Tax Assessment Act 1936*) received by the employee before the time when the statement is given.

“(7) For the purposes of paragraph (4)(b), another statement that may be given is a statement in writing, by the trustee or manager of a benefit body (within the meaning of section 15A) specifying the entitlement amounts (within the meaning of that section) of the employee in relation to the benefit body at the time the statement is given.”.

SCHEDULE 3—continued

14. Application

The amendments made by this Division apply in relation to any quarter commencing after the commencement of this Division.

Division 2—Income Tax Assessment Act 1936

15. After subsection 82AAT(1E):

Insert:

“(1F) If a person has given his or her employer statements under subsection 19(4) of the *Superannuation Guarantee (Administration) Act 1992*, the person is not entitled to a deduction under this section, in his or her assessment for the year of income, in respect of any contribution made to a complying superannuation fund during:

- (a) the contribution period (within the meaning of that Act) in which the statements are given; or
- (b) any later contribution period.”.

16. Application

The amendment made by this Division applies in respect of elections made at any time after the commencement of this Division.

SCHEDULE 4

Section 3

**AMENDMENT OF THE *TAXATION LAWS AMENDMENT
(DROUGHT RELIEF MEASURES) ACT 1995*****1. Section 2:**

Repeal the section, substitute:

Commencement

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

“(2) Item 8 of Schedule 1 is taken to have commenced immediately after the commencement of item 9 of Schedule 2 to the *Tax Law Improvement (Substantiation) Act 1995*.”.

2. Item 8 of Schedule 1:

Omit the item, substitute:

“8. Subsection 170(10):

After ‘subsection 221YRA(2)’ insert ‘, Part XII’.”.