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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX LAWS AMENDMENT BILL (NO.3) 1981

INCOME TAX (INDIVIDUALS) BILL 1981

INCOME TAX (COMPANIES, CORPORATE UNIT TRUSTS AND SUPERANNUATION FUNDS) BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister representing the Acting Treasurer, the Hon. J.C. Moore, M.P.)

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General outline

Income Tax Laws Amendment Bill (No.3) 1981

The Income Tax Laws Amendment Bill (No.3) 1981 will amend the income tax law to:

- give effect to proposals (foreshadowed on 11 July 1980 and announced on 16 July 1980) for the income of certain public unit trusts which acquire property as a result of a company reorganisation to be taxed as company income and for distributions to unitholders to be treated as dividends - the changes to apply for 1980-81 and subsequent income years for trusts established after 11 July 1980 and for 1983-84 and subsequent years for trusts established on or before that date;
- grant income tax deductions for gifts of the value of $2 or more -
  - made after 30 June 1981 to the Victorian Arts Centre Trust (proposal announced on 26 June 1981); or
  - made during the 1980-81 financial year to a public fund established and maintained by the relevant committee appointed by the Commonwealth, a State or the Northern Territory for the purposes of observance of the International Year of Disabled Persons (proposal announced on 17 July 1981);
- increase from 6 to 10 years - broadly in relation to expenditure contracted for after 18 August 1981 - the statutory maximum life of a mine or oil field that applies for the purpose of allowing deductions on a life-of-mine or field basis for capital expenditures on development of a mine or oil field (Budget proposal);
- change the basis of assessment of friendly society dispensaries, for the 1982-83 and subsequent income years, so that they will be assessed like other non-profit companies on profits derived otherwise than from members (Budget proposal); and
- provide the method of calculating provisional tax for the 1981-82 income year.

Income Tax (Individuals) Bill 1981

This Bill will:

- formally impose tax payable for the 1981-82 financial year by individuals and trustees generally, at the indexed rates of tax already declared for that year; and
- formally impose provisional tax for the 1981-82 year of income.

Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Bill 1981

This Bill will:

- declare and impose the rates of tax payable for 1981-82 by companies and trustees of corporate unit trusts and superannuation funds.

Main features

The main features of the Income Tax Laws Amendment Bill (No. 3) 1981 are as follows:

Taxation of public unit trusts
(Clauses 10, 32 to 38 and 40)

The Bill will give effect to proposals, announced in detail on 16 July 1980, concerning the taxation treatment of certain public unit trusts. Broadly, the taxable income of a unit trust that is to be subject to the new rules will be taxed at the rate applicable to companies - currently 46 per cent - and distributions to unitholders of trust income or other profits derived by the trustee will be taxed on the basis applicable to dividends paid by a company.

The unit trusts to which the proposed amendments will apply are those formed as part of an arrangement for the reorganisation of a company or company group. A unit trust will fall within the scope of the new rules if, as part of the arrangement for the reorganisation, a business or other property of a company was transferred to the unit trust and shareholders of the company involved in the reorganisation received entitlements to take up units in the unit trust.

Two further tests will have to be satisfied before a unit trust will be taxed as a company. The first is that, as part of the arrangement for the reorganisation, units in the unit trust were to be held or dealt with in such a way that the trust would become a "public unit trust", as defined. The other test is that the unit trust is, in fact, a "public unit trust" in relation to the relevant year of income.

The term "public unit trust" is to be defined as a unit trust whose units are listed on a stock exchange, whose units are held by 50 or more persons, or whose units are available for investment by the public. A unit trust will not, however, be regarded as a public unit trust if 20 or fewer persons hold 75 per cent or more of the beneficial interests in the income or property of the trust. For this purpose, a person and his or her relatives or nominees will be regarded as one.

The income of a unit trust which, in relation to a year of income, meets the tests specified will be subject to tax at the general company tax rate. Distributions (referred to as "unit trust dividends") made to unitholders out of income or other profits derived by the trustee during a year of income for which the trust has been or is to be taxed as a company will constitute assessable income in the hands of the unitholders as if they were dividends paid by a company.

To the extent that the income of a taxable unit trust consists of dividends paid by a company (or unit trust dividends paid by another unit trust), the trustee will be entitled to a rebate of tax in the same way that dividend income derived by a company is rebatable. Correspondingly, unit trust dividends received by a company will also qualify for rebate. The anti-avoidance provisions of the Income Tax Assessment Act relating to dividend stripping operations are also to be made applicable to cases where stripping operations are carried out in connection with unit trust dividends paid by a trustee.

The proposed amendments will apply in relation to the 1980-81 year of income and subsequent years for public unit trusts established after 11 July 1980. For such trusts established on or before 11 July 1980 the amendments will apply from the commencement of the 1983-84 year of income.

A number of related safeguarding measures will support the intended operation of these proposals.

The amendments in relation to public unit trusts to be made to the Income Tax Assessment Act 1936 are contained in Part II of the Bill. By it, a new Division (Division 6B - Income of certain unit trusts) will be inserted in Part III of the Assessment Act. Parts III and IV of the Bill contain consequential amendments to the Income Tax (International Agreements) Act 1953 and to the Income Tax (Rates) Act 1976. Part V of the Bill contains miscellaneous amendments and, in relation to unit trusts, will enable the Commissioner of Taxation to amend assessments of income tax to give effect to the amendments proposed by this Bill.

The Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Bill 1981 will impose tax at the rate of 46 per cent on the net income of those public unit trusts to be subject to the new basis of taxation.

Friendly society dispensaries
(Clauses 4 and 5, 11 to 14 and 41)

It is proposed that a friendly society dispensary (FSD) be taxed in accordance with the mutuality principle which applies in the assessment of clubs and other non-profit organisations generally. This principle excludes from the income tax base of such bodies all receipts from members, but leaves to be taxed net profit attributable to trading with and receipts from non-members and any investment income.

Under the existing law, an FSD is taxed on 10 per cent of the aggregate of the following:

- amounts received from the Commonwealth under the National Health Act 1953 in respect of the supply of pharmaceutical benefits; and

- gross proceeds from the sale or supply of medicines and other goods sold or supplied in the ordinary course of business (including amounts received under the Repatriation Act 1920), but not amounts received from a friendly society for the supply of benefits to members of that society.

By the amendments, an FSD will be taxed on profits (taxable income) arising from the following classes of receipts:

- all amounts received from the Commonwealth under the National Health Act and the Repatriation Act for the supply of pharmaceutical benefits, whether to members or non-members;

- any receipts from non-members for the supply of pharmaceutical benefits;

- proceeds of sale or supply of pharmaceutical products and other goods and services, to non-members; and

- investment income.

The amendments are to apply to assessments in respect of income derived during the 1982-83 income year and subsequent years.

The rate of tax applicable to an FSD is to be the rate which applies to non-profit companies generally and the rate for 1982-83 income will, in the normal course, be determined by the Act that fixes rates of tax payable by companies for the 1983-84 financial year.

<u>Gifts</u>
(Clauses 9, 40 and 41)

Amendments proposed by clause 9 will extend the gift provisions of the income tax law under which deductions are available for gifts of the value of $2 or more made to specified funds, authorities or institutions in Australia.

The first of the amendments will make tax deductible gifts of the value of $2 or more made after 30 June 1981 to the Victorian Arts Centre Trust. Further amendments will authorise a deduction for such gifts made during the current financial year to a public fund established and maintained by a committee appointed by the Commonwealth, a State or the Northern Territory for the promotion of the observance of, or

the furtherance of the aims or principles of, the International Year of Disabled Persons, where the fund is maintained for those purposes.

Deductions for capital expenditure incurred in the development of a mine or oil field
(Clauses 6 to 8 and 15 to 30 and 40)

Deductions in respect of specified capital expenditures incurred in developing a mining property or oil field are calculated by reference to the lesser of the estimated life of the mine or field, or six years.

In respect of allowable capital expenditures incurred after 18 August 1981 (unless incurred under a contract entered into on or before that date or, in respect of property constructed by the taxpayer, where construction commenced on or before that date) the deductions allowable on a life-of-mine or life-of-field basis will be calculated by reference to a maximum statutory life of ten years instead of six.

Provisional tax for 1981-82 year of income
(Clause 39)

Provisional tax for 1981-82 is to be calculated, basically, by applying 1981-82 rates of tax to 1980-81 taxable income as increased by 10 per cent, and by allowing dependant rebates at 1981-82 levels.

The second Bill, the Income Tax (Individuals) Bill 1981, will formally impose tax payable for the 1981-82 financial year by individuals and trustees generally, at the rates of tax, as varied by the half-indexation factor of 1.038, already declared for that year by the Income Tax (Rates) Act 1976.

The third Bill, the Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Bill 1981, will declare and impose the rates of income tax payable for 1981-82 by companies, trustees of corporate unit trusts and trustees of superannuation funds.

The rates for companies and superannuation funds are the same as for 1980-81. The rate imposed on the net income of a corporate unit trust is to be 46 per cent, the same as for companies.

A more detailed explanation of the Bills is contained in the following notes.

INCOME TAX LAWS AMENDMENT BILL (NO.3) 1981

PART I - PRELIMINARY

Clause 1 : Short title, etc.

By this clause this amending Act is to be cited as the Income Tax Laws Amendment Act (No.3) 1981. This title is explained by the fact that the amendments contained in Part II of the amending Act are amendments of the Income Tax Assessment Act 1936, those contained in Part III are amendments of the Income Tax (International Agreements) Act 1953 and those contained in Part IV relate to the Income Tax (Rates) Act 1976.

Clause 2 : Commencement

Under this clause the amending Act is to come into operation on the date on which it receives the Royal Assent. But for this clause the amending Act would, by reason of section 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of Assent.

PART II - AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936

Clause 3 : Principal Act

This clause provides formally for the Income Tax Assessment Act 1936 to be referred to as "the Principal Act", in Part II of the amending Act.

Clause 4 : Interpretation

Clause 4 together with clauses 5 and 13 will provide the basis for taxing friendly society dispensaries in accordance with the mutuality principle which applies in the assessment of clubs and other non-profit organisations generally. This principle, as explained earlier, excludes from the income tax base of such bodies all receipts from members, but leaves exposed to tax the net profit attributable to trading with non-members as well as any investment income.

Clause 4 proposes the amendment of sub-section 6(1) of the Principal Act to insert a definition of "friendly society dispensary". Division 9A of the Principal Act which presently taxes a friendly society dispensary on 10 per cent of the aggregate of certain receipts already provides a basis for defining the term, but it is proposed by clause 13 to repeal that Division to allow the mutuality principle to operate.

The term "friendly society dispensary" is to be defined basically as it now is in Division 9A - as a friendly society dispensary within the meaning of section 91 of the National Health Act 1953 that is an approved pharmaceutical chemist for the purposes of that Act. A friendly society dispensary is defined in the National Health Act as a pharmaceutical chemist, being a friendly society or a body (whether corporate or unincorporate) carrying on business for the benefit of members of a friendly society or friendly societies.

Clause 5 : Exemptions

Paragraph 23(g) of the Principal Act exempts from income tax the income of certain types of societies, associations or clubs which are not carried on for the purposes of profit or gain to the individual members. The income of a friendly society is exempt from income tax by the operation of that paragraph, subject to the operation of Division 9A which treats as assessable income 10 per cent of the aggregate of certain amounts received by a friendly society dispensary.

A friendly society, not being a friendly society dispensary (as proposed to be defined under clause 4), will continue to be exempt from tax. The two amendments to paragraph 23(g) to be made by clause 5 are consequential upon the proposed repeal of Division 9A and the inclusion of the definition of "friendly society dispensary" in sub-section 6(1).

Clauses 6 to 8 : Current year losses

Introductory note

Clauses 6 to 8 propose amendments to Subdivision B of Division 2A of Part III - the "current year loss" provisions of the Principal Act. The amendments are consequential upon amendments proposed, by clauses 15 to 30, to the provisions of Divisions 10 and 10AA of Part III of the Principal Act which authorise deductions in relation to certain capital expenditures incurred in general mining and petroleum mining operations.

The amendments proposed by clauses 15 to 30 will have the effect that deductions will be allowed under new sections 122DF and 124ADF, in respect of eligible capital expenditure incurred after 18 August 1981 by a mining enterprise in connection with the development of a mining property or oil or gas field in Australia, in corresponding circumstances to those in which deductions are allowable under section 122DD or 124ADD in respect of expenditure incurred after 30 April 1981. Under the new arrangements, however, deductions will be calculated by reference to the lesser of

the estimated life of the mine or field or 10 years instead of the present formula of the lesser of the estimated life of the mine or field or 6 years.

Accordingly, clauses 6 to 8 propose that deductions allowable under sections 122DF and 124ADF are to be treated in the same way for purposes of the current year loss provisions as the deductions that are allowable at present under sections 122DD and 124ADD.

Clause 6 : Calculation of taxable income

This clause will insert a reference to new sections 122DF and 124ADF in sub-paragraph 50C(3)(d)(v) of the Principal Act. The effect of this amendment will be to bring deductions allowed under the new sections into place within the specified order of deductibility for certain classes of full-year deductions set out in sub-section 50C(3). Deductions under sections 122DF and 124ADF will thus be taken into account for purposes of the current year loss provisions in the order in which the deductions would have been taken into account if they had continued to be allowed under the arrangements that are being varied.

Clause 7 : Full-year deductions and partnership deductions

The amendment proposed by clause 7 is complementary to that being effected by clause 6 and will include references to new section 122DF in section 50F of the Principal Act which identifies the deductions that are to be treated as "full-year" deductions or, as the case requires, as full-year partnership deductions, for the purposes of the current year loss provisions.

By paragraph (a) of clause 7, a reference to new section 122DF will be included in sub-section 50F(2). This amendment will have the effect that a deduction allowable to a company under section 122DF will not be treated as a full-year deduction if the company had made an election under sub-section 122DF(4) that the deduction is not to be limited to the amount of remaining assessable income for the year of income. This is consistent with the position in relation to an election under comparable provisions of sections 122D, 122DB and 122DD.

Paragraph (b) of clause 7 will insert a reference to section 122DF in sub-section 50F(5). This amendment will have an effect, in relation to partnerships and the specification of full-year partnership deductions, identical with that which the amendment proposed by paragraph (a) will have in relation to companies.

Clause 8 : Divisible deductions

This clause will amend section 50G of the Principal Act. Section 50G identifies certain deductions that are to be treated as "divisible" deductions for the purposes of the current year loss provisions, and specifies the manner in which those divisible deductions are to be taken into account under those provisions.

Included in the category of divisible deductions, by virtue of paragraph 50G(1)(b), are those deductions allowable under sections 122D, 122DB and 122DD that do not qualify as full-year deductions under section 50F by reason that the taxpayer has made an election that the deductions not be limited in accordance with sections 122D, 122DB or 122DD, as the case may be, to the assessable income of the income year. By paragraph (a) of clause 8 any deductions allowable under new section 122DF in respect of which a taxpayer has made a corresponding election will similarly be treated as divisible deductions.

Paragraph (b) of clause 8 will insert a reference to new section 122DF in paragraph 50G(2)(g) of the Principal Act which specifies the manner in which those deductions under sections 122D, 122DB and 122DD that fall to be treated as divisible deductions for purposes of the current year loss provisions are to be taken into account for the purposes of those provisions. The amendment will have the effect that any deduction under new section 122DF that qualifies as a divisible deduction for purposes of the current year loss provisions will be treated in the same manner as deductions under sections 122D, 122DB and 122DD.

Clause 9 : Gifts, calls on afforestation shares, pensions, etc.

Section 78 of the Principal Act authorises an income tax deduction for gifts of the value of $2 and upwards of money, or of property other than money that was purchased by the taxpayer within the twelve months preceding the making of the gift, to a fund, authority or institution in Australia that is specified in paragraph (1)(a).

Paragraph (a) of clause 9 will amend section 78 to authorise income tax deductions for gifts to two additional categories of funds by inserting two new sub-paragraphs in paragraph (1)(a).

New sub-paragraph (lxiv) will specify the Victorian Arts Centre Trust as a fund to which the gift deduction authorised by section 78 applies. As explained in the notes on sub-clause 41(2), gifts to the trust will qualify where made after 30 June 1981.

New sub-paragraph (lxv) will similarly specify a public fund that is established and maintained exclusively for promotion of observance of the International Year of Disabled Persons by a committee appointed by the Commonwealth, a State or the Northern Territory with responsibility for observance of the International Year.

Paragraph (b) of clause 9 will insert new sub-section (6AD) in section 78 which will have the effect of restricting the deductibility of gifts to a public fund maintained by an eligible IYDP committee to gifts made on or after 1 July 1981 and on or before 30 June 1982.

Clause 10 : Division 6B - Income of certain unit trusts

Introductory note

By this clause, it is proposed to insert a new Division - Division 6B - Income of certain unit trusts - in Part III of the Principal Act. The new Division, which comprises sections 102D to 102L, contains provisions to implement the proposal that the income tax law apply in relation to certain unit trusts as if, broadly speaking, those trusts were companies and distributions to their unitholders were dividends.

As mentioned in the general outline to this memorandum, the income of a unit trust which emerges from a reorganisation of a company or company group is to be taxed in the hands of a trustee at the rate applicable to companies - currently 46 per cent. Distributions of income or other profits derived by the trustee of a unit trust during a year of income in which the unit trust is taxed as a company will constitute assessable income in the hands of the unitholders in the same way as dividends paid by a company are assessable to shareholders.

A unit trust will be subject to these provisions if it is a "public unit trust" and, as part of the arrangement for the reorganisation of the company or company group, property of a company in the group was transferred to the unit trust and shareholders of a company in the group received rights or a preference to take up units in the trust.

Section 102D : Interpretation

Proposed sub-section 102D(1) defines terms used in Division 6B:

"arrangement" is expressed to mean any formal or informal agreement, arrangement or understanding, whether expressed or implied and whether or not enforceable by legal proceedings.

"<u>net income</u>" is defined - in relation to a unit trust to which the new Division is to apply for a year of income (referred to in the Division as a "corporate unit trust") - to mean the total assessable income of the corporate unit trust, calculated as if the trustee were a resident taxpayer, less all allowable deductions.

"<u>prescribed trust estate</u>" means a trust estate which is a corporate unit trust (as defined) or which has been a corporate unit trust in relation to an earlier year of income. This definition identifies certain trusts whose distributions of income or profits are to be treated for tax purposes in the same way as dividends paid by a company. A distribution to unitholders of income or profits (referred to as a "unit trust dividend") derived by the trustee of a prescribed trust estate during a year of income in which the trust estate was a corporate unit trust will thus fall to be taxed as dividends in the hands of unitholders.

"<u>property</u>" is widely defined and includes choses in action, such as shares.

"<u>relevant year of income</u>" is defined as the 1980-81 year of income or a subsequent year of income and means that the new provisions may first apply to unit trusts for the 1980-81 year of income. (However, see notes following in relation to new section 102J).

"<u>unit</u>" is the term used to describe a beneficial interest in a prescribed trust estate, however that interest might be described formally.

"<u>unitholder</u>" is defined to include a person who is a beneficiary in a prescribed trust estate.

"<u>unit trust dividend</u>" is the term used in the new provisions to describe the distributions by the trustee of a prescribed trust estate which are to be taxable on the same basis as dividends paid by a company. By <u>paragraphs (a) and (b)</u> of this definition, any distribution of money or property and any amount credited to a unitholder of a prescribed trust estate is to be regarded as a unit trust dividend, subject to the qualifications in paragraphs (c) and (d) of the definition.

As a result of <u>paragraph (c)</u>, only distributions or amounts credited which are attributable to profits derived by the trustee of the trust

during a year of income in which the trust was taxed as a corporate unit trust will be unit trust dividends. By paragraph (d), any amount distributed or credited to a unitholder in connection with the cancellation, redemption or extinguishment of a unit, where the amount represents a return of capital contributed by the unitholder at the time of creation or issue of the unit, will not be a unit trust dividend.

Sub-section 102D(2) will define the term "associate" to identify those companies and trustees of unit trusts that are to be regarded as being part of a group.

By paragraph (a), a company or trustee (referred to as the "associate") will be an associate of another company or trustee (referred to as the "primary entity") if the associate controls or is able to control the primary entity. Conversely, by paragraph (b), a company or trustee will be an associate if it is, or can be, controlled by the primary entity and, by paragraph (c), two entities will be regarded as associates if both are or are able to be controlled by the same person or persons.

Sub-section 102D(3) is a drafting measure designed to require that a reference in sub-section (2) to the affairs or operations of a trustee of a trust estate is to be read as including a reference to the administration of the trust estate by the trustee.

Section 102E : Prescribed arrangements

This section will identify certain arrangements which have been carried out as part of a reorganisation of a company or company group and which have resulted in the formation of a public unit trust of the kind to which the new provisions are to apply.

Sub-section 102E(1) specifies two tests for the purpose of identifying a prescribed arrangement in relation to a company. Both of these tests must be satisfied before an arrangement will be regarded as a prescribed arrangement.

By paragraph (a), the first test is whether the arrangement provided for shareholders of the company to have rights or options to take up units in a unit trust.

The second test, in paragraph (b), is whether it was contemplated by the arrangement that the unit trust would be one that would have been a public unit trust within the meaning of proposed section 102G (see later) if that section had been in force at the time of the arrangement. This paragraph will exclude from the scope of the new provisions a unit trust formed by persons who did not plan that the unit

trust would have characteristics (for example, more than 50 unitholders) of the kind that denote a public unit trust under that section.

Sub-section 102E(2) gives a wide meaning to the term "rights" in sub-section (1). By reason of sub-section (2), informal rights in the form of any preference or advantage given to shareholders of a company in connection with the issue of units in the unit trust concerned will be regarded as rights to acquire those units for the purpose of sub-section (1).

Sub-sections 102E(3) and (4) mirror sub-sections (1) and (2) and apply in a case where the arrangement for a reorganisation involves the transfer of a business or property by an existing unit trust, the unitholders in which are to be given rights to take up units in a new unit trust to which the business or property is transferred. These provisions are a safeguard to ensure that a public unit trust which is to be subject to the new basis of taxation cannot avoid the amendments by means of a further reorganisation into a new unit trust.

Section 102F : Eligible unit trusts

This section has the purpose of identifying those unit trusts which, if other conditions specified in section 102J are satisfied, are to be subject to the new basis of taxation provided for by new Division 6B. Such unit trusts are to be referred to as "eligible unit trusts".

Paragraph (a) of sub-section 102F(1) specifies that a unit trust will be an eligible unit trust in relation to a year of income if any property which was, at any time, owned by the unit trust (whether or not the property is still owned by the unit trust) was acquired by the unit trust from a company as part of a prescribed arrangement in relation to that company (see notes in relation to section 102E). A unit trust will also be an eligible unit trust if the property referred to was acquired from an associate of the company connected with the prescribed arrangement.

Paragraph (b) of sub-section (1) is complementary to paragraph (a) and looks to the situation where the trustee of a unit trust, in pursuance of a prescribed arrangement in relation to a company, has carried on a business at any time, which business was previously carried on by the company or by an associate of the company. Where such a business is, or has been, carried on by the trustee, the unit trust will be an eligible unit trust.

Sub-section 102F(2) mirrors the tests contained in sub-section (1) but applies to the situation where the property acquired or the business carried on by a unit trust was previously owned or carried on by another eligible unit trust. This sub-section, in conjunction with sub-sections

102E(3) and (4), is a safeguard to ensure that a unit trust that is subject to the new basis of taxation cannot escape the amendments by undergoing a further reorganisation into a new unit trust.

Sub-section 102F(3) is a drafting measure designed to ensure that a reference in the section to the property of an associate will be read as a reference to the property of a trust estate in cases where the associate is the trustee of a trust estate.

Section 102G : Public unit trusts

This section specifies the circumstances in which a unit trust will be regarded as being a "public unit trust" for the purposes of the new provisions. The section consists of 11 sub-sections, most of which are directed at providing necessary safeguards against arrangements which might otherwise defeat the purpose of the amendments. The safeguarding provisions will ensure that a unit trust which is intended to fall within the scope of the new provisions cannot escape the tax by arranging specially to be put beyond the tests for determining whether a unit trust is to be regarded as a public unit trust. Other safeguards in this section are to ensure that public unit trust status does not apply in relation to unit trusts that are not public in nature.

Sub-section (1) specifies the basic criteria for determining whether a unit trust is to be regarded as a public unit trust for a year of income. By this sub-section, a unit trust will be a public unit trust if, at any time during the year, units in the unit trust are -

(a) listed on a stock exchange in Australia or elsewhere;

(b) offered to the public; or

(c) held by 50 or more persons.

Sub-section (2) is to ensure that a unit trust will not be regarded as a public unit trust by reason of paragraph (1)(b) if the Commissioner of Taxation is of the opinion that units in the unit trust were offered to the public for the purpose of enabling the trust to be treated as a public unit trust.

By sub-section (3) a unit trust will not be a public unit trust if, at any time during the year of income, 20 or fewer persons held or could acquire units entitling them to 75 per cent or more of the beneficial interests in the income or property of the trust.

Sub-section (4) will enable the Commissioner to treat a unit trust as being a public unit trust in circum-

stances where the unit trust has the real character of a public unit trust but is closely held, in terms of sub-section (3), for a short time during the year of income.

Sub-section (5) is designed to ensure that a public unit trust will not be able to avoid the new taxing provisions by simply arranging that rights to acquire units be granted to 20 or fewer persons, in order to fall within the scope of sub-section (3), if it is not intended that the rights so granted be exercised.

Sub-section (6) is complementary to sub-section (3). It will apply to deem a unit trust not to be "public" where 75 per cent or more of the income or property of the trust is paid to, or capable of being required to be paid to, 20 or fewer persons, notwithstanding that those persons might not hold 75 per cent or more of the units in the trust.

Sub-section (7) parallels sub-section (5) and is designed to ensure that a public unit trust will not be able to acquire non-public status by entering into arrangements to invoke the operation of sub-section (6).

By sub-section (8), the phrase "offered to the public" is defined for the purposes of sub-sections (1) and (2) to mean an offer to the public or a section of the public to subscribe for or purchase units in a unit trust or an invitation to the public or a section of the public to make offers to subscribe for or purchase units.

Sub-section (9) enables the beneficial ownership of units in a unit trust to be traced through any interposed trusts to the ultimate beneficiaries of those interposed trusts.

Sub-section (10) means that non-cash distributions of trust property to unitholders are to be taken into account as if they were cash distributions equal in amount to the value of the property distributed.

Sub-section (11) is an interpretive measure and defines the term "person" as employed in section 102G. A person, his or her relatives and any nominees who hold units in a unit trust for the person or his or her relatives will be deemed to be one person. This provision will have practical effect in determining whether a unit trust has 50 or more unit-holders for the purposes of sub-section 102G(1) and whether 20 or fewer persons hold the units or other interests referred to in sub-sections 102G(3), (4) and (6).

Section 102H : Resident unit trusts

The new basis of taxation for public unit trusts will only apply if, in the first year of such application, the

unit trust is a resident unit trust within the meaning of section 102H.

Section 102H specifies the conditions under which a unit trust is to be regarded as a resident. By paragraph (a) this will be if, at any time during the year of income, either any property of the trust is situated in Australia or the trustee carries on business of the trust in Australia. In conjunction with paragraph (a), paragraph (b) will require that either the central management and control of the unit trust was then in Australia or persons who held more than 50 per cent of the beneficial interests in the trust were residents.

Section 102J : Corporate unit trusts

By this section, the various criteria established in sections 102E, 102F, 102G and 102H are considered together to determine whether a unit trust is to be subject to taxation as a company in relation to a year of income, i.e., in terms of the section, whether the trust is a corporate unit trust.

Paragraph (1)(a) of section 102J is confined to each of the years of income commencing 1 July 1980, 1 July 1981 and 1 July 1982. A unit trust will be a corporate unit trust (and therefore subject to tax at the company tax rate) in relation to any of these years only if it was established in the period after 11 July 1980 and before the commencement of the 1983-84 income year and if it satisfies the other eligibility criteria set out in the paragraph. The other criteria, each of which must be satisfied in the relevant year of income, are that the unit trust:

- is an eligible unit trust in relation to that year (section 102F);
- is a public unit trust in relation to that year (section 102G); and
- is either a resident unit trust (section 102H) or was, in an earlier year, a corporate unit trust (section 102J).

Paragraph (1)(b) will operate in relation to the 1983-84 income year and later income years. A unit trust established at any time, i.e., whether before or after 11 July 1980, will be a corporate unit trust for such a year of income if it meets the same criteria of being an eligible unit trust, a public unit trust and either being a resident unit trust or having been in an earlier year a corporate unit trust.

By sub-section 102J(2), a unit trust established on or before 11 July 1980 and which, therefore, would not otherwise be subject to tax until the 1983-84 income year, will be treated as if it were established after 11 July 1980 if it is

employed in a prescribed arrangement entered into or carried out after that date. The practical effect of this safeguarding measure will be that a "shelf" unit trust established before 11 July 1980 may become subject to tax at the company rate earlier than the commencement of the 1983-84 income year if utilised in a company reorganisation of the prescribed kind that is carried out after 11 July 1980.

Section 102K : Taxation of net income of corporate unit trust

This section is the operative provision which requires the assessment of the net income of a corporate unit trust for a year of income and imposes liability to pay tax on that net income, at the rate declared by the Parliament, on the trustee of the corporate unit trust.

Section 102L : Modified application of Act in relation to certain unit trusts

The purpose of this section, in broad terms, is to equate corporate unit trusts or, where appropriate, prescribed trust estates, with companies in the application of certain specified provisions of the Principal Act. In a like manner, units in a prescribed trust estate, unitholders and unit trust dividends will be equated respectively with shares, shareholders and dividends paid by a company.

There are three main areas of the Principal Act affected. Firstly, by modification of the operation of section 44 of the Principal Act, unit trust dividends are to be included in the assessable incomes of unitholders on the same basis as company dividends are assessed to shareholders. In any case where a unitholder is not a resident of Australia, the provisions requiring the payment of dividend withholding tax will be made applicable to unit trust dividends paid to the non-resident.

Secondly, the operation of sections 46, 46A and 46B of the Principal Act will be modified to entitle the trustee of a corporate unit trust to a rebate of tax in respect of dividends paid to the trustee by a company and in respect of unit trust dividends paid to the trustee by the trustee of a prescribed trust estate. A rebate of tax will also be available in respect of unit trust dividends included in the assessable income of a company that is a resident of Australia. The rules contained in sections 46A and 46B relating to dividend stripping arrangements will be made applicable to arrangements under which a unit trust dividend is paid in circumstances similar to a company dividend stripping operation.

Thirdly, the operation of the provisions contained in Division 1A of Part VI of the Principal Act, by which companies are required to pay instalments of tax in advance

of assessment, will be modified to require the payment of advance instalments of tax by trustees of corporate unit trusts.

Sub-section (1) of section 102L is a drafting measure to specify that, for the purpose of the imposition, assessment and collection of tax in respect of the net income of a corporate unit trust and in respect of unit trust dividends paid by a prescribed trust estate, the succeeding sub-sections of section 102L are to have effect.

By sub-section (2), sections 46, 46A and 46B of the Principal Act, which govern the eligibility of a resident company to a rebate of tax in respect of dividends included in its assessable income, are to be made applicable to unit trust dividends.

Paragraph (2)(a) will entitle the trustee of a corporate unit trust to a rebate of tax in respect of amounts included in the net income of the trust by way of dividends paid by a company and unit trust dividends paid by a prescribed trust estate.

The amount of the rebate will be equal to the amount which would be allowable as a rebate if the corporate unit trust and the prescribed trust estate were both companies and if the unit trust dividends were dividends paid by a company.

Paragraph (2)(b) authorises allowance of a rebate of tax to a resident company in respect of unit trust dividends included in its assessable income. The rebate will be allowable on the same basis as applies when dividends are included in the assessable income of a resident company.

Sub-section (3) has effect on arrangements in relation to a unit trust dividend where the arrangements have the essential purpose of a dividend stripping arrangement carried out in relation to a company. Sections 46A and 46B of the Principal Act affect the rebates of tax allowable in respect of dividends paid under dividend stripping arrangements. The practical effect of sub-section (3) will be that, where the Commissioner of Taxation is satisfied that an arrangement in relation to a unit trust dividend would have been regarded as a dividend stripping arrangement for the purposes of section 46A or 46B if the unit trust dividend had been a dividend paid by a company, sections 46A and 46B will apply in like manner in relation to the unit trust dividend so as to reduce or eliminate the amount of rebate available in respect of the unit trust dividend.

Sub-section (4) has the purpose of modifying the operation of section 221AC of the Principal Act to require the payment of instalments of tax by trustees of corporate unit trusts in the same manner as companies are required to pay instalments of tax. By this sub-section, a liability to

pay three instalments of tax will be imposed on a trustee of a corporate unit trust for the year of income that commenced on 1 July 1980 and for each subsequent year of income. The instalments of tax payable for the 1980-81 income year will be payable during the 1981-82 financial year.

By sub-section (5), the definition of "year of income" in sub-section 6(1) of the Principal Act, as it applies to companies, will be made applicable to corporate unit trusts and to trustees of corporate unit trusts. The year of income of a company and, by reason of this amendment, the year of income of a corporate unit trust, is the financial year immediately prior to the financial year for which income tax is levied.

Sub-section (6) will require a reference to a company in certain provisions of the Principal Act to be read as including a corporate unit trust or, where appropriate, to the trustee of a corporate unit trust. The provisions of the Principal Act to which this sub-section will apply are -

- the definition of "person" in sub-section 6(1) (In this definition a person is defined to include a company.).

- section 160AF (This section provides for a credit against Australian tax on income derived in Papua New Guinea if tax has been paid in Papua New Guinea in respect of that income. The credit is not available, however, where the income is derived by a company and consists of dividends in respect of which the company is entitled to a rebate of tax under section 46 or 46A. The operation of section 160AF is to be modified so that the credit for Papua New Guinea tax will also not be available in respect of rebatable dividends derived from Papua New Guinea by a corporate unit trust.).

- Division 1A of Part VI, which requires the payment of instalments of tax by companies (The operation of Division 1A of Part VI is to be modified to require the payment of instalments of tax by trustees of corporate unit trusts.).

By sub-section (7), a reference to "the taxable income of a company except income in respect of which it is assessable as trustee" in section 158 of the Principal Act is to include a reference to the net income of a corporate unit trust. Section 158 applies to exclude companies from the benefits of the primary producer income averaging provisions and the modification proposed will exclude corporate unit trusts from those benefits.

By sub-section (8), a reference to "income tax that a company is liable to pay in the capacity of a trustee" in sub-section 221A(1) of the Principal Act is not to include income tax that a trustee of a corporate unit trust is liable to pay in respect of the net income of the corporate unit trust. The effect of sub-section 221A(1) is to exclude from the requirement to pay instalments of company tax a company which derives income in the capacity of a trustee. The modification proposed by this sub-section, in conjunction with other provisions in this section, will require the payment of instalments of tax by trustees of corporate unit trusts.

By sub-section (9), a trustee of a corporate unit trust is to be taken, for the purposes of sub-section 221YB(1) of the Principal Act, to be a company not being a company in the capacity of a trustee. Section 221YB imposes a liability to pay provisional tax on persons other than companies and on companies in the capacity of a trustee. As the trustee of a corporate unit trust is to become liable to pay instalments of tax under the company tax instalment provisions, this sub-section will have the effect of excluding such a trustee from the liability to pay provisional tax.

Sub-section (10) will require a reference to a company or to a company that is a resident in certain provisions of the Principal Act to be read as including a prescribed trust estate or, where appropriate, to the trustee of a prescribed trust estate. The provisions of the Principal Act to which this sub-section will apply are -

- sub-section 44(1), which requires that dividends paid by a company be included in the assessable income of a shareholder (If the shareholder is a resident of Australia, dividends paid out of profits derived by the company from any source are to be included in the shareholder's assessable income. If the shareholder is a non-resident, only dividends paid out of profits derived by the company from Australian sources are included in the shareholder's assessable income. By the modification proposed to be made to sub-section 44(1) by this sub-section, unit trust dividends paid to a unitholder in a prescribed trust estate will be included in the unitholder's assessable income. If the unitholder is a non-resident, only unit trust dividends paid out of profits derived by the trustee from Australian sources will be included in assessable income.).

- section 128B and Division 4 of Part VI (These provisions relate to the imposition of dividend withholding tax in respect of dividends paid by a resident company to a non-resident shareholder.

The modified operation of these provisions will impose the same requirements for the payment of withholding tax in respect of unit trust dividends paid to a non-resident unitholder.).

Sub-section (11) will require a reference to a dividend in certain provisions of the Principal Act to be read as including a unit trust dividend. The provisions of the Principal Act to which this sub-section will apply are -

- the definition of "paid" in sub-section 6(1) (This definition refers to the payment of dividends.).
- sub-section 44(1), which requires the inclusion of dividends in the assessable income of a shareholder (see notes in relation to sub-section (10)).
- section 116AA (This section applies for the purpose of ascertaining the amount of a rebate of tax to which a life assurance company is entitled under sections 46 and 46A in relation to dividends included in its assessable income. In its modified application, section 116AA will also apply for the purpose of ascertaining the amount of a rebate of tax to which a life assurance company is entitled under sections 46 and 46A in relation to unit trust dividends included in its assessable income.).
- sections 128A and 128B and Division 4 of Part VI (The operation of these provisions, which relate to dividend withholding tax, will be modified to impose the same requirements for the payment of withholding tax in respect of unit trust dividends paid to a non-resident unitholder.).

Sub-section (12) will require a reference to a share in a company in sections 116AA and 221YL to be read as including a unit in a prescribed trust estate. The purpose of the modification to the operation of section 116AA has been discussed in the notes relating to sub-section (11). Section 221YL relates to the payment of dividend withholding tax and, in its modified operation, will also apply in relation to the payment of withholding tax on unit trust dividends.

By sub-section (13), a reference to a shareholder in a company in sub-section 44(1) is to be read as including a unitholder in a prescribed trust estate.

By sub-section (14), a reference to taxable income of a company in Division 1A of Part VI (instalments of

company tax) is to be read as including a reference to the net income of a corporate unit trust.

Sub-section (15) will require that a reference to a trust estate or to a trustee in certain provisions in the Principal Act is not to be read as including a corporate unit trust or the trustee of a corporate unit trust. The provisions of the Principal Act concerned are section 6B, Division 6 of Part III and sub-sections 128A(3) and 157(3) each of which is concerned with the normal liability to tax imposed on trustees and beneficiaries of trust estates.

Corporate unit trusts and unitholders in prescribed trust estates are to be subject to the new basis of taxation provided for in these amendments and, accordingly, it is to be provided by sub-section (15) that the existing trust provisions will not apply to corporate unit trusts and unit-holders in prescribed trust estates.

Sub-section (16) will modify the operation of paragraph 26(b) of the Principal Act. Paragraph 26(b) requires the inclusion in assessable income of beneficial interests in income derived under certain instruments, including an instrument of trust. In its modified operation, paragraph 26(b) will not apply to beneficial interests in the income of a corporate unit trust.

Sub-section (17) will require a reference to the register of members of a company in sub-section 221YL(1) of the Principal Act to be read as including any record of names or addresses of unitholders in a prescribed trust estate. Section 221YL requires a company to make a deduction, on account of dividend withholding tax, from a dividend paid to a shareholder shown in the register of members as having an address outside Australia. By reason of the modification proposed by sub-section (17), a deduction for withholding tax will also be required to be made from unit trust dividends paid to unitholders at addresses outside Australia.

Sub-section (18) relates to the assessment of unit trust dividends paid to a unitholder in a prescribed trust estate. The purpose of the sub-section is to ensure that, in the application of sub-section 44(1) in relation to unit trust dividends paid out of profits derived by the trustee, profits derived by the trustee of a corporate unit trust will be characterised as profits notwithstanding that the profits are, or might become, part of the corpus of the trust estate.

Sub-section (19) relates to the liability for withholding tax on unit trust dividends under section 128B of the Principal Act. In its present form, section 128B applies to income comprising dividends derived by a non-resident on or after 1 January 1968. By this sub-section, a unit trust dividend will be deemed, for the purposes of section 128B, to be income derived by a unitholder at the time at which the unit trust dividend is paid.

Clause 11 : Private companies

Clause 11 concerns the measures dealing with friendly society dispensaries and proposes a consequential amendment to section 103A of the Principal Act which is largely concerned with the "public" or "private" status of companies for income tax purposes.

Sub-paragraph 103A(2)(d)(ii) provides that a company is a public company if it is a friendly society dispensary within the meaning of section 121A. That section is part of Division 9A which it is proposed to repeal by clause 13.

The amendment to sub-paragraph 103A(2)(d)(ii) will thus delete the reference therein to section 121A. The term "friendly society dispensary" is, by clause 4, to be redefined in sub-section 6(1) of the Principal Act.

Following the amendment, friendly society dispensaries will continue to qualify as public companies for income tax purposes.

Clause 12 : Co-operative companies

Division 9 of Part III of the Principal Act provides the basis for the assessment of certain co-operative companies. Section 117, which is part of Division 9, defines the type of company that is a co-operative company for the purposes of the Division.

But for Division 9A, a friendly society dispensary would also generally qualify as a co-operative company and be taxed under Division 9 on the special basis provided for such bodies. Division 9A is being repealed (clause 13) and, to ensure that the Division 9 basis remains inapplicable, clause 12 proposes that sub-section 117(1) be amended to specify that Division 9 is not, upon the repeal of Division 9A, to apply to friendly society dispensaries.

Clause 13 : Repeal of Division 9A

Clause 13 proposes the repeal of Division 9A of Part III of the Principal Act which taxes a friendly society dispensary on 10 per centum of the aggregate of certain amounts received by the dispensary.

Consequent on the repeal of Division 9A, friendly society dispensaries will be subject to tax in accordance with the general provisions of the income tax law applicable to such bodies. Because they have the characteristics of a mutual organisation, friendly society dispensaries will be assessable in accordance with the mutuality principle which applies in the assessment of clubs and other non-profit organisations generally. This principle excludes from the tax base of such bodies all receipts from members, but leaves

exposed to tax the net profit attributable to trading with non-members, as well as any investment income.

As a result of the change proposed, a friendly society dispensary will be taxed on the basis of the profit (taxable income) element in the following classes of receipts:

(a) all amounts received from the Commonwealth under the National Health Act 1953 and the Repatriation Act 1920 for the supply of pharmaceutical benefits, whether to members or non-members;

(b) any charges paid by non-members for supply of those benefits;

(c) proceeds of sale or supply of pharmaceutical products and other goods and services to persons who are not members of the friendly society dispensary; and

(d) investment income.

Clause 14 : Interpretation

Section 121F contains definitions of certain terms and a number of drafting measures in Division 9C which is designed to counter tax avoidance schemes which would exploit the tax status of various organisations, associations, funds and other bodies.

Paragraph (a) of clause 14 proposes to omit the definition of "friendly society dispensary" from sub-section 121F(1) because clause 4, as already explained, proposes to insert a definition of the term in sub-section 6(1) which will apply generally for relevant purposes of the Principal Act.

Paragraph (b) proposes to amend the definition of "public company rate" in sub-section 121F(1) by omitting the reference therein to a friendly society dispensary. The existing definition makes it clear that references to the public company tax rate are not to be taken to mean the lower rate of tax presently payable by a friendly society dispensary. As the rate of tax which it is proposed will apply to friendly society dispensary income for the 1982-83 income year and later years will be that applying generally to non-profit and public companies, it will not in future be necessary when defining the public company rate to specifically exclude the rate of tax payable by a friendly society dispensary.

Clauses 15 to 30 : Deductions in respect of capital expenditure incurred in the development of a mining property or oil field

Introductory note

Deductions in relation to eligible capital expenditure incurred in connection with the development of a mining property or an oil or natural gas field in Australia and in carrying on general mining or petroleum mining operations are available under Divisions 10 and 10AA of the Principal Act.

The amendments to be made to Divisions 10 and 10AA will not disturb the classes of capital expenditure which may qualify for deduction. Their purpose is to provide for reduced rates of deductions in respect of eligible expenditures that, broadly, are incurred after 18 August 1981 and which are currently deductible by reference to the life of the mine or field to which they relate. The maximum life of a mine or field for this purpose is to be increased from 6 to 10 years with deductions continuing to be calculated on the reducing balance of undeducted amounts.

The amendments proposed by clauses 15 to 21 relate to Division 10 which is concerned with mining operations other than for petroleum and the amendments proposed by clauses 22 to 30 relate to Division 10AA which is concerned with petroleum mining operations.

Clause 15 : Deduction of residual previous capital expenditure

This clause will amend sub-section 122D(3) of the Principal Act in consequence of the insertion of new section 122DF by clause 19.

Sub-section 122D(3) provides that, unless the tax-payer elects otherwise, a deduction under section 122D is limited to the amount of assessable income remaining after taking into account all other deductions except the deductions under sections 122DB, 122DD and 122J and those under section 122D. Briefly, section 122D provides the basis for deductions in respect of eligible capital expenditures incurred on or before 17 August 1976; section 122DB provides for deductions in respect of eligible capital expenditures incurred after 17 August 1976 and on or before 30 April 1981; section 122DD provides for deductions in respect of eligible capital expenditure incurred after 30 April 1981 and section 122J provides for deductions in respect of prospecting and exploration expenditure.

The purpose of sub-section 122D(3) is to ensure that a taxpayer is not deprived of an effective deduction for allowable capital expenditure by reason of section 80 of the Principal Act which limits the carry-forward of losses to 7 years. In the absence of the sub-section this could happen if the taxpayer did not derive income, within the next 7 years after incurring the expenditure, sufficient to absorb the full amount of the expenditure.

By clause 15 deductions under new section 122DF will be grouped with the deductions under sections 122D, 122DB, 122DD, and 122J that are excluded from the calculation of the amount available for deduction in the absence of a contrary election by the taxpayer. Another effect of the clause will be that amounts deductible under section 122D (i.e., those in respect of earlier-incurred expenditure) will be deducted before amounts deductible under section 122DF.

Clause 16 : Deduction of residual capital expenditure

The amendment proposed by clause 16, by which a reference to new section 122DF will be inserted in sub-section 122DB(3), has a purpose similar to the amendment proposed by clause 15.

Sub-section (3) is designed to ensure that mining enterprises are not deprived of effective deductions for allowable capital expenditure through the operation of the loss provisions of section 80 of the Principal Act. This is achieved, unless the taxpayer elects otherwise, by limiting the amount of the deduction allowable under section 122DB to the amount of assessable income remaining after taking into account all deductions except the deductions under sections 122DB, 122DD and 122J.

As amended, sub-section (3) will require that deductions allowable under new section 122DF correspondingly be excluded from the calculation of the amount of assessable income available to absorb deductions under section 122DB.

Clause 17 : Residual (1 May 1981 to 18 August 1981) capital expenditure

This clause will amend section 122DC by inserting a new sub-section (1) and making a consequential amendment to sub-section (2).

Existing section 122DC provides the basis for determining the amount of residual (post 30 April 1981) capital expenditure of a taxpayer as at the end of a year of income. In broad terms, the residual (post 30 April 1981) capital expenditure is so much of the allowable capital expenditure incurred by a taxpayer after 30 April 1981 (not

being expenditure that was incurred under a contract entered into on or before that date or, in relation to the construction of property by the taxpayer, where the construction was commenced on or before that date) and before the end of the year of income as has not been allowed as a deduction in a previous year of income. The amount so determined is deductible on the basis provided in section 122DD.

New sub-section 122DC(1) is substantially a restatement of the existing sub-section except that expenditure incurred after 18 August 1981 is to be excluded from the scope of the relevant expenditure pool unless the expenditure was incurred under a contract entered into on or before that date or, in relation to the construction of property by the taxpayer, the construction was commenced on or before that date. The relevant expenditure pool now referred to as "residual (post 30 April 1981) capital expenditure" is to be renamed more appropriately "residual (1 May 1981 to 18 August 1981) capital expenditure". In all other respects the calculation of residual (1 May 1981 to 18 August 1981) capital expenditure under sub-section 122DC(1) is to be identical with that of the existing sub-section (1). (See also the notes on clause 19).

Existing sub-section 122DC(2) applies in relation to expenditure on property which has been excluded from residual capital expenditure (because the property has ceased to be used by the taxpayer for prescribed purposes) but commences to be used again for purposes for which allowable capital expenditure may be incurred. In these circumstances, so much of the expenditure incurred after 30 April 1981 and before the termination of use as the Commissioner of Taxation determines is deemed, for the purposes of section 122DC, to have been incurred by the taxpayer for relevant purposes in the year in which its use for those purposes recommenced.

Sub-section (2) as amended will operate in a similar fashion to the existing sub-section in relation to expenditure incurred after 17 August 1976 on property, the use of which by the taxpayer for prescribed purposes has ceased, but will be confined to cases where the recommencement of use for eligible purposes occurred after 30 April 1981 and on or before 18 August 1981. In such a case, so much of the expenditure incurred after 30 April 1981 and before the termination of use as the Commissioner determines is to be deemed, for the purposes of section 122DC to have been incurred by the taxpayer for the relevant purposes on the day on which its use for those purposes recommenced.

Clause 18 : Deduction of residual (1 May 1981 to 18 August 1981) capital expenditure

The amendment proposed by paragraph 18(b), by which a reference to new section 122DF will be inserted in sub-section 122DD(3), has a purpose similar to the amendments

proposed by clauses 15 and 16. The amendment proposed by paragraph 18(a) will merely change the name of the capital expenditure pool to which the section relates from "residual (post 30 April 1981) capital expenditure" to "residual (1 May 1981 to 18 August 1981) capital expenditure" to reflect the new qualifying expenditure termination date.

Sub-section 122DD(3) is designed to ensure that mining enterprises are not, through the operation of the loss provisions of section 80 of the Principal Act, denied effective deductions for allowable capital expenditure. This is achieved, unless the taxpayer elects otherwise, by limiting the amount of the deduction allowable under section 122DD to the amount of assessable income remaining after taking into account all deductions except the deductions under sections 122DD and 122J.

As amended, sub-section (3) will require that deductions allowable under new section 122DF correspondingly be excluded from the calculation of the amount of assessable income available to absorb deductions under section 122DD.

Clause 19 : Residual (post 18 August 1981) capital expenditure

By this clause two new sections - sections 122DE and 122DF - are to be inserted into the Principal Act. The new sections will have application in respect of allowable capital expenditure incurred after 18 August 1981, unless the expenditure is incurred under a contract entered into on or before that date or is incurred in respect of the construction of property by the taxpayer where the construction commenced on or before that date. In the latter cases the provisions of section 122DC will continue to apply (see clause 17).

Section 122DE : Residual (post 18 August 1981) capital expenditure

New section 122DE will provide the basis for determining the amount of "residual (post 18 August 1981) capital expenditure" of a taxpayer as at the end of a year of income. The amount so determined as at the end of an income year will be deductible on the basis of new section 122DF.

In broad terms, the residual (post 18 August 1981) capital expenditure will be so much of the allowable capital expenditure incurred by a taxpayer after 18 August 1981 and before the end of the year of income as has not been allowed as a deduction in a previous year of income.

Sub-section (1) prescribes the amounts to be taken into account in ascertaining the residual (post 18 August 1981) capital expenditure as at the end of a year of income.

The scheme of the sub-section is to deduct from the amount of allowable capital expenditure incurred after 18 August 1981 and before the end of the year of income (other than allowable capital expenditure incurred under a contract entered into on or before 18 August 1981 or incurred in respect of the construction of property by the taxpayer where the construction commenced on or before that date), certain amounts referred to in paragraphs (c) and (d) of the sub-section that are specifically excluded from the residual (post 18 August 1981) capital expenditure. These amounts are any part of the allowable capital expenditure that -

- has been allowed or is allowable as a deduction in a prior year of income under proposed section 122DF, i.e., as an annual deduction in respect of residual (post 18 August 1981) capital expenditure;

- was incurred on property (not being property in respect of which a notice under section 122B has been given) which has been disposed of, lost or destroyed, or the use of which for prescribed purposes has been terminated and has not been allowed, and is not allowable, as a deduction for a year of income prior to that in which the disposal, etc., takes place;

- represents so much of any amounts specified in notices given under section 122B, in respect of which the entitlement to deductions has been transferred to the purchaser of a mining or prospecting right or information, which would otherwise be included in the residual (post 18 August 1981) capital expenditure of the vendor taxpayer as at the end of the year of income.

Sub-section (2) applies in a situation where after expenditure on property has been excluded from residual (post 18 August 1981) capital expenditure - because the property has ceased to be used by the taxpayer for prescribed purposes - the property commences to be used again after 18 August 1981 for purposes for which allowable capital expenditure may be incurred.

In these circumstances, so much of the expenditure incurred after 17 August 1976 and before the termination of use as the Commissioner of Taxation determines is to be deemed, for the purposes of section 122DE, to have been incurred by the taxpayer for the relevant purposes on the day on which its use for those purposes recommenced.

Section 122DF : Deduction of residual (post 18 August 1981) capital expenditure

New section 122DF is the operative provision establishing the basis for allowing annual deductions in respect of residual (post 18 August 1981) capital expenditure.

Sub-section (1) applies to authorise the allowance of a deduction where a taxpayer has an amount of residual (post 18 August 1981) capital expenditure as at the end of a year of income.

Under sub-section (2), the deduction allowable for a year of income is found by dividing the amount of the residual (post 18 August 1981) capital expenditure as at the end of the year by the lesser of 10 and the number of years in the estimated life of the mine as at the end of the year of income.

The sub-section effectively places a statutory upper limit of 10 years on the estimated life of a mine, as at the end of the year, for the purposes of calculating the annual deduction.

This means that where the estimated life of the mine at the end of a year is 10 years or more the allowable deduction will be equal to one-tenth of the residual (post 18 August 1981) capital expenditure as at the end of the year in question. Where the number of whole years in the estimated life of the mine is between 1 and 9 years the allowable deduction is to be found by dividing the residual (post 18 August 1981) capital expenditure by that number.

Sub-sections (3), (4) and (5) of proposed section 122DF follow the principles of their counterparts in sections 122D, 122DB and 122DD in all material respects.

Sub-section (3), like sub-sections 122D(3), 122DB(3) and 122DD(3) discussed in connection with clauses 15, 16 and 18, is to ensure that mining enterprises are not denied effective deductions for allowable capital expenditure through the operation of the loss provisions of section 80.

The sub-section provides that where the net income of the enterprise from mining and other activities (before the deduction of exploration and prospecting expenditure under section 122J) is insufficient to absorb the amount to be deducted under the section, the deduction is limited to the amount of the net income. The excess amount is thus retained in the pool of residual (post 18 August 1981) capital expenditure for deduction in subsequent years.

Sub-section (4) is complementary to sub-section (3) and allows an enterprise to elect that the limitation not apply. In that event, any loss arising from the deduction in

respect of residual (post 18 August 1981) capital expenditure will be carried forward for deduction under the general loss provisions of section 80 for up to 7 years.

Sub-section (5) restates the rule in sub-sections 122D(5), 122DB(5) and 122DD(5) which permits the Commissioner of Taxation to substitute his own estimate of the life of a mine or proposed mine if he is not satisfied that the estimate made by the taxpayer is realistic and soundly based.

Clause 20 : Elections

This clause effects a formal change to section 122M of the Principal Act to insert a reference to new section 122DF. Section 122M sets out formal requirements for the making of the elections which a taxpayer is entitled to make under various provisions of Division 10.

Clause 21 : Deduction not allowable under other provisions

Section 122N of the Principal Act prevents the allowance of more than one deduction in respect of capital expenditure which has been or may become deductible under Division 10. The section stipulates that such expenditure is not to be deductible or to be taken into account in determining a deduction under any other provision of the Principal Act.

Sub-section 122N(3) ensures that amounts which, by virtue of the operation of the limits placed on deductions by sub-sections 122D(3), 122DB(3), 122DD(3) and 122J(2), are not allowable in the year of income (i.e., because a taxpayer derived insufficient income to absorb the deductions in full), but are carried forward for deduction under Division 10 in subsequent years, are not to be deductible under any other provisions of the income tax law.

Clause 21 will amend sub-section 122N(3) to make it clear that the same principle is to be applied to excess amounts carried forward as residual (post 18 August 1981) capital expenditure by the application of the corresponding limitation imposed by new sub-section 122DF(3).

Clause 22 : Deduction of residual previous capital expenditure

Clauses 22 to 30 propose amendments to Division 10AA relating to deductions for eligible capital expenditure incurred by a taxpayer in the development and operation of an oil or natural gas field. The amendments correspond with those being made by clauses 15 to 21 in relation to Division 10.

Clause 22 will amend sub-sections 124AD(3) and (4) of the Principal Act in consequence of the insertion of new section 124ADF by clause 26.

Sub-section 124AD(3) limits the deduction allowable under the section in a year of income to the amount of assessable income from petroleum that remains after allowing all other deductions other than deductions under sections 124AD, 124ADB, 124ADD, or under section 124AH in respect of petroleum exploration expenditure. This provision is directed at ensuring that a taxpayer will not be deprived of an effective deduction for allowable capital expenditure through the operation of section 80 of the Principal Act, which limits the carry-forward of losses to 7 years.

Paragraph (a) of clause 22 will have the effect of excluding the deduction under new section 124ADF in calculating the deduction allowable under section 124AD in respect of residual previous capital expenditure. The result will be that the deduction allowable under section 124AD will be allowable before any deduction allowable under section 124ADB in respect of residual capital expenditure, under section 124ADD in respect of residual (1 May 1981 to 18 August 1981) capital expenditure, under section 124ADF in respect of residual (post 18 August 1981) capital expenditure or under section 124AH in respect of exploration expenditure.

Paragraph (b) effects a consequential amendment as a result of the proposed insertion of section 124ADF by clause 26. It will insert in sub-section 124AD(4) references to the new section 124ADF.

Clause 23 : Deduction of residual capital expenditure

By this clause, sub-section 124ADB(3) will be amended to insert a reference to new section 124ADF.

Sub-section 124ADB(3), like its counterpart sub-section 124AD(3), the operation of which has been explained in the notes on clause 22, is designed to ensure that a deduction allowable under section 124ADB is not lost to a taxpayer by reason of the 7 year limit on the carry-forward of losses under section 80.

The amendment will have the effect of excluding a deduction allowable under the new section 124ADF in calculating the deduction to be allowed under section 124ADB in respect of residual capital expenditure. The result will be that the deduction under section 124ADB will be set off against the available assessable income of an income year before determining any deduction under section 124ADD in respect of residual (1 May 1981 to 18 August 1981) capital expenditure, under section 124ADF in respect of residual

(post 18 August 1981) capital expenditure or under section 124AH in respect of exploration expenditure.

Clause 24 : Residual (1 May 1981 to 18 August 1981) capital expenditure

This clause, which is complementary to clause 26, proposes amendments to section 124ADC which provides the basis for determining the amount of residual (post 30 April 1981) capital expenditure of a taxpayer as at the end of a year of income. Broadly, this is so much of the allowable capital expenditure incurred by a taxpayer after 30 April 1981, (not being expenditure that was incurred under a contract entered into on or before that date or, in relation to the construction of property by the taxpayer, where the construction was commenced on or before that date) and before the end of the year of income, as has not been allowed as a deduction in a previous year of income. Under section 124ADD deductions for residual (post 30 April 1981) capital expenditure are calculated by reference to the lesser of the estimated life of the field or 6 years.

Paragraph (a) of clause 24 will amend section 124ADC by inserting a new sub-section (1) and paragraph (b) will make a consequential amendment to sub-section (2). The effect of the amendment proposed by paragraph (a) will be that the residual (post 30 April 1981) capital expenditure of a taxpayer will not include allowable capital expenditure incurred after 18 August 1981, unless it was incurred under a contract entered into on or before that date or incurred in respect of the construction of property by the taxpayer where the construction commenced on or before that date. The capital expenditure pool created by section 124ADC will in future be referred to as "residual (1 May 1981 to 18 August 1981) capital expenditure" to reflect the termination date for the particular qualifying capital expenditure.

Paragraph (b) will effect an amendment to sub-section (2) consequent on the amendment proposed by paragraph (a). Existing sub-section (2) applies where, after 30 April 1981, a taxpayer has brought into use for petroleum mining operations property on which the taxpayer had incurred capital expenditure after 17 August 1976 but which had previously ceased to be used for such operations or which had previously been used for non-petroleum mining operations. The amendment will confine the application of the sub-section to expenditure that is incurred on or before 18 August 1981 or is contracted for or commenced to be constructed by the taxpayer on or before that date.

Clause 25 : Deduction of residual (1 May 1981 to 18 August 1981) capital expenditure

By this clause, sub-section 124ADD(3) will be amended to insert a reference to new section 124ADF.

Sub-section 124ADD(3), like its counterparts, sub-sections 124AD(3) and 124ADB(3), the operation of which have been explained in the notes on clauses 22 and 23, is designed to ensure that a deduction allowable under section 124ADD is not lost to a taxpayer by reason of the 7 year limit on the carry-forward of losses under section 80.

The amendment will have the effect of excluding a deduction allowable under the new section 124ADF in calculating the deduction to be allowed under section 124ADD in respect of residual capital expenditure. The result will be that the deduction under section 124ADD will be set off against the available assessable income of an income year before determining any deduction under section 124ADF in respect of residual (post 18 August 1981) capital expenditure.

Clause 26 : Residual (post 18 August 1981) capital expenditure

This clause will insert two new sections in Division 10AA of the Principal Act to provide the bases for determining the amount of the residual (post 18 August 1981) capital expenditure of a taxapyer and for calculating deductions in respect of that expenditure.

Section 124ADE : Residual (post 18 August 1981) capital expenditure

In broad terms, under new section 124ADE the residual (post 18 August 1981) capital expenditure will be so much of the allowable capital expenditure incurred after 18 August 1981 and up to the end of the year of income (other than allowable capital expenditure that was incurred under a contract entered into on or before 18 August 1981 or incurred in respect of the construction of property by the taxpayer where the construction commenced on or before that date) as has not been allowed as a deduction in a previous year of income.

Sub-section (1) prescribes the amounts to be taken into account in ascertaining the residual (post 18 August 1981) capital expenditure as at the end of a year of income. Paragraphs (a) and (b) of the sub-section identify the relevant amounts of allowable capital expenditure from which are to be deducted the amounts specified in paragraphs (c) and (d).

Paragraph (a) will include in residual (post 18 August 1981) capital expenditure amounts of allowable capital expenditure incurred by the taxpayer after 18 August 1981 and before the end of the year of income, other than amounts that were incurred under a contract entered into on or before 18 August 1981 or incurred in respect of the construction of property by the taxpayer where the construction commenced on or before that date.

Paragraph (b) will include in residual (post 18 August 1981) capital expenditure amounts of allowable capital expenditure incurred after 17 August 1976 and which are deemed by sub-section 124ADE(2) to have been incurred after 18 August 1981. These will be amounts in respect of property that is brought into use after 18 August 1981 for petroleum mining operations where such use had previously been terminated or where the property had previously been used for non-petroleum mining operations.

Sub-paragraph (c)(i) requires that there be deducted from the sum of the amounts determined under paragraphs (a) and (b) any part of the expenditure included in that sum that has been allowed or is allowable as a deduction under section 124ADF from the assessable income of a preceding year of income.

Sub-paragraph (c)(ii) further requires the deduction from the sum of the amounts identified in paragraphs (a) and (b) of any part of the expenditure included in that sum that represents the undeducted amount of expenditure on property that has been disposed of, lost or destroyed or the use of which for carrying on prescribed petroleum operations has been terminated.

By paragraph (d) there is also to be deducted any amounts specified in notices under section 124AB that would, but for the paragraph, be included in the residual (post 18 August 1981) capital expenditure as at the end of the year of income.

Sub-section 124ADC(2) will apply where, after 18 August 1981, a taxpayer brings into use for petroleum mining operations property on which the taxpayer has incurred capital expenditure after 17 August 1976 and which between those dates had ceased to be used for such operations or which had been used for non-petroleum mining operations.

In these cases, so much of the expenditure as the Commissioner of Taxation determines is to be treated as allowable capital expenditure incurred on the day on which the property commences or recommences to be used for petroleum mining operations. This will increase the residual (post 18 August 1981) capital expenditure by the amount so determined.

Sub-section (3) is to the effect that sub-section (2) is to operate notwithstanding section 122N.

Section 122N has the purpose of preventing double deductions in respect of an amount of capital expenditure that qualifies for deduction under the general mining provisions of Division 10. Under it expenditure that is deductible under Division 10 is not to be deductible under any other provision of the Principal Act.

While this is a necessary safeguard generally, there can be cases where expenditure is incurred on an item of plant that qualifies under Division 10 but which ceases to be used for general mining and commences to be used for petroleum mining. Sub-section (3) will permit deductions to be allowed under Division 10AA in such a case.

Section 124ADF : Deduction of residual (post 30 April 1981) capital expenditure

New section 124ADF is the operative section that will authorise deductions for residual (post 18 August 1981) capital expenditure over the life of the petroleum field, but with a maximum statutory life of 10 years.

Sub-section (1) applies where a taxpayer has an amount of residual (post 18 August 1981) capital expenditure as at the end of a year of income, and authorises the allowance of a deduction.

Sub-section (2) specifies, subject to sub-section (3), that the deduction is to be ascertained by dividing the amount of the residual (post 18 August 1981) capital expenditure as at the end of the year of income by the lesser of the number of years in the estimated life of the petroleum field as at the end of the year of income or 10. Where a taxpayer has more than one petroleum field, a separate deduction will be calculated for each field.

Sub-section (3) limits the deduction allowable under section 124ADF in respect of a year of income to the amount of assessable income that remains after allowing all other deductions other than a deduction under section 124ADF or under section 124AH in respect of exploration expenditure.

Provision is also made for the case where a taxpayer is carrying on mining operations on more than one petroleum field. In such a case, the total of the deductions in respect of all fields is correspondingly, and proportionately, limited to the net income after allowance of other deductions, excluding deductions under this section and section 124AH.

An excess amount that is excluded from deduction for a particular income year under this sub-section will remain as part of the pool of residual (post 18 August 1981) capital expenditure to be deducted in future years.

Sub-section (4) is in conformity with sub-section 124AD(5) and the other similar sub-sections which apply in a case where the Commissioner is not satisfied that a taxpayer's estimate of the life of a petroleum field is reasonable. In such circumstances, sub-section (4) will give the Commissioner power to substitute a reasonable estimate of his own.

Clause 27 : Deductions of unrecouped previous capital expenditure

This clause proposes an amendment to section 124AF that is consequential upon the insertion by clause 26 of new section 124ADF relating to deductions for residual (post 18 August 1981) capital expenditure.

Section 124AF authorises deductions in respect of unrecouped previous capital expenditure which, broadly speaking, is capital expenditure on petroleum mining operations incurred on or before 17 September 1974.

The deduction under section 124AF is limited to the net amount of assessable income from petroleum remaining after deducting from that income all deductions allowable otherwise than under sections 124AD, 124ADB, 124ADD, 124AF and 124AH. Clause 27, by inserting references to new section 124ADF in sub-sections 124AF(1) and (2), proposes that the deductions to be available under section 124ADF also be excluded in calculating the net assessable income from petroleum under this section. This will have the effect of allowing deductions under section 124AF ahead of those other four deductions where the taxpayer is in receipt of assessable income from petroleum.

Clause 28 : Exploration and prospecting expenditure

This clause proposes an amendment to sub-section 124AH(3) to insert a reference to new section 124ADF.

Sub-section 124AH(3) specifies the allowable deductions to be taken into account in arriving at the net assessable income from petroleum for the purpose of calculating the deduction allowable under sub-section 124AH(2). Specifically included are deductions allowable under sections 124AD, 124ADB, 124ADD, 124AF and 124AM. This amendment will also include deductions allowable under section 124ADF in respect of residual (post 18 August 1981) capital expenditure. In this way, the entitlement to immediate deductions for petroleum exploration expenditure will arise after the deductions allowable under the specified provisions.

Clause 29 : Double deductions

This clause proposes an amendment to sub-section 124AN(3) consequential upon the insertion of new section 124ADF.

Section 124AN is a general safeguarding provision, the purpose of which is to prevent more than one deduction being allowed for the one amount of expenditure. It provides that where expenditure is deductible under the special petroleum mining provisions of Division 10AA, it is not to be deductible under any other provision of the income tax law.

Sub-section 124AN(3) has the effect of deeming amounts that would have been allowable as deductions, but for the limitations imposed on deductions by sub-sections 124AD(3), 124ADB(3), 124ADD(3), 124AF(1), 124AH(2) or (4A) or 124AM(4), to have been allowed as deductions and therefore not deductible under other provisions of the income tax law.

By clause 29 a reference to new sub-section 124ADF(3) will be included in sub-section 124AN(3) to apply the same principle to excess amounts carried forward as residual (post 18 August 1981) capital expenditure by reason of the limitation imposed by new sub-section 122ADF(3).

Clause 30 : Reduction of allowable deductions where certain declarations lodged

Clause 30 proposes amendments to section 124AR of the Principal Act that are consequential upon the insertion of new section 124ADF relating to deductions for residual (post 18 August 1981) capital expenditure.

Section 124AR authorises reductions in deductions otherwise allowable under Division 10AA where a company has made appropriate declarations to forgo those deductions under the various shareholder rebate or deduction schemes that are or have been in force at particular times.

The deductions that may be reduced consequent upon a declaration made under the petroleum shareholder rebate scheme of section 160ACA of the Principal Act are, by the amendments proposed, to also include deductions under new section 124ADF relating to residual (post 18 August 1981) capital expenditure.

Clause 31 : Interpretation

This clause will effect a technical amendment to section 221YA of the Principal Act by substituting a new sub-section (5) for existing sub-sections (5) and (5A) which in effect vary the meaning of the term "provisional income" in sub-section 221YA(1) in specified circumstances.

In broad terms, provisional tax payable in respect of a year of income is calculated by reference to the "provisional income" in respect of that year. This is basically the taxable income of the taxpayer for the next preceding year of income, but it is necessary to vary this when the taxable income of the next preceding year has been affected by factors that would not normally be expected to affect taxable income of the year of income.

Existing sub-section (5) applies where, in accordance with Division 16C of Part III, in the next preceding year of income, a taxpayer has been allowed a deduction for an income equalisation deposit or an amount has been included in the taxpayer's assessable income of that year in respect of the redemption of an income equalisation deposit. In these circumstances, sub-section (5) applies to substitute, for the purpose of calculating provisional tax, the amount that would have been the taxable income of the preceding year but for the application of Division 16C.

Similarly, where a deduction has been allowed in the next preceding year, in accordance with section 124ZAF, in respect of capital moneys expended in producing a qualifying Australian film, existing sub-section (5A) applies to substitute for the taxable income of the next preceding year the amount that would have been the taxable income of that year but for the allowance of the deduction under section 124ZAF.

The proposed new sub-section (5) will incorporate the provisions of each of the existing sub-sections (5) and (5A) and will make clear that where, in calculating the taxable income of the next preceding year, account has been taken of an income equalisation deposit or redemption under Division 16C and of expenditure of capital moneys on producing a qualifying Australian film under section 124ZAF, the provisional income will be equal to the amount that would have been the taxable income of the next preceding year but for the application of the provisions of Division 16C and the allowance of a deduction under section 124ZAF.

If, in relation to a current year of income, a tax-payer makes or redeems an income equalisation deposit in that year and/or incurs eligible film expenditure in that year, he or she will be eligible, by the self-assessment procedure, to have the effect taken into account in the calculation of provisional tax for the year.

PART III - AMENDMENTS OF THE INCOME TAX (INTERNATIONAL AGREEMENTS) ACT 1953

Introductory note

The amendments to be made to the Income Tax (International Agreements) Act 1953 by clauses 32 to 35 of the Bill are in consequence of the proposals relating to the taxing of income of corporate unit trusts and unit trust dividends paid to unitholders of prescribed trust estates explained earlier in this memorandum.

The Income Tax (International Agreements) Act gives statutory effect to the various agreements entered into by Australia with other countries for the purposes of avoiding double taxation of income flowing between Australia and those countries.

There are two main aspects of the operation of the Income Tax (International Agreements) Act that are the subject of this Bill. In broad terms, the first is concerned with the credit for foreign tax paid on dividends derived by an Australian company in respect of which a rebate of tax is also allowable under section 46 or 46A of the Income Tax Assessment Act. Reflecting the fact that in such cases, the rebate concerned provides relief from Australian tax the credit for foreign tax paid is not available. The amendments propose that a credit for foreign tax paid on rebatable dividends derived by a corporate unit trust is, likewise, not to be available.

The second matter relates to the rate of dividend withholding tax imposed on Australian dividends paid to a resident of a country with which Australia has concluded a double tax agreement. The normal rate of dividend withholding tax is 30 per cent. A reduced rate, generally 15 per cent, is applicable to dividends paid to a resident of an agreement country and, by these amendments, it is proposed that the same reduced rate be applicable to unit trust dividends paid to a resident of an agreement country.

Clause 32 : Principal Act

The purpose of this clause is to facilitate references in the Bill to the Income Tax (International Agreements) Act 1953. That Act will be referred to as "the Principal Act" in clauses 33 to 35 of the Bill.

Clause 33 : Interpretation

By this clause, sub-section 3(4) of the Principal Act will be amended. The sub-section deems income of a trust estate to which a beneficiary is presently entitled to be income derived by the beneficiary. As the income of a corporate unit

trust is to be taxed in the hands of unitholders only when the income is distributed as unit trust dividends, the amendment proposed will exclude corporate unit trusts from the scope of the sub-section.

Clause 34 : Ascertainment of Australian tax

Clause 34 will insert a new sub-section - sub-section (5A) - in section 15 of the Principal Act. The new sub-section will have the practical effect of denying a credit for foreign tax paid on rebatable dividends derived by a corporate unit trust.

Clause 35 : Withholding tax

Clause 35 will insert two new sub-sections - sub-sections (2) and (3) - in section 17A of the Principal Act. Section 17A limits the amount of withholding tax payable on Australian dividends paid to residents of countries with which Australia has concluded a double tax agreement.

Sub-section (2) will have the effect of limiting the withholding tax payable on unit trust dividends derived by a resident of an agreement country to the amount that would have been payable if the unit trust dividend had been a dividend paid by an Australian company.

Sub-section (3) will define the term "unit trust dividend" to have the same meaning as in the Income Tax Assessment Act.

PART IV - AMENDMENTS OF THE INCOME TAX (RATES) ACT 1976

This Act declares the rates of tax payable by individuals and trustees. The amendments to be made are in consequence of the proposal contained in clause 10 of the Bill to tax the income of corporate unit trusts at the rate applicable to companies. The imposition and rate of the tax on trustees of corporate unit trusts is to be provided for in the Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Bill 1981.

Clause 36 : Principal Act

This clause provides formally for the Income Tax (Rates) Act 1976 to be referred to as "the Principal Act" in clauses 37 and 38.

Clause 37 : Amendment of long title

By this clause, a reference to corporate unit trusts will be included in the title of the Principal Act. The amended long title will read: "An Act to declare the Rates of Income Tax payable upon Incomes other than Incomes of Companies, of Corporate Unit Trusts and of Superannuation Funds".

Clause 38 : Interpretation

By this clause, the definition of "tax" in sub-section 3(1) of the Principal Act is to be amended to exclude tax payable by the trustee of a corporate unit trust.

PART V - MISCELLANEOUS

Part V of the Bill contains 2 clauses - clauses 39 and 40 - that affect the operation of the Income Tax Assessment Act 1936, but do not amend it. The remaining clause - clause 41 - covers the application of amendments proposed by the Bill.

Clause 39 : Provisional tax for 1981-82 year of income

The purpose of this clause is to specify the basis for calculating 1981-82 provisional tax of taxpayers who do not "self-assess". Broadly, the provisional tax is to be calculated by applying 1981-82 rates of tax to 1980-81 taxable incomes as increased by 10 per cent, with rebates for dependants, to sole parents and for a housekeeper, being taken into account (including for zone rebate purposes) at their increased 1981-82 values.

Where a taxpayer chooses to self-assess, i.e., to have 1981-82 provisional tax based on his or her own estimate of 1981-82 income, the provisional tax will be, basically, the amount calculated by applying 1981-82 rates of tax to that estimated income and by deducting estimated 1981-82 rebates.

For a taxpayer whose 1980-81 taxable income reflects a deduction allowed for capital moneys expended in producing a qualifying Australian film, 1981-82 provisional tax is to be calculated as if no such deduction had been allowed, with the taxable income so adjusted increased by 10 per cent.

For primary producers who do not self-assess, the clause will require that, for provisional tax purposes, any averaging rebate to which the primary producer is entitled be recalculated using 1980-81 taxable income (as adjusted for any income equalisation deposits or withdrawals or capital expenditure on a qualifying Australian film) as increased by 10 per cent. 1981-82 rates of tax will be applied, as will the average income for 1980-81 taxation purposes - the average income itself will not be increased to reflect the 10 per cent adjustment of taxable income. If a primary producer qualified for a part only of the averaging benefit in 1980-81 (i.e., where his or her income other than from primary production in that year exceeded $5,000) the clause will require, in effect, that the proportion of the recalculated averaging benefit to be allowed in calculating 1981-82 provisional tax is to be the same as that allowed in calculating 1980-81 tax payable, that is, it is not to be reduced to reflect the notional 10 per cent increase in income other than from primary production.

For taxpayers deriving a notional income as specified by section 59AB (depreciation recouped), section 86 (lease premiums), or section 158D (abnormal income of authors or inventors) of the Assessment Act, the clause will have the effect that, unless they self-assess, their provisional tax, before deduction of rebates, is to be calculated by applying to their 1980-81 taxable income increased by 10 per cent, the 1981-82 rate of tax applicable to their 1980-81 notional income, that is, the rate of tax is not to be increased to reflect a 10 per cent increase in notional income.

For taxpayers who were minors, (i.e., under 18 years of age) at 30 June 1981 and who were liable for tax for 1980-81 under the arrangements applying to minors (i.e., the minor's eligible taxable income for the purposes of Division 6AA of Part III of the Assessment Act for that year was greater than $1,040) the proportion of the taxable income, as increased by 10 per cent, that is to be taken as being eligible taxable income, for purposes of the provisional tax calculation, is to be the same as that which the 1980-81 eligible taxable income of the taxpayer bore to his or her taxable income for that year.

Of course, if a taxpayer derives salary or wage income in addition to income on which provisional tax is payable, sub-section 221YC(1A) of the Assessment Act enables the provisional tax otherwise payable to be appropriately adjusted.

Clause 40 : Amendment of assessments

Clause 40 will give the Commissioner of Taxation authority to re-open an income tax assessment made before the Income Tax Laws Amendment Bill (No. 3) 1981 becomes law should this be necessary for the purpose of giving effect to certain of the amendments proposed by the Bill. These are the proposals relating to the increase in the maximum statutory life of a mine or oil field, the extension of the gift deduction provisions and the taxation of corporate unit trusts.

The authority to re-open assessments is necessary in the case of the amendments relating to the taxation of corporate unit trusts because those amendments will first apply generally to returns of income for the 1980-81 income year.

Generally, deductions affected by the proposed increase in the maximum statutory life of a mine or oil field and the proposed extension of the gift deduction provisions will first arise in returns of income for the 1981-82 income year. However, the authority to re-open assessments in these cases is necessary because some taxpayers with substituted accounting periods whose 1980-81 income year ends after 30 June 1981 may have sought relevant deductions in their 1980-81 returns.

Clause 41 : Application of amendments

By sub-clause (1) of clause 41 the amendments proposed to be made by clauses 4, 5, 11, 12, 13 and 14 which relate to the change in the basis of assessment of friendly society dispensaries are to apply in respect of income of the year of income commencing on 1 July 1982 and in respect of income of all subsequent years of income.

The existing provisions of the Principal Act which apply in the assessment of friendly society dispensaries will continue to apply in assessments in respect of income of the year of income commencing on 1 July 1981 and preceding years of income.

As mentioned in the notes on clause 9, sub-clause (2) of clause 41 will apply to restrict the availability of income tax deductions for gifts to the Victorian Arts Centre Trust to gifts made after 30 June 1981.

INCOME TAX (INDIVIDUALS) BILL 1981

This Bill will formally impose the tax payable in respect of income derived by individuals, and by trustees generally, during the 1981-82 income year and will, as is customary in such a Bill, formally impose 1981-82 provisional tax. It is complementary to the Income Tax (Rates) Act 1976, which declares the rates of tax to apply to such taxpayers.

The Bill is similar to the Income Tax (Individuals) Act 1980 and the following notes are confined to those clauses of the Bill which differ in practical effect from the provisions of that Act.

Clause 5 : Imposition of income tax

Sub-clauses (1) and (2) have the effect, when read with clause 6, of formally imposing income tax payable by individuals and trustees generally for the 1981-82 financial year at the rates declared for that year by the Income Tax (Rates) Act 1976. The rates of tax declared by that Act for 1981-82 are as follows:

Parts of Taxable Income

Exceeding $	Not Exceeding $	Standard Rate %	Surcharge %	Total %
4,195	17,894	32	Nil	32
17,894	35,788	32	14	46
35,788	-	32	28	60

Tax payable may be calculated from the following table.

Parts of Taxable Income

Exceeding $	Not Exceeding $	Tax on Total Taxable Income
0	4,195	Nil
4,195	17,894	Nil + 32 cents for each dollar of taxable income in excess of $4,195
17,894	35,788	$4,383.68 + 46 cents for each dollar of taxable income in excess of $17,894
35,788	-	$12,614.92 + 60 cents for each dollar of taxable income in excess of $35,788.

Paragraph (c) of sub-clause 5(2) will exclude from the operation of this Bill, a trustee of a corporate unit trust. The rate of income tax payable for the 1981-82 financial year by such a trustee is declared, and the tax imposed, by the Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Bill 1981.

Clause 6 : Levy of tax

This clause operates to formally levy the tax imposed by clause 5 of the Bill in respect of the 1981-82 financial year and, until the Parliament otherwise provides, for the 1982-83 financial year.

INCOME TAX (COMPANIES, CORPORATE UNIT TRUSTS AND SUPERANNUATION FUNDS) BILL 1981

The main purpose of this Bill is to impose income tax for the 1981-82 financial year, at the rates declared in the Bill, on the 1980-81 incomes of companies and, for the first time, of corporate unit trusts, and the 1981-82 incomes of superannuation funds.

Other rates of income tax payable for the 1981-82 financial year - by individuals and by trustees generally - have been declared by the Income Tax (Rates) Act 1976 and are to be imposed by the Income Tax (Individuals) Bill 1981. The "branch profits" tax that is payable by non-resident companies is imposed by the Income Tax (Non-Resident Companies) Act 1978.

Apart from the inclusion of corporate unit trusts which would come within Division 6B of Part III of the Assessment Act under proposals contained in the Income Tax Laws Amendment Bill (No.3) 1981 and which are referred to below, the practical effect of the present Bill will be the same as the Income Tax (Companies and Superannuation Funds) Act 1980, which declared and imposed the rates of income tax payable by companies and superannuation funds for the 1980-81 financial year.

The main changes in the Bill as compared with the comparable Act for the previous year, concern tax on the net income of corporate unit trusts. This will be on the same basis as the taxable income of public companies, i.e., at 46 per cent for the 1981-82 financial year.

Clause 3 : Interpretation

Sub-clause 3(1) defines a "corporate unit trust" as being a corporate unit trust within the meaning of new Division 6B of Part III of the Income Tax Assessment Act 1936, proposed to be inserted by the accompanying Income Tax Laws Amendment Bill (No.3) 1981.

Sub-clause 3(2) includes a reference to "net income". The trustee of a corporate unit trust is to be liable to pay tax on the net income of the corporate unit trust.

Clause 5 : Imposition of income tax

Sub-clause 5(3) in effect includes trustees of corporate unit trusts, whether natural persons or companies, within the ambit of the Bill, for the purpose of declaring and imposing rates of income tax.

Clauses 6, 7 and 8 : Rates of tax

The rates of income tax declared by this Bill for the 1981-82 financial year are as follows:

- by clause 6, the general rate of tax payable on taxable income of companies is to remain at 46 per cent;

- by clause 6, the rate of additional tax payable by a private company on the amount by which dividends paid fall short of a sufficient distribution remains at 50 per cent;

- by clause 6, the general rate of tax payable by a friendly society dispensary on its taxable income is to remain at 41 per cent for the 1981-82 financial year;

- by clause 7, the rate of tax payable by a trustee on the net income of a corporate unit trust to which section 102K of the Assessment Act applies is to be 46 per cent;

- by clause 8, the rate of tax payable on investment income of a superannuation fund that does not, under the "30/20" rule, invest a sufficient proportion of its assets in public securities remains at 46 per cent;

- by clause 8, the rate of tax payable on certain taxable income of superannuation funds to which section 121CA or 121CB of the Assessment Act applies is to remain at 50 per cent;

- by clause 8, the rate of tax payable on income of trusts qualifying as superannuation funds to which section 121DA of the Assessment Act applies is to remain at 60 per cent.

Clause 12 : Instalments of tax

Clause 12 of the Bill relates to the collection of instalments of corporate unit trust tax and of company tax, in accordance with the relevant provisions of the Assessment Act. Sub-clause 12(1) will authorise collection of corporate unit trust tax instalments in the 1981-82 financial year. Sub-clause 12(2) will authorise collection of corporate unit trust tax instalments and of company tax instalments in the 1982-83 financial year - the first of three such instalments is to be due not earlier than 15 August 1982.

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