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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
SENATE

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TAXATION LAWS AMENDMENT BILL 1991

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SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,  
the Hon P.J. Keating MP)

## TAXATION LAWS AMENDMENT BILL 1991

### General Outline of the Amendments

The amendments will amend the Taxation Laws Amendment Bill 1991 to simplify compliance with revised capital gains tax rollover and partnership rules proposed by the Bill.

### Financial Impact of the Amendments

The further amendments proposed to the Bill do not change the original objectives of the Bill and are not expected to have any additional revenue impact.

### Main features of the amendments

A number of further amendments to the Bill are to be moved on behalf of the government. These further amendments relate to changes proposed by the Bill to the capital gains tax (CGT) provisions contained in Part IIIA of the Income Tax Assessment Act 1936. First, clause 44 of the Bill will be amended to ensure that effective gains realised on the disposal of an interest in a partnership cannot be taxed twice. Clause 57 of the Bill will also be amended to ensure that an individual partner can obtain rollover relief on the disposal of an interest in a partnership asset to a company 100 per cent owned by the partner.

Finally, an amendment to clause 61 will ensure that cost base adjustments (following the transfer of an asset between two companies under common ownership for reduced consideration) will not be made to genuine third-party loans which have not been reduced in value as the result of an asset's transfer.

Notes on amendmentsClause 44 - Assets to which Part applies

Clause 44 proposes an amendment to the definition of "asset" contained in section 160A, to make it clear that a partner's interest in a partnership asset will be treated as a separate asset for capital gains tax purposes. However, a technical argument has been put that because a partnership interest is itself an asset (being a chose in action), the value of which may relate in whole or in part to interests in underlying partnership assets (which themselves are to be treated as separate assets), a partner could be exposed to "double taxation" on the same effective gains.

To ensure that this result cannot occur, the further amendment proposed ensures that a "partnership interest" is to be treated as a separate asset for CGT purposes only to the extent that its value does not relate to a partner's interests in individual partnership assets which themselves are treated as separate assets for CGT purposes.

Clause 57 - Transfer of asset to wholly-owned company

Clause 57 proposes a number of amendments to section 160ZZN as a consequence of the proposed insertion of new section 160ZZNA by clause 58. Section 160ZZN provides rollover relief to a taxpayer (other than a partnership or company) which transfers an asset to a wholly-owned company. New section 160ZZNA will provide similar relief to the partners of a partnership where a partnership asset is transferred to a company wholly-owned by the partners.

By paragraph (a) of clause 57, an individual partner is effectively denied rollover relief on the transfer of an interest in a partnership asset to a company wholly-owned by that partner. As that result was not intended, the further amendment now proposed will omit that paragraph from the Bill.

Clause 61 - Transfer of Assets between Companies under Common Ownership

Clause 61 proposes the insertion of new Division 19A which, broadly speaking, is intended to

prevent artificial tax advantages from arising where assets are transferred between companies under common ownership. To achieve this aim, Division 19A requires an adjustment to the cost bases of shares (or, in some cases, loans) held either directly or indirectly in a company, where that company transfers an asset to another company under common ownership for actual consideration less than the asset's indexed cost base.

Division 19A was intended to apply, in most cases, to shares in, or loans made to, a transferor company by other closely associated taxpayers. However, a concern has arisen that the Division may extend to loans made to a taxpayer by unassociated third parties (eg. a bank), where the value of the loan has not been reduced as a result of the asset's transfer.

For the purposes of sections 160ZZRF and 160ZZRG, it would not be reasonable in such cases for any cost base adjustment to be made to those genuine third-party loans. However, section 160ZZRE contains no such "reasonableness" requirement in determining the amount of any cost base adjustments, which instead are made pursuant to a series of arithmetic calculations.

Unless a loan is a "traditional security" for the purposes of section 26BB (in which case it is effectively excluded from the application of Part IIIA), any mandatory cost base adjustments pursuant to section 160ZZRE could increase the amount of any capital gain or reduce the amount of any capital loss realised on the subsequent disposal of the loan. A further amendment is proposed so that section 160ZZRE will not apply unless the lender was not at arm's-length in its dealings with the transferor of the asset, or the loan was reduced in value as a result of the asset's transfer. Non-arm's length lenders need not be subject to the application of the Division if actual consideration equal to an asset's indexed cost base is paid in respect of the asset's transfer to another company under common ownership.

