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THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO. 3) 1990

EXPLANATORY MEMORANDUM

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GENERAL OUTLINE

This Bill will amend:

- the Income Tax Assessment Act 1936 -
  - .. to provide for the tax consequences for both companies that repurchase their shares and for vendor shareholders that sell their shares back to a company in a share buy-back transaction (proposal announced on 31 October 1989);
  - .. to remove the exemption from the thin capitalisation rules for Australian-owned non-resident companies (1989-90 Budget announcement);
  - .. to extend, from 30 June 1992 to 30 June 1997, the effective termination date of the special accelerated depreciation concession for Australian trading ships (proposal announced by the Minister for Transport and Communications in a Ministerial Statement on reform of the shipping and waterfront industries on 1 June 1989);
  - .. to remove or modify the operation of certain provisions that require an actuary to certify deductions or exemptions from tax claimed by a superannuation fund (proposal announced on 14 February 1990).
  - .. to widen the manner in which pensioners, and entities not required to lodge income tax returns, may provide the necessary information to an investment body to claim an exemption from quoting a tax file number in relation to certain investments;
  - .. to raise, from $5,000 to $8,000, for the 1989-90 and subsequent years of income, the threshold for general exemption from the quarterly instalment system of paying provisional tax (1989-90 Budget announcement);
  - .. to ensure that excess provisional tax credits are not offset against quarterly instalments of provisional tax not yet due for payment (1989-90 Budget announcement);
  - .. to allow income tax deductions for gifts to -
    - the National Foundation for Australian Women Limited (proposal announced 15 December 1989);

- Landcare Australia Limited (proposal announced 19 March 1990); and

- The Foundation for Development Cooperation Ltd (proposal announced 11 April 1990).

. the Fringe Benefits Tax Assessment Act 1986 -

.. to allow certain employers to amortise the taxable value of housing assistance provided to employees under a remote area home ownership scheme over a period of fifteen years, rather than the existing maximum of seven years.

. the Sales Tax (Exemptions and Classifications) Act 1935 -

.. to confirm the interim exemption from sales tax given by ACT regulations for goods for official use by ACT government departments and certain ACT authorities.

The Bill will also establish the basis of calculating instalments of provisional tax for the 1990-91 year. The basis will correspond with the base that would have applied had the Income Tax Assessment Amendment Bill 1989 not lapsed when the Parliament was dissolved prior to the recent elections.

FINANCIAL IMPACT

The amendments in relation to share buy-backs will result in unquantifiable revenue savings.

The amendment of the special depreciation concession for Australian trading ships will have no impact until the 1992-93 year with an estimated cost to revenue of $23 million and $31 million in 1993-94.

The cost to revenue of including the National Foundation for Australian Women Limited, Landcare Australia Limited and The Foundation for Development Cooperation Ltd in the income tax gift provisions is estimated to be $50,000, $250,000 and $500,000 respectively in a full financial year.

The increase in the threshold below which instalments of provisional tax are not payable is estimated to increase outlays on public debt interest by $20 million in 1989-90, $18 million in 1990-91 and $15 million per annum in subsequent years.

The amendment to extend the maximum allowable period of amortisation of the taxable value of fringe benefits under certain remote area housing ownership schemes is estimated to cost $150,000 in a full year.

Other amendments proposed by the Bill will have negligible revenue impact.

MAIN FEATURES

The main features of this Bill are as follows:

Share Buy-backs
(Clauses 15, 17 and 29)

The Bill will give effect to the proposal announced on 31 October 1989 to amend the Income Tax Assessment Act 1936 to deal with changes to the companies legislation that will permit companies to buy back their own shares. New arrangements will provide for the tax treatment of transactions when companies buy-back their own shares and the vendor-shareholders sell shares back to the companies.

The proposed amendments will apply where a company buys a share in itself from a shareholder. If the share is listed on the stock exchange and the purchase is made in the ordinary course of business of that stock exchange, the buy-back will be an on-market purchase. All other buy-backs will be treated as off-market purchases. The price paid by the company will be the amount or total of the amounts received by the shareholder, the market value of any property a shareholder received or the total sum of property and cash if the shareholder is entitled to receive both.

In the case of the shareholder, where the buy-back is an off-market purchase, the price paid by the company less the sum of the paid up value of the share and any part of the price paid that is drawn by the company against its share premium account will be treated as a dividend paid by the company to the shareholder. The dividend will be a frankable dividend for the purposes of the imputation system and a shareholder that is a company may be entitled to the intercorporate dividend rebate.

Where the buy-back is an on-market purchase the tax consequences for the shareholder will be different. No part of the price paid will be a dividend and the treatment of the amount received by the shareholder for the share will fall for consideration under the income tax or capital gains tax provisions. This will also be the treatment for that part of the price paid in an off-market purchase that is not a dividend - the paid up value and any amount drawn by the company against the share premium account.

For the company that buys-back shares the amendments proposed by this Bill will treat the relevant transactions as, in effect, not having occurred. The effect of this will be that a buy-back will not be taken into consideration in determining whether any amount is assessable or deductible and there will be no capital gain or capital loss arising to the company. In this respect the transaction will be tax-neutral.

The Bill also proposes an amendment to the imputation system so far as the company is concerned when the company makes an on-market purchase. Notwithstanding that for the shareholder no part of the price paid in an on-market purchase is taken to be a dividend, the company will for franking account purposes, be taken to have paid a dividend equal to the amount that would have been a dividend if the buy-back had been an off-market purchase. A franking debit will arise equal to the price paid in an on-market purchase less the sum of the paid up value of the share and any amounts drawn by the company against the share premium account.

The amendment to the imputation system will apply from the day companies are permitted to make on-market purchases. The other amendments will apply to buy-backs that occur on or after 1 November 1989.

<u>Australian-owned non-resident companies</u>
(Clauses 13, 14 and 29)

Under the existing legislation, Australian-owned non-resident companies are excluded from the definition of "foreign controller" and hence from the scope of the thin capitalisation controls. This exemption is to be removed with ffect from 1 July 1990.

<u>Special depreciation on trading ships</u>
(Clause 10)

The Bill will also amend the special accelerated depreciation concession for eligible Australian trading ships by extending the effective termination date from 30 June 1992 to 30 June 1997. Eligible ships that are now delivered to a taxpayer, and registered under the <u>Shipping Registration Act 1981</u> before 1 July 1997 will qualify for depreciation on a prime cost basis at a rate of 20% over five years.

<u>Superannuation : Requirements for actuarial certifications</u>
(Clauses 24, 25, 26, 27, 28, 30 and 33)

This Bill will give effect to the proposals announced on 14 February 1990 to ease the operation of the provisions of the Income Tax Assessment Act which require an actuary to certify the amount of particular deductions or exemptions that may be claimed by a complying superannuation fund.

The Bill will reduce the need for complying superannuation funds to obtain actuarial certifications when claiming deductions for the cost of death and disability cover for members of the fund. In particular, a fund will not need to obtain a certificate from an actuary where the death and disability insurance components of the premium paid are separately identified. Further, in relation to "endowment" and "whole of life" policies (to be defined), a deduction equal to 10% and 30%, respectively, of the premium paid, will be available also without the need for a certificate from an actuary.

The Bill also proposes amendments which will require actuaries to value superannuation fund assets, in determining the exemption for income relating to current pension liabilities, based on the expected earnings on those assets rather than the preceding year's earnings.

In addition, the Bill will remove the obligation on superannuation funds to provide actuarial certificates with their returns of income.

The new provisions will have effect in relation to assessments in respect of income of the year of income in which 1 July 1988 occurred and all subsequent years. However, if a complying superannuation fund has lodged a return of income before the relevant amendments commence, the proposed amendments will not apply unless the trustee of the fund makes an appropriate election.

<u>Exemptions from quotation of Tax File Numbers - investments</u> (Clauses 19, 20)

The use of tax file numbers in connection with investments is to commence from 1 July 1991 with a phase in period from 1 July 1990 for investments in existence at that time. Persons who are investors will be able to quote their tax file number to the investment body after 30 June 1990. Where a person fails to quote a tax file number in respect of relevant investments in existence on 1 July 1991 the investment body will be required to withhold tax at the top personal marginal rate (plus Medicare levy) from any income arising from the investment on or after that date.

Certain investors are to be exempt from these requirements. Entities not required to lodge income tax returns and pensioners seeking exemption from the quotation requirements in relation to certain investments are required to provide a written declaration to obtain exemption. The Bill will allow the Commissioner of Taxation to approve the manner in which the necessary information to claim an exemption from quoting a tax file number is provided to the investment body so that in appropriate circumstances it will not be necessary for the declaration to be in written form.

Notification of Instalments of provisional tax
(Clauses 22)
Offset of Provisional Tax Credit
(Clause 23 and 32)

The Bill will implement the two Budget proposals announced on 15 August 1989 to alter the operation of the quarterly instalment system of paying provisional tax.

First, with effect for provisional tax payable in the 1989-90 and subsequent income years, the Bill will raise the threshold for general exemption from the system from $5,000 to $8,000. As a result, a taxpayer will not be required to pay quarterly instalments of provisional tax in respect of a year of income where his or her provisional tax in respect of the preceding year is $8,000 or less.

Secondly, where income tax payable for an income year is less than the provisional tax credit available in respect of that year, the excess provisional tax credit will not be offset against any quarterly instalment of provisional tax in respect of the following income year which has been notified but is not yet due for payment.

Gifts
(Subclause 2(2), clauses 29 and 31)

The Bill will authorise deductions for gifts of the value of $2 or more made to the National Foundation for Australian Women Limited where the gifts are made on or after 5 February 1990 (the date the company was incorporated). The Bill also contains transitional arrangements that allow gifts made to the unincorporated body known as the National Foundation for Australian Women on or after 10 November 1989 and before 5 February 1990 to also be deductible.

Deductions will also be authorised for gifts to Landcare Australia Limited made on or after 1 April 1990.

In addition, gifts to The Foundation for Development Cooperation Ltd will be an allowable deduction where they are made on or after 12 March 1990.

Altering basis of calculating instalments of provisional tax for 1990-91
(Clause 34)

Under the system for paying provisional tax by instalments, the instalments for a year of income other than the final instalment are calculated having regard to certain provisional tax amounts. The instalments may be calculated in the relevant circumstances on the basis of either:

(a) the provisional tax payable in respect of the instalment year following an application to vary by the taxpayer;

(b) the provisional tax notified as payable in respect of the instalment year following the issue of the previous year's assessment; or

(c) the provisional tax payable in respect of the year of income preceding the instalment year.

The final instalment is the amount, if any, required to make the sum of the instalments equal to the amount the taxpayer would be liable to pay as provisional tax for that year (subject, of course, to any variation) if the taxpayer were not required to pay by instalments (that is, the equivalent of the lump sum provisional tax amount).

A Bill, the Income Tax Assessment Amendment Bill 1989, was introduced in the Parliament in the 1989 Budget sittings but lapsed on the dissolution of the Parliament prior to the elections. It proposed a method for calculating provisional tax specifically for the 1989-90 income year in line with the practice applied in past years. The Bill provided for 1989-90 provisional tax to be calculated on the basis of 1988-89 taxable income being uplifted by 10%, with the rates of tax, Medicare levy and income thresholds for Medicare levy for 1989-90 applying and with rebates and credits in general being allowed at their 1988-89 levels subject to certain adjustments. Because the Bill lapsed, provisional tax for 1989-90 was calculated on the basis of the standing provisions in the existing law where this was more beneficial to taxpayers.

As a consequence, unless the income tax law is changed, some taxpayers liable to pay provisional tax for the 1990-91 year by instalments may have smaller instalments, apart from the final instalment, for 1990-91 than the Government intended when introducing the Income Tax Assessment Amendment Bill 1989. This would be the result of the provisional tax for 1989-90 being less than it otherwise would have been.

This Bill proposes that the amount of a taxpayer's instalments, other than the final instalment, for 1990-91 - where it is necessary to have regard to the 1989-90 provisional tax liability in calculating those amounts - be determined by reference to what the taxpayer's provisional tax liability for that year would have been had the Income Tax Assessment Amendment Bill 1989 become law (that is, a notional provisional tax liability). Of course, where the taxpayer had varied the 1989-90 provisional tax liability, that varied amount would continue to be used in calculating the instalments, as necessary.

Amortisation of remote area housing fringe benefits
(Clauses 6, 7 and 8)

Under the existing amortisation provisions, the taxable value of certain fringe benefits providing housing assistance to employees working in remote areas may be spread over a minimum period of five years and a maximum of seven years.

To be eligible for amortisation the fringe benefit must be provided by the employer to an employee working in a remote area and consist of:

- a discount on the purchase of a home or of land on which to build a house;

- a reimbursement of the cost of buying land and/or building a home; or

- an option fee paid to the employee entitling the employer to have first choice in purchasing the employee's house.

The benefit provided by the employer must also be subject to a contractual obligation that restricts the employee's right to dispose of the relevant property for a period of at least five years.

The Bill will increase, in certain circumstances, the maximum period over which the taxable value of a fringe benefit (which is eligible to be amortised under the existing amortisation provisions) may be amortised from seven years to fifteen years.

The new fifteen year maximum amortisation period is to apply to employers who, prior to 31 August 1988 (the date of introduction of the Act inserting the original amortisation rules into the Fringe Benefits Tax Assessment Act), had provided a fringe benefit under a remote area home ownership scheme. Also, the scheme must have provided for the benefit to the employee to be subject to a restriction on the employee's right to dispose of the property to which the benefit relates for a period of at least seven years.

Further, the new fifteen year amortisation period will only apply to fringe benefits provided to an employee, where the obligation restricting the employee's right to dispose of the property to which the benefit relates is entered into no later than 6 months after the commencement of this Bill.

Exempting from sales tax, goods for use by ACT departments and authorities
(Clauses 36, 37 and 38)

By the A.C.T. Self Government (Consequential Provisions) Act 1988 the Governor-General was empowered to make regulations, no later than 31 December 1989, modifying the operation - but not the text - of Commonwealth Acts where amendment of those Acts was necessary as a consequence of the establishment of self-government in the ACT. The purpose of that regulation-making power was to allow the operation of those Acts to be changed temporarily until the Acts themselves could be amended.

The ACT Self-Government (Consequential Provisions) Regulations, which were made under that regulation-making power, modify the Sales Tax (Exemptions and Classifications) Act 1935 so that the exemption from sales tax available under that Act for goods for official use by departments and certain authorities of the Commonwealth, the States and the Northern Territory is available for ACT departments and authorities on the same basis. This Bill proposes the amendment of the text of the Sales Tax (Exemptions and Classifications) Act to reproduce the exemption given by those Regulations.

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

PART 1 - PRELIMINARY

Clause 1 : Short title

This clause provides for the amending Act to be cited as the Taxation Laws Amendment Act (No.3) 1990.

Clause 2 : Commencement

Subject to subclauses 2(2), (3) and (4), the amending Act is by subclause 2(1), to commence on the day on which it receives the Royal Assent. But for this subclause, the Act would, by reason of subsection 5(1A) of the Acts Interpretation Act 1901, commence on the twenty-eighth day after the date of Assent.

By the operation of subclause (2) of clause 2, the amendment proposed by clause 11 of the Bill to insert three new subparagraphs in the gift provisions of the Income Tax Assessment Act is to be taken to have commenced at the commencement of Part 3 of the Taxation Laws Amendment Act (No. 2) 1990. The reason for this is that the Taxation Laws Amendment Bill (No. 2) 1990 also proposes to insert new subparagraphs in the gift provisions and these must be in place first in order to maintain the numerical sequence of the provisions.

By subclause 2(3), clause 23, which amends section 221YE to ensure that excess provisional tax credits are not offset against quarterly instalment of provisional tax not yet due for payment, is to be taken to have commenced on 4 December 1989 (see notes on clause 23).

By subclause 2(4), Part 5 of the amending Act is to be taken to have commenced on 11 May 1989. Part 5 proposes the amendment of item 74 of the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935 to place, in the appropriate legislation, the exemption from sales tax for goods for use by ACT departments and certain ACT authorities that is currently given by the ACT Self-Government (Consequential Provisions) Regulations. The proposed commencement date is the date on which self-government in the ACT began and, accordingly, the date from which the exemption given by the Regulations applies.

PART 2 - AMENDMENT OF THE CRIMES (TAXATION OFFENCES) ACT 1980

Clause 3 : Principal Act

This clause facilitates reference to the Crimes (Taxation Offences) Act 1980 which, in this Part, is referred to as the "Principal Act".

Clause 4 : Interpretation

This clause makes a formal amendment to section 3 of the Principal Act. In essence a comma is inserted after the reference to section 221AG in paragraph (b) of the definition of "income tax" in subsection (1).

PART 3 - AMENDMENT OF THE FRINGE BENEFITS TAX ASSESSMENT ACT 1986

Clause 5 : Principal Act

This clause facilitates reference to the Fringe Benefits Tax Assessment Act 1986 which, in this Part, is referred to as the "Principal Act".

Clause 6 : Amortisation of taxable value of fringe benefits relating to remote area home ownership schemes

This clause proposes the amendment of section 65CA of the Principal Act to include two new subsections, subsections (6) and (7).

Section 65CA, when read in conjunction with section 142 of the Principal Act, provides for the spreading, generally over a five to seven year period, of the impact of the fringe benefits tax that would otherwise be imposed on an employer who provides employees in a remote area with specified types of housing assistance.

In broad terms, the taxable value of a remote area housing benefit (as defined), where the employer has entered a 'recognised remote area housing obligation' is subject to fringe benefits tax by pro-rating the taxable value of the benefit over the period during which the freedom of transfer is restricted by the obligation.

A qualifying remote area housing benefit must consist of:

- a property fringe benefit, where the property is 'remote area residential property' - as defined in subsection 142(2) of the Principal Act (e.g., the benefit is a discount on the purchase of a home or of land on which to build a home);

- a 'remote area residential property option fee' - as defined in subsection 142(2A) (an option fee paid to an employee entitling the employer to first choice in repurchasing the employee's interest in land); or

- an expense payment fringe benefit, where the expenditure is in respect of 'remote area residential property' - as defined in subsection 142(2C) (e.g., the benefit is the reimbursement of the cost of buying land/or building a home).

A recognised remote area housing obligation (defined in subsection 142(2D) of the Principal Act) is a contractual obligation between the employer and employee restricting the employee's right to dispose of his or her interest in the property to anyone other than to the employer (or an associate) for at least five years.

Section 65CA provides that the maximum period over which the taxable value of a benefit may be spread, subject to the other limitations imposed by subparagraphs 65CA(1)(d)(iii)-(vi), is seven years. As such, the amortisation concession may be spread over a minimum of five years and a maximum of seven years.

Proposed new subsections 65CA(6) and (7) will extend, subject to certain limitations, the maximum period over which a taxable value may be amortised, from seven to fifteen years. The extended amortisation treatment is intended to apply only to employers who, prior to the introduction of the original amortisation rules, operated remote area home ownership schemes restricting the employee's right to dispose of the relevant property for a period exceeding seven years.

As a consequence, paragraph 65CA(6)(a) proposes that an employer will only be eligible for the extended amortisation treatment if the employer has provided a fringe benefit which would have qualified for amortisation treatment under the Principal Act, even if the related remote area housing obligation provisions (subsection 142(2D)) required the employee's right to dispose of the property to exist for seven years rather than five years.

Proposed paragraph (6)(b)) requires that the 'benefit time' of the benefit referred to in paragraph (6)(a) must be before 31 August 1988 - the date of introduction of the Act inserting the original amortisation rules into the Principal Act.

The 'benefit time' of an amortised fringe benefit is defined in paragraphs 65CA(1)(d)(i) and (ii) of the Principal Act. Broadly, the 'benefit time' of a fringe benefit will depend on the type of benefit provided to the employee. Where the benefit is a property benefit and the property is either 'remote area residential property' or a 'remote area residential property option fee' the 'benefit time' will be the time the benefit is provided. Where the benefit is an expense payment fringe benefit in respect of 'remote area residential property', the 'benefit time' will be when the employee's expenditure was incurred.

An employer who satisfies the requirements of both paragraphs of new subsection (6) will be eligible for extended amortisation treatment.

Subsection (7) will restrict the new fifteen year maximum amortisation period to employers that are eligible for extended amortisation treatment as defined in new subsection (6) (paragraph (a)). Also, the new fifteen year amortisation period will only apply to amortised fringe benefits provided to employees, where the 'remote area housing obligation' associated with the benefits is entered into no later than 6 months after the commencement of subsection (7) (paragraph (b)).

Amortised fringe benefits provided to employees, where the 'remote area housing obligation' is entered into after 6 months from the commencement of subsection (7), will not be the subject of the new concession. Such benefits, however, may continue to be spread over the contract, as at present, subject to the seven year maximum period.

Where an employer satisfies the requirements of proposed paragraphs (7)(a) and (b), paragraphs (7)(c) and (d) will apply to extend the maximum amortisation period to fifteen years.

New paragraph (7)(c) will operate so that in determining the length of the 'overall amortisation period', a term used in subsections 65CA(3) and (4) of the Principal Act, fifteen years instead of seven years is to be taken as the upper limit of the amortisation period. This is achieved by treating the reference in subparagraph 65CA(1)(d)(vii), which specifies the maximum period over which a fringe benefit may be amortised, to seven years as a reference to fifteen years.

For the purposes of determining the 'notional amortisation period' of an amortised fringe benefit provided by an employer, the reference in paragraph 65CA(2)(b) of the Principal Act to seven years is to be read as a reference to fifteen years (paragraph (7)(d)).

Clause 7 : Application of amendments

This clause, which will not amend the Principal Act, contains application provisions relating to the operation of various amendments contained in Part 3 of this Bill.

Subclause (1) provides that the amendment proposed to be made to section 65CA of the Principal Act applies to fringe benefits tax assessments for the transitional year and later years of tax. As such, the extended amortisation period made available by clause 6 of this Bill will apply from the date of commencement of the fringe benefits tax law, 1 July 1986.

The effect of subclause (2) is to ensure that the amendment made by clause 6 to section 65CA of the Principal Act do not apply to instalments of tax in respect to the transitional year of tax.

Clause 8 : Amendment of assessments

Clause 8 of the Bill authorises the Commissioner of Taxation to re-open a fringe benefits tax assessment made before the Bill becomes law should this be necessary for the purpose of giving effect to the amendment proposed by the Bill.

PART 4 - AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936

Clause 9 : Principal Act

This clause facilitates reference to the Income Tax Assessment Act 1936 which, in this Part, is referred to as the "Principal Act".

Clause 10 : Special depreciation on trading ships

This clause will amend section 57AM of the Principal Act, which sets out the special accelerated depreciation concession that is allowable for eligible Australian trading ships. The amendment will extend for a further 5 years, from 30 June 1992 to 30 June 1997, the effective termination date of the concession.

To be eligible for the concession a ship owned by a taxpayer must satisfy certain criteria as set out in subsection 57AM(4). These criteria operate with the general effect that the concession is restricted to ships that qualify for a grant provided under the Ships (Capital Grants) Act 1987 defined in subsection 57AM(1) as a "Grants Act ship". Further in respect of a Grants Act ship, under paragraph 57AM(4)(ba) the ship must be delivered to the taxpayer and registered under the Shipping Registration Act 1981 before 1 July 1992. The amendment proposed by clause 10 will omit the reference to 1992 to replace it with 1997.

Clause 11 : Gifts, pensions etc.

This clause will amend the provisions of the Principal Act that authorise income tax deductions for gifts to the value of $2 and upwards of money - or certain property other than money - made to the funds, authorities and institutions that are listed in the provisions.

The amendment proposed by clause 11 will insert three new subparagraphs in the Principal Act. First, subparagraph 78(1)(a)(ciii) will authorise deductions for gifts to the National Foundation for Australian Women Limited.

Secondly, subparagraph 78(1)(a)(civ) provides a deduction for gifts to Landcare Australia Limited. Finally, subparagraph 78(1)(a)(cv) authorises deductions for gifts to The Foundation for Development Cooperation Ltd.

By the operation of subclause 2 of clause 29, proposed subparagraph 78(1)(a)(ciii) will apply to gifts made on or after 5 February 1990 while, as a result of the operation of subclause 3 of clause 29, subparagraph 78(1)(a)(civ) will apply to gifts made on or after 1 April 1990. Subclause 4 of clause 29 provides that the application of subparagraph 78(1)(a)(cv) will apply to gifts made on or after 12 March 1990.

Clause 31 of the Bill will operate to allow a deduction for gifts made on or after 10 November 1989 and before 5 February 1990 to the unincorporated body that was known as the National Foundation for Australian Women as if they were gifts authorised by subparagraph 78(1)(a)(ciii).

Clause 12 : Interpretation

Section 159GZA of the Principal Act sets out definitions of terms used in the provisions of the Act that deal with thin capitalisation by non-residents. This clause will amend section 159GZA by deleting the definition of "Australian-owned non-resident company". This deletion is consequential upon thin capitalisation changes proposed by clause 13 and 14 - see notes below on those clauses.

Clause 13 : Repeal of section 159GZD

An "Australian-owned non-resident company" is defined in section 159GZA of the Principal Act to have the meaning given by section 159GZD.

The amendment proposed by clause 13 will repeal section 159GZD because the definition of "Australian-owned non-resident company" is no longer relevant as a consequence of the amendment to be made by clause 14 (see notes on that clause).

Clause 14 : Foreign controller

Clause 14 proposes to amend section 159GZE of the Principal Act, which defines the term "foreign controller". In broad terms, a "foreign controller" is a non-resident having at least 15% control of a resident company, a partnership, or a trust estate. The amendment will omit references in subsection 150GZE(1) to an "Australian-owned non-resident company" which currently operates to exclude such a company from the thin capitalisation controls. Following this amendment, an "Australian-owned non-resident company" may be a foreign controller.

Clause 15 : Insertion of new Division

Introductory Note

Clause 15 proposes to insert Division 16K into Part III of the Principal Act. The new Division will operate where a company buys back shares in itself from its

shareholders in a transaction commonly referred to as a "share buy-back". The Division provides for the tax consequences for both the shareholder and the company arising from a share buy-back transaction.

The Division distinguishes between buy-backs that occur during the ordinary course of business on an official stock exchange - "on-market purchases" - and other buy-backs - "off-market purchases".

Broadly, for the shareholder in an off-market purchase, so much of the amount of the purchase price that exceeds the paid up amount of the share and that part of the purchase price that is drawn from the company's share premium account will be treated as a dividend paid to the shareholder by the company. That part of the purchase price not treated as a dividend will, for general income tax and capital gains tax purposes, be treated as the consideration in respect of disposal of the share. However, in the case of an on-market purchase, no part of the purchase price in respect of the buy-back will be a dividend. The total amount received on the sale of the share by the shareholder will, for both general income tax and the capital gains tax purposes, be treated as the consideration in respect of the disposal of the share. For example, assume an individual shareholder owns a share with a paid up value of $1.00, and a market value of $2.50. Also assume that the share is bought-back by the company at its market value. If the buy-back was an off-market purchase then the difference ($1.50) between the purchase price ($2.50) and the paid up value ($1.00) will be a dividend. That part of the purchase price not treated as a dividend - the paid up value ($1.00) - will be the consideration on the disposal of the share. If the share had a reduced cost base of, say, $2.00 a capital loss of $1.00 would arise. Conversely, if the buy back had been an on-market purchase the total purchase price ($2.50) will be the consideration on disposal. If the share had an indexed cost base of, say, $2.00 a capital gain of $0.50 would arise and no amount of the purchase price would be treated as a dividend.

In the case of the company buying-back its own shares the new Division provides for a tax neutral position and the buy-back transaction is taken not to have occurred. Accordingly, no amount will be included in assessable income or allowed as a deduction, nor will any capital gain or capital loss arise in respect of any buy-back, on-market or off-market, to the purchasing company. Division 16K will apply to buy backs of shares that occur on or after 1 November 1989. However, a specific amendment is proposed to the imputation provisions in relation to the purchasing company and buy-backs that are on-market purchases (see notes on clause 17). Broadly, a franking debit will arise in the franking account of the purchasing company equal to the amount of the purchase price that would be treated as a dividend paid to the shareholder if the on-market purchase had been an off-market purchase.

Divison 16K comprises new sections 159GZZZJ to 159GZZZT and notes on the sections are set out below.

Division 16K - Effect of Buy-backs of shares

Subdivision A - Interpretation

Section 159GZZZJ : Interpretation

Section 159GZZZJ defines the following terms and phrases used in new Division 16K :

"buy-back" will have the meaning given to it by paragraph 150GZZZK(a) of this subdivision. A buy-back occurs when a company buys a share in itself from a shareholder in the company. The definition covers transactions that will occur as a result of a number of recent amendments to the Companies Act 1981 that permit both proprietary and public companies to buy-back shares in themselves.

"off-market purchase" has the meaning given to it by paragraph 159GZZZK(d). Simply, any buy-back (see earlier notes) that is not an on-market purchase (see later notes) is an off-market purchase. An off-market purchase will occur where a shareholder sells shares held in a company directly to that company rather than in the ordinary course of trading on a stock exchange.

"on-market purchase" has the meaning given to it by paragraph 159GZZZK(c). Where a company buys-back a share from a shareholder and-

- the shares are listed on any stock exchange including those outside Australia; and
- the buy-back is made in the ordinary course of trading of the stock exchange then the buy-back is an on-market purchase.

"purchase price" has the meaning given to it by section 159GZZZM. The purchase price of a share is the amount of money received by the seller, or the market value, at the time of the buy-back of any property received by the seller in respect of the buy-back. Where the seller receives both property and money in respect of a buy-back, the purchase price will be the sum of the money and the market value of the property.

"seller" has the meaning given to it by paragraph 159GZZZK(b). The seller is the shareholder in a buy-back transaction.

Section 159GZZZK : Explanation of Terms

This section describes the type of transaction that is covered by new Division 16K. Where a company buys a share in itself from one of its shareholders then, for the purposes of Division 16K-

- the purchase of that share is a buy-back (paragraph (a));
- the shareholder is the seller (paragraph (b));
- the buy-back is an on-market purchase if the share is listed on any stock exchange in Australia or in an overseas jurisdiction, (subparagraph (c)(i)) and is made in the ordinary course of trading on that stock exchange (subparagraph (c)(ii));
- if the buy-back is not an on-market purchase, then it is an off-market purchase (paragraph (d)).

Section 159GZZZL : Special buy-backs not made in ordinary course of trading on a stock exchange

This section proposes to limit the meaning of the phrase "ordinary course of trading on that stock exchange", a term used in subparagraph (c)(ii) of new section 159GZZZK. Under section 159GZZZL a buy-back will not be made in the ordinary course of trading of a stock exchange where the transaction is described under the stock exchange's rules as "special". The inclusion of this section ensures that the meaning of "on-market purchase" used in this Division mirrors the meaning of that term as used in section 133BD of the Companies Act 1981. Broadly, a "special" or "special crossing" means a share transaction for which the price has been mutually agreed upon between the parties and includes where either a broker acts on behalf of both parties or where a broker acts as a principal on one side of the transaction.

Section 159GZZZM : Purchase price in respect of buy-back

Section 159GZZZM explains what the term "purchase price" means in respect of a buy-back of a share. The purchase price is relevant in the calculation of the amount taken to be a dividend in an off-market purchase (see notes on section 159GZZZP below) and the amount taken to be the consideration on disposal of the shares in a buy-back (see notes on sections 159GZZZQ and 159GZZZR below).

Purchase price means -

- the amount of money or the sum of the amounts of money a seller receives or is entitled to receive as a result of or in respect of a buy-back (paragraph (a)); or

- the market value at the time of the buy-back of any property (other than money) a seller receives or is entitled to receive as a result of or in respect of a buy-back (paragraph (b)); or

- if the seller has received or is entitled to receive both an amount of money or amounts of money and property other than money as a result of or in respect of the buy-back - the sum of that amount or those amounts of money and the market value of the property at the time of the buy-back (paragraph (c)).

Subdivision B - Company Buying-back Shares

Section 159GZZZN : Buy-back and cancellation to be disregarded for certain purposes

Section 159GZZZN will ensure that for a company there will be no income tax or capital gain tax consequences when it buys-back its own shares and any subsequent cancellation of those shares. Therefore in determining whether in consequence of a share buy-back by a company:

- an amount is to be included in the assessable income of the company under any provision of the Principal Act (other than the capital gains tax provisions) (subparagraph (a)(i)) or an amount is allowable as a deduction to the company (subparagraph (a)(ii)); or

- a capital gain (subparagraph (b)(i)) or a capital loss (subparagraph (b)(ii)) arises to the company under Part IIIA of the Principal Act;

the company is to be treated as if the share buy-back had never occurred. This will ensure that, for example, a capital loss will not be incurred by the company on the cancellation of bought-back shares equal to the purchase price paid to the shareholder by the company. The section also ensures that related expenditure incurred in respect of the buy-back will not be allowed as a deduction.

Subdivision C - Off-market Purchases

Section 159GZZZP : Part of off-market purchase price is a dividend

In broad terms section 159GZZZP will provide that, to the extent that an off-market purchase is funded from a

company's distributable profits, the purchase price will be treated as a dividend paid by the company to the shareholder.

Under subsection 159GZZZP(1) the amount that is taken to be a dividend paid by the company, where the company makes an off-market purchase, is an amount that equals the purchase price less the sum of:

- the paid up amount of the share immediately before the buy-back (paragraph (a)); and
- any part of the purchase price in respect of the buy-back which is drawn against the share premium account of the company (paragraph (b)). It should be noted that the term "share premium account" is specifically defined in subsection 6(1) of the Principal Act. Broadly, that definition provides that a share premium account in relation to a company is an account, whether or not called a share premium account, to which the company has credited share premiums not exceeding the amount of share premiums received by it.

The dividend is taken to have been paid to the seller, as a shareholder in the company (paragraph (c)), out of profits derived by the company (paragraph (d)). These provisions ensure that the amount taken to be a dividend will be included in the assessable income of the shareholder under subsection 44(1) of the Principal Act. The dividend is taken to be paid by the company on the day the buy-back occurs (paragraph (e)) and accordingly assessable in the tax year the buy-back occurs.

Under Subsection 159GZZZP(2) that part of the purchase price that is not a dividend under subsection 159GZZZP(1) is taken not to be a dividend for the purposes of the Principal Act.

Section 159GZZZQ : Consideration in respect of off-market purchase

For off-market purchases, section 159GZZZP will operate to limit the amount taken to be the consideration on the sale of the shares by the shareholder to that part of the purchase price that is not taken to be a dividend. This will apply for both income tax and capital gains tax purposes. In the case of an off-market purchase in determining whether:

- an amount is to be included in the assessable income of the seller under any provision of the Principal Act (other than the capital gains tax

provisions) (subparagraph (a)(i)) or an amount is allowable as a deduction to the seller (subparagraph (a)(ii)); or

- a capital gain (subparagraph (b)(i)) or a capital loss (subparagraph (b)(ii)) arises to the seller under Part IIIA of the Principal Act in respect of the buy-back;

the seller is taken to have received or to be entitled to receive on disposal of the share the amount of the purchase price that is not a dividend. This is the amount referred to in subsection 159GZZZP(2).

For example, an individual shareholder owns a share with a paid up amount of $1.00 and a market value of $2.50. The company buys-back the share at market value and the buy-back is an off-market purchase. If the purchase price is drawn entirely out of distributable profits then the amount not treated as a dividend, that is the paid up amount of $1.00, is taken to be the consideration received on disposal of the share by the seller.

Subdivision D - On-market Purchases

Section 159GZZZR : No part of on-market price is a dividend

For the purposes of the Principal Act, section 159GZZZR provides that no part of the amount of the purchase price of a share in an on-market purchase is taken to be a dividend.

Section 159GZZZS : Consideration in respect of on-market purchase

This section follows on from section 159GZZZR and ensures that for the purposes of both the income tax and capital gains tax provisions the total amount of the purchase price of a share in an on-market purchase will be taken to be the consideration received by the seller on the sale of the shares. Section 159GZZZS applies in the case of an on-market purchase and in determining whether:

- an amount is to be included in the assessable income of the seller under any provision of the Principal Act (other than the capital gains tax provisions) (subparagraph (a)(i)) or an amount is allowable as a deduction to the seller (subparagraph (a)(ii)); or
- a capital gain (subparagraph (b)(i)) or a capital loss (subparagraph (b)(ii)) arises to the seller under Part IIIA of the Principal Act in respect of the buy-back;

the seller is taken to have received or to be entitled to receive on disposal of the shares the whole amount of the purchase price.

Subdivision E - Miscellaneous

Section 159GZZZT : Certain provisions of this Division to be treated as provisions of Part IIIA

Sections 159GZZZN, 159GZZZQ and 159GZZZS are linked to Part IIIA, the capital gains tax provisions by section 159GZZZT. These sections are to be regarded as being part of those provisions.

Clause 16 : Interpretation

Subclause 16(1) will amend section 160APA of the Principal Act which contains the definitions that apply for the purposes of Part IIIAA of the Principal Act, the imputation system. The amendment made by paragraph (a) of subclause 16(1) is needed because of the addition of a new paragraph to the definition of "frankable dividend". The amendment inserts 'or' at the end of paragraph (b) of that definition. Paragraph 16(1)(b) proposes the addition of paragraph (ba) to the definition of frankable dividend. The term frankable dividends defines the dividends that are able to be franked with imputation credits.

Under proposed paragraph (ba) an amount taken to be a dividend under subsection 159GZZZP(1) will be a frankable dividend. Subsection 159GZZZP(1) is part of new Division 16K (see notes on clause 15) which deals with company share buy-backs. Broadly, where a company buys-back a share in itself other than in the ordinary course of trading on a stock exchange - termed an "off market purchase" - then so much of the price paid by the company to the shareholder for the share that exceeds the sum of the paid up amount of the share and that part of the purchase price drawn from the company's share premium account is taken to be a dividend. The inclusion of paragraph (ba) in the definition of frankable dividend ensures that the subsection 159GZZZP(1) dividend is able to be franked with imputation credits.

The amendment made by paragraph (c) of subclause 16(1) is consequential to the inclusion of new paragraph (ba) in the definition of frankable dividend. The amendment replaces the word 'either' in that definition with 'any'.

Paragraph (d) of subclause 16(1) inserts the following new definitions into section 160APA of the Principal Act -

'buy-back' is defined to have the same meaning as in Division 16K of Part III which was explained in clause 15.

'<u>off-market purchase</u>' is also defined to have the same meaning as in Division 16K of Part III which was explained in clause 15.

'<u>on-market purchase</u>' is also defined to having the same meaning as in Division 16K of Part III which was explained in clause 15.

Subclause 16(2) corrects a punctuation error in the definition of "unitholder" contained in section 160APA.

Clause 17 : On-market share buy-back arrangements

Clause 17 will insert new section 160AQCC in Division 2 of Part IIIAA of the Principal Act. This section will be the operative provision under which franking debits for the purposes of Part IIIAA of the Principal Act will arise in certain situations where a company buys-back shares in itself on-market, that is, on the stock exchange.

Subdivision C of Division 2 of Part IIIAA sets out the various circumstances under which franking debits arise such as where a company underfranks a dividend, pays a franked dividend or specific reductions are made to its tax liability. The new section 160AQCC will ensure franking debits will arise when a company makes an on-market purchase of its shares.

Effectively, the new section 160AQCC will only apply from the day on which companies incorporated in Australia and listed on a stock exchange will be permitted to make on market purchases (see notes on clause 15).

Subsection 160AQCC(1) proposes that a company will incur a franking debit of an amount calculated under proposed subsection 160AQCC(2) on the day the company buys-back shares in itself, where that buy-back is an on-market purchase.

The calculation of the amount in subsection 160AQCC(2) requires two steps. The first step is to calculate what the amount of the dividend on a particular day would be if the on-market purchase had been an off-market purchase. New section 159GZZZR (see notes on clause 15) provides that where a buy-back of shares by a company is an on-market purchase then no part of the purchase price paid to the shareholder is taken to be a dividend. In contrast new section 159GZZZP (see notes on clause 15) provides that where a buy-back of shares by a company is an off-market purchase, that is, broadly, other than on the stock exchange, then a specified amount as calculated under the section is taken to be a dividend. Therefore, if the on-market purchase had been an off-market purchase the amount taken to be a dividend under section 159GZZZP would be the purchase price paid to the shareholder for the share less the sum of:

- the paid up amount of the share immediately prior to the buy-back; and
- that part of the purchase price which is debited against amounts standing to the credit of the share premium account.

The amount is only notional and is only relevant in calculating the franking debit for purposes of new section 160AQCC. That is, under new section 150GZZZR the amount that is the purchase price paid to a shareholder in an on-market purchase will not be a dividend. It follows that the amount cannot be franked notwithstanding that a franking debit arises in relation to that on-market purchase.

The second step is to calculate what the required franking amount would be under section 160AQE of the Principal Act for this "notional dividend". This calculation must also take into account any notional dividends that arise because of other on-market purchases made that day.

Broadly, the required franking amount rules in section 160AQE determine the minimum extent to which dividends are required to be franked. The basic rule requires a dividend to be franked to the extent permitted by the company's franking surplus at the date of payment of the dividend.

This basic rule is subject to two further rules which apply where a company, at the date of payment of a dividend, is to pay a further dividend on that day, or has an obligation to pay a frankable dividend at a later time in the year - a committed future dividend. In these cases, unless a company's franking surplus is sufficient to fully frank all of the relevant dividends, the company will be required to pro-rate its franking surplus over all of the dividends being paid on that day and committed future dividends.

The required franking amount for the notional dividend as calculated under section 160AQE will be the franking debit for the purposes of new section 160AQCC.

Clause 18 : Ascertainment of required franking amount

Clause 18 proposes the insertion of subsection 160AQE(5) into the Principal Act. Section 160AQE contains the required franking amount rules that determine the minimum extent to which dividends are required to be franked.

Subsection 160AQE(5) will require that when calculating a provisional required franking amount under subsection 160AQE(2), (3) or (4) a buy-back of shares by a company that is an on-market purchase will be taken to be an off-market purchase. The effect of treating an on-market purchase as an off-market purchase is explained in the notes

on clause 15 explaining new subsection 160AQCC. Broadly, under new section 160AQCC a notional dividend is calculated as if paid to a shareholder that is then used in calculating a franking debit. In the same way under subsection 160AQE(5) a notional dividend will be required to be calculated as set out in clause 15. It will then be necessary to have regard to this notional dividend when calculating any provisional required franking amount for any frankable dividend. This is because the notional dividend gives rise to a franking debit under new section 160AQCC. For example where an on-market purchase is made on a particular day and because of the requirements of subsection 160AQE(5) a notional dividend is calculated then in the calculation of the provisional required franking amount of an actual frankable dividend paid on the same day the notional dividend would have to be taken into account.

Clause 19 : Persons receiving certain pensions etc. - investments

Section 202EB of the Principal Act exempts recipients of a pension or benefit specified in subsection 202EB(5) from the tax file number (TFN) quotation arrangements of Division 4 of Part VA of the Principal Act in relation to certain investments.

By subsection (1), a person in receipt of any of the pensions or benefits specified in subsection (5) is to be taken to have quoted his or her TFN in relation to an investment of a kind mentioned in the table in subsection 202D(1) if he or she gives a written declaration under subsection (2) to the investment body.

Under subsection (2), a person to whom section 202EB applies may make a written declaration in a form approved by the Commissioner of Taxation, containing the information as set out in the subsection.

Clause 19 will amend section 202EB to allow the Commissioner to approve the manner in which that information is to be provided. This approach is consistent with existing section 202DC. The Commissioner will thus be able, for example, to approve the giving of information in other than written form by people in receipt of the specified pensions or benefits.

Subclause 19(a) will amend subsection 202EB(1) of the Principal Act so that a recipient of a specified pension or benefit will be taken to have quoted his or her TFN in relation to certain investments where the person gives the investment body the following information:

- the person's full name (paragraph (a));
- the nature of the pension, benefit or allowance paid to the person (paragraph (b));

in a manner approved by the Commissioner.

Subclause 19(b) will omit subsection 202EB(2) of the Principal Act.

Clause 20 : Entities not required to lodge income tax returns

Section 202EC of the Principal Act applies in respect of a body corporate and/or an unincorporated association that is not required to lodge an income tax return in respect of a year of income and does not have a tax file number (TFN). Such a body is to be taken to have quoted a TFN in relation to certain investments with investment bodies for the purposes of Division 4 of Part VA, where a written declaration is completed by an eligible representative of the entity and given to the investment body.

Subsection 202EC(2) specifies the information to be included in the written declaration that must be in a form approved by the Commissioner of Taxation.

Clause 20 will amend subsection 202EC(1) to allow the Commissioner to approve the manner in which the necessary information is to be provided. This approach is consistent with existing section 202DC. The Commissioner will thus be able, for example, to approve the giving of information in other than written form by entities not required to lodge income tax returns.

Subclause 20(a) will amend subsection 202EC(1) of the Principal Act so that an entity that is not required to lodge an income tax return in respect of a year of income and does not have a TFN, will be taken to have quoted a TFN in relation to certain investments where the eligible representative of the entity gives the investment body the following information:

- the name and address of the entity (paragraph (c));
- the reason why the entity does not have to lodge an income tax return in respect of the year of income (paragraph (d));

in a manner approved by the Commissioner.

Subclause 20(b) will omit subsection 202EC(2) of the Principal Act.

Subclause 20(c) will amend subsection 202EC(4) to remove the reference to a declaration under subsection (2) and to replace it with a reference to information which has been given to an investment body under subsection (1) as amended.

Clause 21 : Liability to make payments under the Division

Clause 21 proposes an amendment of a drafting nature to omit the words "income tax" from section 221AO of the Principal Act. As a result, section 221AO will state more clearly the objects of Division 1B of Part VI which deals with the collection of tax on com panies and treaties of certain trusts.

Clause 22 : Notification of instalments of provisional tax

Section 221YDAA of the Principal Act sets out, among other things, the requirements of the law concerning the notification of instalments of provisional tax. Subsection 221YDAA(4) specifies two sets of circumstances in which taxpayers are not liable to pay instalments of provisional tax.

By paragraph 221YDAA(4)(b), a taxpayer is not required to pay provisional tax instalments in respect of a year of income where his or her "previous year's provisional tax amount" is $5,000 or less at the date on which the first instalment notice for the year would have otherwise have issued.

The term "previous year's provisional tax amount" is defined in subsection 221YA(1) of the Principal Act in relation to a particular date in relation to a year of income to mean, broadly, the provisional tax liability of the taxpayer at that date in relation to the preceding year of income.

Under the amendment to be made by this clause, the $5,000 threshold is to be increased to $8,000. This will mean that a taxpayer whose provisional tax liability in respect of the preceding year (i.e., the "previous year's provisional tax amount") is $8,000 or less, as at the date on which the first instalment notice for the current year of income would have issued, will not be liable to pay provisional tax by instalments in relation to income of the current year. Such taxpayers will be subject to provisional tax on a single payment basis.

This amendment will apply for the charging of provisional tax instalments for the 1989-90 and subsequent years of income (see later notes on subclause 29(9) of the Bill).

Clause 23 : Provisional tax to be credited against other tax

By this clause, section 221YE of the Principal Act is to be amended to preclude the application of any excess provisional tax credit in respect of a year of income to provisional tax instalments of the succeeding year not yet due for payment.

Broadly, existing section 221YE of the Principal Act requires the Commissioner of Taxation, on making an assessment, or in determining that no income tax is payable for a year of income, to apply provisional tax paid by the taxpayer in respect of that year in payment successively of -

(a) any income tax liability for the year (paragraph (a));

(b) any provisional tax liability notified to the taxpayer in respect of the succeeding income year (paragraph (b)); and

(c) any other income tax or withholding tax liability of the taxpayer (paragraph (c)).

The Commissioner is required to refund to the taxpayer any amount of provisional tax not so credited.

Paragraphs (a) and (b) of clause 23 will amend section 221YE to ensure that the section will apply to all taxpayers who have paid provisional tax in respect of income of a particular year of income, whether that provisional tax was paid by way of instalments or under the single payment (lump sum) system.

These amendments are drafting adjustments consequent on the repeal of subsection 221YE(2) of the Principal Act by the Income Tax (Arrangements with the States) Repeal Act 1989 (No.73 of 1989). By the repeal, section 221YE ceased to apply in respect of an instalment of provisional tax.

The amendments made by paragraphs 23(a) and (b) will restore the operation of section 221YE in respect of an instalment of provisional tax.

By clause 32 of the Bill, section 221YE is to be taken to have had this effect from the date of Royal Assent of the Income Tax (Arrangements with the States) Repeal Act 1989 until the commencement of this Bill.

Paragraph 23(c) will omit paragraph (b) of section 221YE of the Principal Act and substitute a new paragraph (b) to ensure that excess provisional tax credit remaining after the payment of the income tax liability in respect of income of a year of income will next be credited in payment of provisional tax (but not an instalment of provisional tax) notified to the taxpayer (subparagraph (b)(i)), or in payment of any instalment of provisional tax due and payable by the taxpayer (subparagraph (b)(ii)), in respect of income of the following year of income. As a result, excess provisional tax credit in respect of a year of income will not be offset against any instalment of provisional tax in respect of income of the subsequent year which is not due for payment as at the date on which the assessment of income tax of the first-mentioned year is made.

By subclause 2(3) of the Bill, clause 23 is taken to have commenced on 4 December 1989. This is the day on which provisional tax credit arising from an assessment of provisional tax commenced to be applied as provided for by paragraph 23(c).

Clause 24 : Interpretation

Section 267 of the Principal Act sets out the meanings of terms used in Part IX - Taxation of superannuation business and related business. Clause 24 inserts four new definitions of terms which are to be used in Part IX.

'actuary's certificate' and 'certificate date' relate to a certificate given by an actuary for the purposes of Part IX. For example, a certificate required by the amendments to paragraph 273A(b) being made by clause 25 of this Bill, must be in the form approved in writing by the Commissioner of Taxation and obtained by the trustee of the complying superannuation fund before the date the return of income of the fund to which the certificate relates is lodged, or such later date as the Commissioner allows.

'endowment policy' is a term used in connection with amendments proposed to section 279 of the Principal Act (see notes on clause 27). It is defined to be an insurance policy :

- which is not a whole of life policy (also a defined term being inserted by this clause - see later notes) (paragraph (a));
- which includes an investment component (paragraph (b));
- where the premium is not divided by reference to particular parts of the policy (paragraph (c)). This requirement ensures that a policy which has separately identified riders, supplementary benefits or other components, does not fall within this definition; and
- where the sum insured, together with any bonuses, is payable on the earlier of the death of the life insured or the date specified in, or ascertained in accordance with the policy (paragraph (d)).

'whole of life policy' is a policy for whole of life insurance. It is a term also used in connection with amendments of section 279 of the Principal Act (see notes on clause 27) and means an insurance policy :

- which includes an investment component (paragraph (a));
- where the premium is not divided into the investment component or otherwise (paragraph (b)). As with the definition of endowment policy, this ensures that a policy which has separately identified components does not fall within this definition; and
- where the sum insured, together with any bonuses, is payable on the death of the life insured or the earlier of the death of the life insured or the person reaching a specified age, being 85 or more years of age (paragraph (c)).

Clause 25 : Segregated current pension assets

Section 282B of the Principal Act provides an exemption from tax for any amount of the normal assessable income of a complying superannuation fund that is derived from assets which, at the time the income is derived, are segregated current pension assets. 'Segregated current pension assets' are defined in section 273A.

Under the existing law, paragraph 273A(a) requires that the assets are invested, held in reserve or otherwise dealt with exclusively for the purpose of enabling the fund to satisfy its liability to discharge all or some of its current pension liabilities as they fall due. In addition, by paragraph (b), the fund must provide with its annual return of income an actuarial certificate in the approved form to the effect that the segregated assets, if accumulated at the earning rate on those assets achieved during the preceding year of income, would provide an amount which would allow the fund to meet part or all of its current pension liabilities when they fall due.

Clause 25 will amend paragraph 273A(a), omit paragraph (b) and insert a replacement paragraph (b).

New paragraph 273A(b) will require the actuary to certify that the segregated current pension assets are sufficient, having regard to the expected earnings on those assets (rather than the preceding year's earning rate as at present) to allow the fund to meet its current pension liabilities as they fall due.

The trustee must obtain the actuary's certificate before the certificate date. The terms "actuary's certificate" and "certificate date" are being inserted by clause 24 (see notes on that clause). Although the trustee of the complying superannuation fund must obtain the certificate before the appropriate date, there is now no requirement for it to be provided with the fund's return of income.

Clause 26 : Segregated non-current pension assets

Section 273B of the Principal Act complements section 273A and applies to assets that are specifically set aside, invested, etc., to meet all or a specified part of the fund's non-current pension liabilities (as defined in section 267).

Similarly to the amendment proposed by clause 25 of this Bill to section 273A, clause 26 will amend section 273B. The actuary will be required to certify that the assets in question, together with any future contributions, are sufficient, if accumulated at the expected earning rate on those assets (rather than the earning rate on those assets during the preceding year of income as at present), to provide the amount needed for the fund to meet the non-current pension liabilities, or the specified part of them, as they fall due.

As with the amendments to section 273A, the trustee must obtain the actuary's certificate before the certificate date. However, there is now no requirement for it to be provided with the fund's return of income.

Clause 27 : Deduction for premiums for death or disability cover

Section 279 of the Principal Act allows for two bases of deduction for the cost to a complying superannuation fund of providing death and disability cover in respect of its members. Under subsection 279(1), the trustee of a complying superannuation fund is entitled to a deduction for premiums paid on an insurance policy that is, in whole or in part, to provide cover for current or contingent liabilities to provide death or disability benefits for members of the fund to the extent that the premiums are attributable to those liabilities.

Where a complying superannuation fund carries, in whole or in part, the risk for the provision of death or disability benefits - that is, the liability to provide those benefits is not insured against - subsection 279(2) allows the fund to receive a tax deduction for an amount equal to the lowest arm's length premium that could be expected to be paid for the year on an insurance policy to cover so much of the risk as is not insured outside the fund.

Subsection 273(3) requires an actuary to certify in the approved form the amount claimed as a deduction under subsection 279(2) or the amount claimed as a deduction under subsection 279(1) where the premium paid for the insurance policy is only partly in respect of the fund's liability to provide death or disability cover, i.e., where the remainder of the premium is used to fund the investment or endowment aspects of the relevant insurance policy.

Clause 27 proposes several amendments of section 279 of the Principal Act.

Paragraph (a) of the clause will omit subsection (1) and insert new <u>subsections 279(1) and (1A)</u>.

New subsection 279(1) sets out the deduction available to a complying superannuation fund for the cost of providing death and disability cover for members, where the fund pays a premium for an insurance policy that is wholly or partly to provide such cover.

Where the premium relates to a whole of life policy (to be defined in section 267 - see notes on clause 24) and, under the policy, the fund insures only the lives of its members, the fund is entitled to a deduction equal to 30% of the premium paid (<u>paragraph (a)</u>). A further amendment proposed by paragraph (c) of this clause means that the superannuation fund no longer needs to obtain a certiciate by an actuary in order to be eligible for a deduction in respect of a premium paid on a whole of life policy.

Where the premium relates to an endowment policy (also defined in section 267 - see notes on clause 24) and, under the policy, the fund insures only the lives of its members, the fund is entitled to a deduction equal to 10% of the premium paid (<u>paragraph (b)</u>). As with the amendment in relation to the whole of life policy, there is no need for an actuarial certificate to be obtained in respect of an endowment policy.

Where the whole or part of the premium referable to death or disability cover is specifically identified in the policy (e.g. an unbundled policy) the fund is entitled to a deduction equal to the amount identified (<u>paragraph (c)</u>) also without need for an actuary's certificate.

<u>Paragraph (d)</u> allows a deduction in any other case equal to the portion of the premium paid as is attributable to death or disability cover. This needs to be evidenced by an actuary's certificate as required by proposed new subsection 279(3) (see later notes).

Proposed <u>subsection 279(1A)</u> applies where :

- an insurance policy is neither a whole of life policy nor an endowment policy, but a distinct part of the policy would, if it were a separate policy, be a whole of life policy or an endowment policy; and

- part of the premium relates specifically to that part of the policy.

In these circumstances, subsection 279(1A) provides for the purposes of subsection 279(1), that the part of the policy and the premium in respect of that part of the

policy, is taken to be a separate whole of life policy or a separate endowment policy and a separate premium.

As referred to in the notes on Clause 24, the terms 'whole of life policy' and 'endowment policy' do not include a policy which has separately identified riders, supplementary benefits or other components. Accordingly, proposed subsection 279(1A) means that, in determining the amount allowable as a deduction for death or disability cover, an actuary's certificate will not be required if the policy, for example, separately identifies a whole of life portion and a disability rider. In this case the whole of life part of the policy would be covered by paragraph 279(1)(a) and the disability rider covered by paragraph 279(1)(c).

Paragraph (b) of clause 27 proposes to amend subsection 279(2) which allows a deduction to a complying superannuation fund that carries the risk for the provision of death or disability benefits. The effect of the amendment is to allow as a deduction an amount equal to the arm's length premium as is reasonable in the circumstances (rather than the lowest arm's length premium as at present) that could be expected to be paid for an insurance policy to cover the risk not insured outside the fund. This amendment will reduce the burden on the actuary who is effectively required under the existing legislation to conduct a survey of all insurers in order to determine what the lowest "arm's length premium" would be.

Paragraph (c) of clause 27 will omit subsection 279(3) and insert a new <u>subsection 279(3)</u>.

For a deduction to be allowed under paragraph 279(1)(d) or subsection 279(2), it will be necessary for the trustee of the complying superannuation fund to obtain an actuary's certificate before the certificate date. The terms "actuary's certificate" and "certificate date" are being inserted by clause 24 (see notes on that clause). Although the trustee of the complying superannuation fund must obtain the certificate before the appropriate date, there is now no requirement for it to be provided with the fund's return of income.

<u>Clause 28 : Exemption of proportion of income attributable to current pension liabilities</u>

Section 283 of the Principal Act applies to exempt a proportion of the normal assessable income (as defined in section 267) of a complying superannuation fund which includes assessable income other than the following :

- income which is exempt from tax under the segregated current pension assets provisions of section 282B; and

- income which is derived from assets which, when the income was derived, were segregated non-current pension assets of the fund (section 273B).

The exempt proportion is calculated under subsection 283(2) as the ratio of "unsegregated current pension liabilities" to total "unsegregated superannuation liabilities" of the fund. Subsection 283(3) of the Principal Act sets out the basis for ascertaining the value of particular liabilities of a fund for the purposes of the formula in subsection (2).

Under the existing provisions, the value is determined by reference to the earning rate of assets (other than segregated assets) during the preceding year of income. The valuation is required to be made in accordance with an actuary's certificate, in the approved form, which must accompany the fund's return of income.

Paragraphs (a), (b) and (c) of clause 28 propose amendments to subsection 283(3) that are similar to the amendments proposed by clauses 25 and 26. It is proposed that the valuation be determined at the rate the actuary expects will be the earning rate on assets (other than segregated assets) rather than the rate during the preceding year of income as at present. Further, the valuation is to be made in accordance with an actuary's certificate, which must be obtained by the trustee of the fund before the certificate date, rather than accompanying the fund's return of income. The terms "actuary's certificate" and "certificate date" are being inserted by clause 24 (see notes on that clause).

Given that it may not be feasible for a fund to have its total superannuation liabilities revalued by an actuary every year, existing subsection 283(4) of the Principal Act provides a basis for an interim valuation of those total liabilities in years between actuarial valuations, but only where the fund has no segregated assets.

Paragraphs (d) and (e) of clause 28 will make changes to subsection 283(4) reflecting the fact that actuary's certificates will now only need to be obtained and not provided with a fund's return of income.

Clause 29 : Application of amendments - general

This clause, which will not amend the Principal Act, contains application provisions relevant to certain of the amendments to be made by the Bill.

By subclause 29(1) the Income Tax Assessment Act 1936 as amended by this Bill is in clause 29 referred to as the "amended Act".

By the operation of subclause (2), proposed subparagraph 78(1)(a)(ciii) will authorise deductions for gifts to the National Foundation for Australian Women Limited made on or after 5 February 1990.

Gifts to Landcare Australia Limited, subject to proposed subparagraph 78(1)(a)(civ), will, by the operation of subclause (3) of clause 29, be allowable when made on or after 1 April 1990.

The application of proposed subparagraph 78(1)(a)(cv), that will authorise a deduction for gifts to The Foundation for Development Cooperation Ltd will, by virtue of subclause (4), apply to gifts made on or after 12 March 1990.

Subclause (5) provides that the amendments proposed by clause 14 to the thin capitalisation rules will apply to assessments for the year of income commencing on 1 July 1990 and all subsequent years of income.

By subclause (6) Division 16K of Part III, the provisions that deal with share buy-backs inserted by clause 15 will apply to all share buy backs on or after 1 November 1989.

By subclause (7) the amendments made to the imputation provisions proposed by clause 17 will not apply to on-market purchases of shares made before the earliest day on which a company incorporated under the Companies Act 1981 and listed on an Australian stock exchange is permitted to buy shares in itself in the ordinary course of trading of that stock exchange.

Under subclause (8) expressions used in subclause (7) of clause 29 (see notes above) shall have the same meaning as in Division 16K of Part III of the Pricipal Act (see notes on clause 15).

Subclause 29(9) specifies that the amendment made by clause 22 of the Bill to the threshold for the payment of provisional tax by instalments (paragraph 221YDAA(4)(b) of the Principal Act) applies to instalments of provisional tax in respect of income of the year of income commencing on 1 July 1989 and of all subsequent years of income.

Clause 30 : Application of amendments - superannuation

This clause, which will not amend the Principal Act, contains application provisions relating to the operation of certain measures contained in the Bill.

Subclause (1) of clause 30 provides that the amendments made by this Bill to Part IX - Taxation of superannuation business and related business - of the Principal Act apply to assessments in respect of the income year in which 1 July 1988 occurred and later years.

However, by subclause (2) of clause 30, if a trustee has lodged an income tax return for a year of income before the commencement of the subsection and the trustee of the fund has not made an election in accordance with subclause (3) in respect of the income year, then the amendments made by this Bill to Part IX of the Principal Act will not apply.

By subclause (3), the election must be made by notice in writing to the Commissioner and be lodged with the Commissioner within 2 months after the subsection commences or within such further time as the Commissioner allows.

Clause 31 : Transitional - National Foundation for Australian Women

Clause 31, which will not amend the Principal Act, provides a transitional provision in relation to one of the amendments to be effected by clause 11.

Clause 11 proposes an amendment to section 78 of the Principal Act to authorise deductions for gifts of the value of $2 or more made to three organisations. One of the organisations is the National Foundation for Australian Women Limited which was incorporated on 5 February 1990.

Clause 31 will allow a deduction for gifts made on or after 10 November 1989 and before 5 February 1990 to the unincorporated body that was known as the National Foundation for Australian Women.

Subclause (1) of clause 31 defines, for the purposes of the section, the term "amended Act" as meaning the Principal Act as amended by this Act.

Subclause (2) has the effect that gifts made to the unincorporated body that was known as the National Foundation for Australian Women on or after 10 November 1989 and before 5 February 1990 are subject to the application of subparagraph 78(1)(a)(ciii) (to be inserted by clause 11 of this Bill). Without this provision, subparagraph 78(1)(a)(ciii) would apply to gifts made on or after 5 February 1990 to the National Foundation for Australian Women Limited.

Clause 32 : Transitional - section 221YE of the Principal Act

This clause is relevant to the amendment to section 221YE of the Principal Act by clause 23 and overcomes an unintended consequence of the removal of subsection 221YE(2) of the Principal Act by the Income Tax (Arrangements with the States) Repeal Act 1989 (Act No.73 of 1989) with effect from 21 June 1989.

Clause 33 : Transitional - superannuation

Clause 33, which will not amend the Principal Act, provides a transitional provision as a consequence of the amendments to be effected to Part IX of the Principal Act.

Subclause (1) of clause 33 defines, for the purpose of the section, the term "amended Act" as meaning the Principal Act as amended by this Act.

Subclause (2) will apply to an approval of a form given for the purposes of a provision of Part IX of the Principal Act, before the amendments proposed by this Bill. By this subclause, such an approval is taken to have effect as if it had been given for the purposes of the corresponding provision of the amended Act.

Subclause (3) means that the amendments made by the Bill to Part IX of the Principal Act have effect for the purposes of section 14 of the Taxation Laws Amendment Act (No.2) 1989 as if they had been made by the Taxation Laws Amendment (Superannuation) Act 1989.

The main function of section 14 of the Taxation Laws Amendment Act (No.2) 1989 is to ensure that Part IX and now the amendments made by this Bill, apply only from 1 July 1988 in circumstances where the fund or trust in question has a substituted accounting period which included 1 July 1988 but commenced before 1 July 1988. The need for the section arises essentially from competing demands of the Income Tax Assessment Act 1936 and the requirement that the changes apply from 1 July 1988.

Clause 34 : Transitional - 1990-91 provisional tax

The purpose of this clause is to alter the base for determining the amount of the first three instalments of quarterly provisional tax for 1990-91 where the instalments would otherwise be determined having regard to the 1989-90 provisional tax liability. The base is to be altered from that of the taxpayer's actual provisional tax liability for 1989-90 to that of the liability the taxpayer would have had if the Income Tax Assessment Amendment Bill 1989 had become law. The clause will similarly alter the base for determining the amount of the first of the two instalments of provisional tax payable for 1990-91 by certain 'seasonal income' taxpayers.

Subclause (1) defines two of the terms used in the clause, as follows:

"amended Act" is defined to mean the Principal Act as amended by this Act; and

"1989-90 year of income" is defined to mean the income year that commenced on 1 July 1989.

Subclause (2) sets out the method proposed for determining the "applicable provisional tax amount" for a taxpayer's instalments of provisional tax for 1990-91 other than her or his final instalment. The proposed change to the calculation of what that amount is for 1990-91 is necessary because the amount of each of a taxpayer's instalments of provisional tax are determined by reference to the "applicable provisional tax amount". Paragraph 221YCA(1)(b) of the Principal Act specifies, for taxpayers liable to pay quarterly instalments, that:

- the first instalment for a year of income is 25% of the "applicable provisional tax amount";
- the second instalment is the amount by which 50% of the "applicable provisional tax amount" exceeds the amount of the first instalment;
- the third instalment is the amount by which 75% of the "applicable provisional tax amount" exceeds the sum of the first two instalments; and
- the final instalment is the "applicable provisional tax amount" minus the sum of the first three instalments.

Under paragraph 221YCA(1)(c), seasonal income taxpayers subject to provisional tax payable by two instalments must pay :

- 50% of the "applicable provisional tax amount" as their first instalment; and
- the "applicable provisional tax amount" minus the amount of their first instalment as their second instalment.

The term "applicable provisional tax amount", in relation to instalments of provisional tax for an income year other than the final instalment for that year, is defined in subsection 221YA(1) of the Principal Act as being:

- if the taxpayer has applied to have her or his total provisional tax liability varied and recalculated by reference to the estimate of current year taxable income - the amount determined following that application (subparagraph (b)(i) of the definition);
- if instead there is a "basic provisional tax amount" for the income year as at the date specified in the relevant instalment notice as the date of issue of the notice - the lesser of that amount or the "previous year's provisional tax amount" as at that date (subparagraph (b)(ii) of the definition); or

- if neither of the above apply - the "previous year's provisional tax amount" as at the specified date of issue of the relevant instalment notice (subparagraph (b)(iii).

The change proposed by subclause 34(2) of this Bill to the determination of what is the "applicable provisional tax amount" for 1990-91 instalments other than the final instalment only relates to those cases where the amount of the instalment is calculated by reference to the taxpayer's "previous year's provisional tax amount" - that is, under subparagraph (b)(iii) of the definition of "applicable provisional tax amount" or under subparagraph (b)(ii) where the "previous year's provisional tax amount" is less than the "basic provisional tax amount".

The term "previous year's provisional tax amount" is also defined in subsection 221YA(1) of the Principal Act. Where the taxpayer's total provisional tax liability for the income year immediately before the income year to which an instalment relates has been calculated after the taxpayer applied for a variation based on her or his estimate of the then current year's taxable income, the term refers to the amount so calculated (paragraph (a) of the definition). If the taxpayer did not apply for a variation, the term "previous year's provisional tax amount" means the "basic provisional tax amount" for the year of income immediately before that to which the instalment being considered relates (paragraph (b) of the definition).

Of those taxpayers whose "applicable provisional tax amount" for 1990-91 instalments is to be determined by reference to the "previous year's provisional tax amount", only those who have not sought to vary their provisional tax liability for 1989-90 will be affected by the change proposed by subclause 34(2) - that is, those to whom paragraph (b) of the definition of "previous year's provisional tax amount" applies.

Subclause (2) states that the part of the amended Act that deals with provisional tax - Division 3 of Part VI - is to be read by reference to the three paragraphs in subclause (2) when determining the "applicable provisional tax amount" for an instalment, other than the final instalment, of provisional tax payable by a taxpayer for the 1990-91 year of income.

Each of the three paragraphs in subclause (2) are concerned with the meaning of "basic provisional tax amount" when that term is used in relation to the 1989-90 year of income. The term is defined in subsection 221YA(1). It means the amount of provisional tax that is ascertained under section 221YC (as reduced under section 221YDC or altered under section 221YG, where relevant), no later than the date specified in an instalment notice as the date of

issue of that notice, for the year of income to which the instalment notice relates and that is notified to the taxpayer in:

- a notice of assessment;

- a separate notice of the amount of provisional tax payable or of the amount of provisional tax that would be payable except for the taxpayer being liable instead to pay instalments of provisional tax (a notice under paragraph 221YD(1)(b) or (1A)(b) respectively); or

- a notice of an alteration in the amount of provisional tax notified previously as having been payable or as having been payable were the taxpayer not instead liable for payment of provisional tax by instalments (a notice under subsection 221YG(1)).

Paragraph (a) of subclause 34(2) requires a reference in Division 3 of Part IV of the amended Act to the term "basic provisional tax amount" to be read, as at a particular date and in relation to the 1989-90 income year, as a reference to the amount that satisfies both subparagraphs (i) and (ii) of the paragraph. Subparagraph (i) specifies the amount as being that calculated as the provisional tax payable by the taxpayer (or payable if the taxpayer were not liable to make instalment payments) for the 1989-90 year of income under section 221YC (as affected, where relevant, by a section 221YDC reduction or a section 221YG alteration). The subparagraph does not, however, stand on its own. As explained later in the notes on this clause, paragraph (c) of subclause 34(2) and subclause 34(3) modify the calculation to be made under section 221YC of the amended Act so that, where sections 221YDC and 221YG are inapplicable, the amount ascertained in accordance with subparagraph (a)(i) becomes an amount notionally payable as total provisional tax for the 1989-90 year of income. Where sections 221YDC or 221YG apply, paragraph (b) of subclause 34(2) modifies those sections to allow reductions or alterations to be made under those sections to the notional amount calculated under section 221YC.

Subparagraph (a)(ii) must also be satisfied for the referential change prescribed by the paragraph to take effect. The subparagraph requires that the amount ascertained in accordance with subparagraph (i) be notified to the taxpayer by the Commissioner of Taxation either in a notice served under subsection 221YDAA(1) specifying the amount payable as an instalment and the date for payment of the instalment or in a notice under subsection 221YG(1). The second option is necessary for those cases where, after the taxpayer's first instalment notice for 1990-91 has been issued, the Commissioner amends the income tax assessment of

the taxpayer for the 1988-89 income year so as to affect the taxpayer's notional total provisional tax liability for the 1989-90 year.

The broad effect of the concluding words of paragraph (a) is that the amount of a taxpayer's 'notional' total provisional tax liability for 1989-90 will only be taken into account in determining the amount of a particular 1990-91 instalment if the taxpayer is issued with a notice of her or his notional liability on or before the date of issue of the instalment notice.

By paragraph (b) of subclause 34(2), sections 221YDC and 221YG of the amended Act are to be read with a modification when determining the taxpayer's "basic provisional tax amount" for 1989-90 for the purposes of determining her or his "applicable provisional tax amount" for 1990-91 instalment purposes. The modification is that those two sections will apply to the notional amount ascertained under section 221YC of the amended Act (after the modification of that section by paragraph 34(2)(c) and subclause 34(3) of this Bill) to allow the reduction or alteration of that notional amount.

Paragraph (c) of subclause 34(2) specifies that, in order to calculate the taxpayer's "basic provisional tax amount" for the 1989-90 income year, section 221YC of the amended Act is to be read subject to proposed subsection 34(3) of this Bill.

Proposed subsection 34(3) sets out the rules to be applied in calculating under section 221YC of the amended Act - for the purposes of subclause 34(2) - the amount notionally payable as total provisional tax for the 1989-90 income year (subject to any reduction or alteration to that amount that may be made under section 221YDC or 221YG, respectively, as proposed to be modified by paragraph 34(2)(b) of this Bill). The rules are identical to those proposed in the Income Tax Assessment Amendment Bill 1989 for the calculation of provisional tax for the 1989-90 year of income.

The subclause requires that a taxpayer's notional total provisional tax liability for 1989-90 be calculated by applying 1989-90 rates of tax (without regard to the arrangements for pro-rating of the tax-free threshold) and Medicare levy to 1988-89 taxable income increased by 10%.

With the exception of the rebates of tax discussed below, 1988-89 rebates are to be taken into account as allowed in 1988-89 assessments.

For taxpayers allowed rebates in their 1988-89 assessments for a dependent spouse, daughter-housekeeper, invalid relative, parent or parent-in-law (section 159J of the Principal Act), a housekeeper (section 159L) or as a sole parent (section 159K), subclause 34(3) will require the

notional section 221YC amount of provisional tax to be calculated after adjusting the rebates on the basis of the increase in the level of rebate to be allowed in 1989-90.

Adjustments will also be made to any rebate allowed in a 1988-89 assessment of a taxpayer because he or she is resident in an isolated area (section 79A of the Principal Act), is a Defence Force member serving overseas (section 79B) or is a civilian serving with the United Nations (section 23AB). The notional section 221YC amount of provisional tax will be calculated after increasing any such rebate by 20% of the adjustment made to the taxpayer's 1988-89 concessional rebate claim, as discussed in the previous paragraph.

For taxpayers entitled to a rebate of tax in respect of franked dividends received during 1988-89, the subclause will require that, for the 1989-90 notional total provisional tax calculation, those rebates will be increased by 10% after applying a factor of 39/49ths to the rebates to take account of the reduction in the rate of company tax. Both the uplift and the fall in the rate of company tax will be taken into account by a factor of 429/490 (ie, 39/49 x 1.1).

Where an amount of net capital gain has been included in a taxpayer's 1988-89 assessable income by virtue of Part IIIA of the Principal Act, the notional total amount of provisional tax for 1989-90 will be calculated by reference to the amount that would have been the taxable income for 1988-89 if the net capital gain amount had not been included in the taxpayer's assessable income for that year.

For taxpayers deriving a notional income as specified by section 59AB (depreciation recouped) or section 86 (lease premiums) of the Principal Act, their notional total provisional tax liability for 1989-90, before deduction of rebates, is to be calculated by applying to 1988-89 taxable income, increased by 10%, the 1989-90 rate of tax applicable to their 1988-89 notional income.

Taxpayers who were under 18 years of age at 30 June 1989 were liable for tax for 1988-89 under the special provisions applying to minors if, in the case of a non-resident, the minor had any eligible taxable income for the purposes of Division 6AA of Part III of the Principal Act for that year or if, in the case of a resident, that eligible taxable income exceeded $416. For the purposes of the 1989-90 notional total provisional tax calculation, the portion of a minor's taxable income, as increased by 10%, that is to be taken as eligible taxable income is to be in the same proportion as that which the 1988-89 eligible taxable income of the taxpayer bore to her or his taxable income for that year.

Where the 1988-89 eligible taxable income of a taxpayer to whom the provisions of Division 6AA of Part III of the Principal Act applied for that year included a net capital gains amount, the eligible taxable income for that year is to be adjusted to the amount that would have been the taxpayer's eligible taxable income if that net capital gains amount had not been included in her or his 1988-89 assessable income.

In respect of a taxpayer who is an eligible person for the purposes of Division 16A of Part III of the Principal Act - that is, an artist, composer, inventor, performer, production associate, sportsperson or writer entitled to income averaging - the taxpayer's notional liability is to be calculated on the basis that her or his eligible taxable income for the purposes of section 158H of the Principal Act is increased by 10%.

For primary producers, subclause 34(3) will require that any averaging rebate to which the primary producer is entitled be recalculated using 1988-89 taxable income (as adjusted for any income equalisation deposit withdrawals, capital expenditure on a qualifying Australian film or subscription to shares in licensed management and investment companies) increased by 10%. 1989-90 rates of tax will be applied in the section 221YC calculation on the basis of the average income used for 1988-89 assessment purposes. Average income will not be recalculated to reflect the notional 10% increase in taxable income for the purposes of subclause 34(2).

A primary producer may qualify for a partial averaging benefit in 1988-89 because her or his income other than from primary production in that year exceeded $5,000. In such a case, subclause 34(3) will ensure that the proportion of the averaging adjustment - the same proportion as income from primary production bears to total taxable income - to be taken into account in calculating the notional section 221YC amount of provisional tax for 1989-90 is the same as the 1988-89 proportion. That is, it is not to be reduced to reflect the notional 10% increase in income other than from primary production.

Where an amount of income tax or Medicare levy was payable in 1988-89, an amount representing Medicare levy for 1989-90 is to be incorporated in the calculation of notional total provisional tax liability. In these situations, the Medicare levy component will be calculated by applying the 1989-90 year Medicare levy rate of 1.25% to 1988-89 taxable income as increased by 10%. The increased low income thresholds that applied for levy purposes in 1989-90 will be taken into account. In addition, wherever a part or full exemption from levy was obtained by an individual in his or her 1988-89 assessment, the same exemption will be provided in the calculation of levy for 1989-90 notional total provisional tax liability purposes.

Foreign tax credits allowed in 1988-89 will be uplifted by the same rate of 10% as is applied to foreign income.

For a taxpayer whose 1988-89 taxable income reflects a deduction allowed for capital moneys expended in producing a qualifying Australian film or for subscriptions to shares in licensed management and investment companies, 1989-90 notional total provisional tax liability will be calculated as if no such deduction had been allowed, with the taxable income so adjusted increased by 10%.

Subclause 34(4) explains that any references in the clause to the amount of provisional tax payable by a taxpayer are to be read as including the amount of provisional tax that would be payable by the taxpayer if he or she were not liable to pay instalments of provisional tax.

Clause 35 : Amendment of assessments

Clause 35 of the Bill authorises the Commissioner of Taxation to re-open an income tax assessment made before the Bill becomes law should this be necessary for the purposes of giving effect to amendments proposed by the Bill.

PART 5 - AMENDMENT OF THE SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT 1935

Clause 36 : Principal Act

This clause facilitates reference to the Sales Tax (Exemptions and Classifications) Act 1935 which, in this Part, is referred to as the "Principal Act".

Clause 37 : Amendment of First Schedule

Item 74 of the First Schedule to the Sales Tax (Exemptions and Classifications) Act 1935, in conjunction with subsection 5(1) of that Act, exempts from sales tax goods that are for official use, and not for sale, by :

- a Commonwealth, State or Northern Territory department; or
- an authority which is completely controlled by, and the expenditure of which is exclusively borne by, the Commonwealth, a State or the Northern Territory.

In the case of State and Northern Territory departments and authorities, however, the exemption is only available if the Governor-General has arranged with the Governor-in-Council of the State or the Administrator-in-Council of the Northern Territory (as appropriate) for the State or the Northern

Territory (as appropriate) to collect and pay sales tax on goods sold by the State or Northern Territory, or by their authorities, as part of a trading enterprise.

By this clause, item 74 of the First Schedule is to be amended to add references to the Act to the wording of the item. As explained earlier in this explanatory memorandum (in the "Main Features" and in the notes on subclause 2(4)), the operation of the item has already been modified by ACT regulations consequent on the establishment of self-government in the ACT.

The effect of the proposed amendments is to add :

- ACT departments and authorities to the departments and authorities specified in item 74 that are entitled to obtain goods for official use free of sales tax (paragraph (a) of the clause);
- ACT departments and authorities to those departments and authorities in respect of which an appropriate arrangement must be made if exemption is to be available (paragraph (b));
- the Chief Minister of the ACT to the office-holders who must make an arrangement with the Governor-General (paragraph (c));
- the ACT to the part of item 74 that deals with collecting and paying sales tax on certain goods sold (paragraph (d)); and
- the ACT government and ACT authorities to the governments and authorities whose trading enterprise sales are to be the subject of the arrangement with the Governor-General (paragraph (e)).

Clause 38 : Application of amendments

By this clause, the amendments made by Part 5 will apply to transactions, acts or operations effected or done in relation to goods on or after 11 May 1989.