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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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TAXATION LAWS AMENDMENT BILL (NO. 6) 1988

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendment to be moved on behalf of the Government

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

INTRODUCTORY NOTE

This supplementary memorandum explains the amendment proposed to the Taxation Laws Amendment Bill (No. 6) 1988 (referred to in this memorandum as the "Bill") as introduced into the House of Representatives. The amendment is a transitional measure which will modify the provisions relating to share cancellations where a cancellation occurred after the date of announcement of the legislation and on or before the date of its introduction into the House of Representatives.

GENERAL OUTLINE

Broadly, the amendment to the Bill will ensure that where shares held by a subsidiary in its holding company were cancelled after 11 August 1988 and on or before 30 November 1988, the income tax position of the subsidiary is the same as it would have been had the shares been cancelled, or otherwise disposed of, for a consideration equal to their cost price.

FINANCIAL IMPACT

The nature of the proposed transitional amendment to share cancellations which occurred between the date of announcement of the legislation and the date following its introduction is such that a reliable estimate of the potential revenue effect cannot be made.

NOTES ON AMENDMENT

The amendment will insert three new subclauses in clause 11 of the Bill. Existing clause 11 specifies the date from which the amendment proposed by clause 6 in relation to a cancellation of shares held by a subsidiary in its holding company will apply.

Subclause 11(2) will modify the operation of proposed section 159GZZZF in respect of a cancellation of shares which occurred after 11 August 1988 and on or before 30 November 1988.

Proposed Section 159GZZZF (clause 6 of the Bill) applies to a subsidiary company where there is a cancellation by the holding company of shares in it held by the subsidiary company. Broadly, the section proposes that if the subsidiary receives no consideration for the cancellation or receives an amount of consideration that is less than the adjusted market value of the shares, the subsidiary will be taken, for the purposes of the Income Tax Assessment Act 1936 ("the Principal Act") to have received as consideration for the cancellation an amount equal to the adjusted market value of the shares.

The "adjusted market value of the shares" is the amount that would have been their market value at the time of the cancellation if the cancellation did not occur and was not proposed to occur.

The effect of subclause 11(2) on section 159GZZZF will be to alter the consideration that the subsidiary is taken to have received, by virtue of paragraphs 159GZZZF(1)(c) or 159GZZZF(1)(d), for the cancellation of the shares.

For the purposes of the Principal Act (other than the capital gains and losses provisions and section 159GZZZH), where the adjusted market value of the shares exceeds the consideration given by the subsidiary for their acquisition, that consideration will be taken to be such amount as is received by the subsidiary for the cancellation of the shares.

For the purposes of Part IIIA (capital gains and capital losses), the subsidiary will be taken to have received as consideration for the cancellation, an amount equal to:

- . if the cancellation occurred within 12 months of the acquisition of the shares and their adjusted market value exceeds their cost base - the cost base of the shares to the subsidiary;
- . if the cancellation occurred more than 12 months after the acquisition of the shares and their adjusted market value exceeds their indexed cost base - the indexed cost base of the shares to the subsidiary.

The amendment will not affect the operation of section 159GZZZH (including its additional application under section 159GZZZI) or the calculation of the cancellation adjustment amount in paragraph 159GZZZH(1)(a).

Subclause 11(3) will ensure that terms used in paragraph (d) of subclause (2) that are also used in the capital gains and capital losses provisions of the Principal Act have the same respective meanings.

Subclause 11(4) will define, for the purposes of Clause 11 of the Bill, the term "amended Act" to mean the Principal Act as amended by the Bill.