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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Tax Law Improvement Bill 1996

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved by the Government

(Circulated by authority of the Treasurer,
the Hon. Peter Costello, MP)

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This chapter lists minor textual changes to the original Explanatory Memorandum to the Tax Law Improvement Bill 1996.

General Outline and Financial Impact

These amendments incorporate recommendations made by the Joint Committee of Public Accounts in its report No. 348 on the Tax Law Improvement Bill 1996. There are also some amendments to ensure the Bill accurately reflects the existing law.

The majority of these amendments are of a minor technical nature designed to improve the quality of the Bill. None of the minor amendments will involve any change in policy and they do not have any financial, or cost of compliance, impact. All the amendments apply to the 1997-98 (and later) income years.

There are two more substantial sets of amendments. One group relates to the omission from the Bill of a specific treatment for converting assets into trading stock and vice versa and the other to a recommendation made by the Joint Committee of Public Accounts regarding references to hire purchasers being able to claim depreciation.

Trading stock

- Amendments (23), (39), (53), (55), (57) to (59), (61), and (63) to (69)

Proposal: To remove the specific treatment for converting assets into trading stock and vice versa.

Application: To apply to the 1997-98 (and later) income years.

Financial impact: Any revenue impact will depend on the proposed restoration of this measure after further industry consultations.

Compliance cost impact: None.

Depreciation by hire purchasers

- Amendments (18) to (20), (33), (35), (36), (40) to (45), (47) to (50), (70) and (76) to (82).

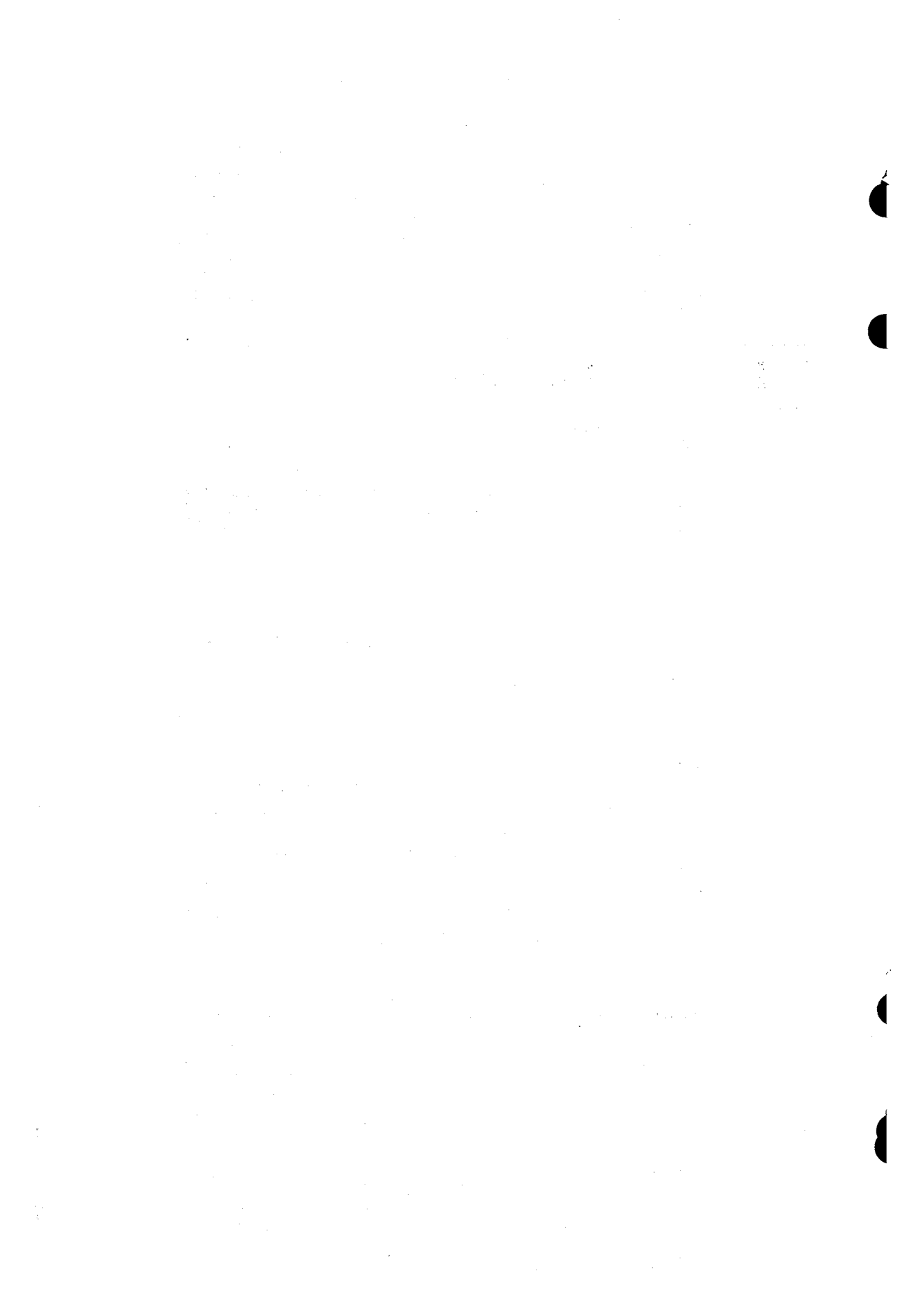
Proposal: To remove any specific references to hire purchasers being able to claim depreciation for plant.

Application: To apply to the 1997-98 (and later) income years.

Financial impact: None.

Compliance cost impact: None.

This supplementary explanatory memorandum also makes changes to the explanatory memorandum on the Tax Law Improvement Bill 1996 including changes to give effect to recommendations by the Joint Committee of Public Accounts specifically related to that explanatory memorandum.



1**Miscellaneous
Amendments**

This chapter explains miscellaneous amendments of the Tax Law Improvement Bill 1996.

Amendments of the Tax Law Improvement Bill 1996

Amendment (1)

Provision being amended: Schedule 1, section 15-15 (page 4) which will include in assessable income profits arising from a profit-making undertaking or plan.

Amendment will: Add a note at the end of the section highlighting that section 25A of the *Income Tax Assessment Act 1936* will continue to apply to include in assessable income a profit arising from the sale of property acquired before 20 September 1985 for the purpose of profit-making by sale.

Reason for amendment: Recommended by the Joint Committee of Public Accounts (Report 348, Recommendation 16, page 32). Section 15-15 partially rewrites section 25A which includes in assessable income profits arising from:

- the sale of property acquired before 20 September 1985 for the purpose of profit-making by sale ('first limb'); and
- the carrying on of a profit-making undertaking or plan ('second limb').

The first limb of section 25A has not been rewritten as it has only minimal ongoing operation. However, it will continue to apply in these circumstances.

Amendment (2)

Provision being amended: Schedule 1, section 15-20 (page 5) which will include in assessable income amounts as or by way of royalty, within the ordinary meaning of that word. These ordinary royalties must also *not* be ordinary income.

Amendment will: Ensure that amounts by way of ordinary royalty are included in assessable income by section 15-20.

Reason for amendment: As presently drafted, it has been suggested that section 15-20 does not include in assessable income amounts *by way of* ordinary royalty. These amounts are unambiguously covered by the existing provision, paragraph 26(f) of the *Income Tax Assessment Act 1936*. This amendment removes any doubt as to the interpretation of section 15-20.

Amendments (3) and (4)

Provisions being amended: Schedule 1, section 20-110 (page 26) and section 20-125 (page 30) which will assess profits made on disposals of previously leased cars.

Amendments will: Restrict the operation of those provisions to cars designed mainly to carry passengers.

Reason for amendments: Recommended by the Joint Committee of Public Accounts (Report 348, Recommendation 18, page 33). The Bill applies these provisions to 'cars'. Cars is a defined term that is wider than the equivalent expression in the existing law ('motor car or station wagon') which it is intended to replace. This widening was unintended. The amendment will limit the Subdivision to the same vehicles as the existing law. It will no longer cover panel vans or utility trucks, for instance.

Amendment (5)

Provision being amended: Schedule 1, section 25-20 (page 40) which will allow a deduction for expenditure incurred in preparing, registering, or stamping a lease or an assignment or surrender of a lease.

Amendment will: Clarify that the provision will allow a deduction for expenditure incurred in preparing, registering or stamping a surrender of a lease, but will not allow a deduction for other expenditure incurred in obtaining the surrender of a lease.

Reason for amendment: A lease surrender payment may be deductible under the general deduction provision (section 8-1). The clarification will remove any suggestion that section 25-20 will allow a deduction for a lease surrender payment even if it is not deductible under section 8-1. The change will bring the provision into line with the existing law.

Amendments (6) to (10)

Provision being amended: Schedule 1, section 25-25 (page 41) which will allow a deduction for expenditure incurred in borrowing money over the period of a loan.

Amendments will:

- Identify that period of the loan is a defined term [*amendments (6), (7), and (9)*].
- Omit unnecessary notes highlighting that *period of the loan* is defined in the section [*amendments (8) and (10)*].

Reason for amendments: All defined terms in the Bill are identified by an asterisk in front of the term.

Amendment (11)

Provision being amended: Schedule 1, section 25-40 (page 47) which will allow a deduction for a loss arising from the carrying on of a profit-making undertaking or plan.

Amendment will: Add a note at the end of the section highlighting that section 52 of the *Income Tax Assessment Act 1936* will continue to apply to allow a deduction for a loss arising from the sale of property acquired before 20 September 1985 for the purpose of profit-making by sale.

Reason for amendment: The inclusion of the note will alert taxpayers to the provision of the *Income Tax Assessment Act 1936* which allows a deduction for a loss arising on the sale of property. This amendment complements amendment (1) to section 15-15 above.

Amendments (12), (13) and (62)

Provision being amended: Schedule 1, section 26-35 (page 56) which is an anti-avoidance provision that will limit the deduction that can be claimed for an amount paid to a related entity.

Amendments will: Expand the definition of a *related entity*, to cover the situation where the taxpayer is a partnership.

Reason for amendments: Section 26-35 rewrites section 65 of the *Income Tax Assessment Act 1936*, which broadly limits the amount of deductions allowable for payments made by a taxpayer to an 'associated person' (the taxpayer can be an individual or a partnership). The intention was to defer the rewrite of those aspects of section 65 that apply only to partnerships until those areas of the *Income Tax Assessment Act 1936* are rewritten. The Joint Committee of Public Accounts (Report 348, Recommendation 19, page 34) recommended that the Bill be amended to indicate that the partnership component of the definition of 'associated persons' will have continued operation. This amendment will insert into section 26-35 the partnership component of the definition effectively meeting the Committee's recommendation.

Amendment (14)

Provision being amended: Schedule 1, section 32-10 (page 112) which will define the term 'entertainment' for the provisions that deny deductions for expenditure on entertainment.

Amendment will: Insert a note at the end of the section that gives examples of what is and what is not entertainment.

Reason for amendment: As a general rule, deductions are denied for expenditure incurred on providing entertainment. One of the provisions that has not been rewritten (paragraph 51AE(5)(g) of the *Income Tax Assessment Act 1936*), provides an exception to that rule for entertainment of a recipient if the expenditure would have been deductible to the recipient if they had incurred it. This exception was not rewritten because the Commissioner is of the view that the expenditure - of which the major example is expenditure on meals while travelling overnight on business - is not incurred on entertainment.

Concerns were raised before the Joint Committee of Public Accounts that meals while travelling overnight on business could come within the definition of 'entertainment'. The Committee (Report 348, Recommendation 20, page 35) recommended the insertion of a note that deductions for expenditure envisaged by paragraph 51AE(5)(g) are still deductible.

These examples have been added to confirm that the paragraph 51AE(5)(g) exception is not needed, because the main categories:

- meals while travelling overnight on business; and
 - a theatre critic attending a play he or she is critiquing; and
 - the restaurant meal of a food writer that is reviewing that meal
- are not entertainment.

Amendments (15) to (17)

Provision being amended: Schedule 1, section 42-18 (page 143) which will extend the definition of 'plant', for which a depreciation deduction may be claimed, to certain plumbing fixtures and fittings provided mainly for employees.

Amendments will:

- State that the fixtures and fittings an entity provides must be for the use of its employees or employees of an entity in the same company group [amendment (17)];
- State that the use of the amenities by both groups of employees can be added together for the purpose of determining whether the 'mainly' test is satisfied [amendment (17)];
- Accommodate those amendments by placing the plumbing fixtures and fittings aspect of the plant definition into a separate subsection within the definition of plant [amendments (15) to (17)].

Reason for amendments To ensure that the rewritten definition of 'plant' accurately reflects the existing law.

The wording in the Bill does not make it clear that the amenities must be provided by a person for use by their employees (or employees of a group company) and that these uses can be added together to satisfy the 'mainly' test. The extra detail needed to provide this clarity makes it necessary to move this aspect of the definition of plant into its own subsection.

Amendments (18) to (20)

Provisions being amended: Schedule 1, sections 42-30 (page 145) and 42-65 (page 151), which are depreciation provisions that will deal with balancing adjustments and the cost of plant respectively.

Amendments will: Remove all references to hire purchase from the depreciation provisions.

Reason for amendments: Recommended by the Joint Committee of Public Accounts (Report 348, Recommendation 13, page 29). The Bill legislated the long standing practice of allowing persons who hold plant under a hire purchase agreement to depreciate it by making them one category of 'quasi-owner'. However, the Committee concluded that it was inappropriate for the Bill to deal with hire purchase until the full spectrum of lease-hire purchase equivalent arrangements can be incorporated into the definition of 'quasi-owner'.

Amendments (21), (22), (37) and (38)

Provisions being amended: Schedule 1, section 42-65 (table items 5 and 6), (page 152) and section 42-205 (table items 8 and 10) (page 173) which will deal with depreciation, setting cost and termination values for depreciable plant held under a quasi-ownership right over land where there is an expiry, surrender, termination or assignment of the right.

Amendments will: Insert the word 'reasonably' before the word 'attributable'.

Reason for amendments: To provide extra guidance to taxpayers in attributing a value to plant where none is specified and to maintain consistency with other cost and termination values which are based on a reasonable attribution. The cost and termination value will be so much of any consideration for the expiry, surrender, termination or assignment of the right as is *reasonably* attributable to the plant.

Amendment (23)

Provision being amended: Schedule 1, section 42-65 (page 153) which explains, in tabular form, how to work out the cost of plant for calculating depreciation of that plant.

Amendment will: Remove item 9 from the table that explains the cost in various situations. Item 9 explains the cost when the plant was converted from trading stock.

Reason for amendment: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendment (24)

Provision being amended: Schedule 1, section 42-70 (page 154) which will deal with depreciation, increasing the depreciable cost of a car that has been reduced through a discount which is referable to the sale of other plant for less than its market value.

Amendment will: State that this provision only applies to cars that are designed mainly for carrying passengers.

Reason for amendment: This provision applies to the same type of car that is subject to the car depreciation limit. This amendment is consequential on making amendment (25) to section 42-80, see below.

Amendments (25) and (72)

Provision being amended: Schedule 1, section 42-80, (page 155) (and its corresponding transitional provision) which will limit the cost of a luxury car for depreciation purposes.

Amendments will: State that this provision only applies to cars that are designed mainly for carrying passengers.

Reason for amendments: Recommended by the Joint Committee of Public Accounts (Report 348, Recommendation 18, page 33). The amendment will preserve the effect of the existing law which only applies to a vehicle that is a motor car or station wagon. The rewrite inadvertently extended the application of the provision by its use of the defined term 'car' which extends beyond cars and station wagons.

Amendment (26)

Provision being amended: Schedule 1, section 42-150 (page 163) which will provide a special depreciation rate for certain employee amenities.

Amendment will: Make the reference to 'an entity' in paragraph 42-150(1)(a)(i) a reference to 'the entity'.

Reason for amendment: To more accurately translate the existing law which says that the entity entitled to the special rate is the one that provides the amenities for its employees in the course of carrying on an income producing business. An interpretation open on the current wording of the Bill would give a deduction to an entity that provides amenities to employees of an unrelated entity.

Amendments (27) to (32), (34) and (73) to (75)

Provision being amended: Schedule 1, section 42-175 (page 166) (and its corresponding transitional provision) which will deal with depreciation, defining 'undeducted cost' (ie. the amount a taxpayer has left to deduct for depreciation).

Amendments will: Remove all cars from the operation of paragraphs (a) and (b) of the definition and place them within the operation of paragraph (c) only.

Reason for amendments: To ensure that a taxpayer who has depreciated a car under Division 42 (the depreciation rules) in one income year and under Division 28 (the car expense rules) in another year does not have to count deductions twice in working out how much they have left to deduct.

The definition of 'undeducted cost' has 3 paragraphs. Paragraphs (a) and (b) calculate a taxpayer's undeducted cost where the taxpayer claims depreciation under Division 42. Paragraph (c) calculates a taxpayer's undeducted cost where that taxpayer claims deductions for their car under Division 28. Paragraphs (a) and (b) were intended to operate for one set of taxpayers and paragraph (c) for another. However, under the wording of the Bill, a potential for overlap exists where a taxpayer claims a deduction under Division 42 in one year and then claims a deduction under Division 28 in another year [*amendments (27) to (32) and (34)*].

The matching transitional provision which sets out how to calculate undeducted cost for the period prior to the commencement of the new law will also be amended [*amendments (73) to (75)*].

Amendment (33)

Provision being amended: Schedule 1, section 42-175 (page 167) which will deal with depreciation, containing the definition of 'undeducted cost' (ie. the amount a taxpayer has left to deduct for depreciation).

Amendments will: Remove a reference to the quasi-owner of a car in paragraph (c) of the definition.

Reason for amendment: This amendment is consequential upon the recommendation by the Joint Committee of Public Accounts to remove hire purchase from the depreciation provisions, see discussion at amendment (18). The removal of hire purchase means that it is no longer possible to be the quasi-owner of a car.

Amendment (34) - see discussion at amendment (27).

Amendments (35) and (36)

Provision being amended: Schedule 1, section 42-205 (page 173) which will set out the termination value of depreciable plant for the purpose of making a balancing adjustment calculation.

Amendments will: Remove the reference to subsection 42-330(2) in table item 5 and remove table items 6 and 7 in the termination value table.

Reason for amendment: This amendment is consequential upon the recommendation by the Joint Committee of Public Accounts to remove hire purchase from the depreciation provisions, see discussion at amendment (18). The reference to subsection 42-330(2) in item 5 gave a termination value where there was a partial change in ownership of plant held under a hire purchase agreement.

Amendments (37) and (38) - see discussion at amendment (21).

Amendment (39)

Provision being amended: Schedule 1, section 42-205 (page 174) which explains, in tabular form, how to work out the termination value of plant.

Amendment will: Remove item 13 from the table. Item 13 explains the termination value when a taxpayer converts the plant to trading stock.

Reason for amendment: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendments (40) to (45)

Provisions being amended:

- Schedule 1, section 42-208 (page 175) which will set a termination value for depreciable plant held under a hire purchase agreement where the hirer fails to complete the agreement;
- Schedule 1, section 42-210 (page 176) which will deal with non-arm's length disposals of plant for depreciation purposes and refers to the disposal of plant by entering into a hire purchase agreement;
- Schedule 1, sections 42-235 (page 181), 42-245 (page 182) and 42-250 (page 183) which will deal with balancing adjustments for some cars for depreciation purposes.

Amendments will: Remove section 42-208. Also remove references to hire purchase and to quasi-owners of cars in the other sections.

Reason for amendment: These amendments are consequential upon the recommendation by the Joint Committee of Public Accounts to remove hire purchase from the depreciation provisions, see discussion at amendment (18). References to the quasi-owner of a car have been removed because the removal of hire purchase means that it is no longer possible to be the quasi-owner of a car.

Amendment (46)

Provision being amended: Schedule 1, the note to subsection 42-280(1) (page 186) which will deal with depreciation, referring the reader to the definitions of 'written down value' and 'undeducted cost' for other consequences of roll-over for depreciable plant.

Amendment will: State that the definition of 'written down value' is contained in section 42-200.

Reason for amendment: The wording in the Bill suggests that the definition of 'written down value' and 'undeducted cost' are both contained in section 42-175.

Amendments (47) to (50)

Provisions being amended: Schedule 1, section 42-310 (page 192) which will state that a person holding depreciable plant under a hire purchase agreement will be one category of 'quasi-owner'.

Amendments will: Remove hire purchase from the definition of 'quasi-owner'.

Reason for amendment: These amendments are consequential upon the recommendation by the Joint Committee of Public Accounts to remove hire purchase from the depreciation provisions, see discussion at amendment (18).

Amendments (51) and (52)

Provision being amended: Schedule 1, section 42-330 (page 195) which will deal with depreciation, specifically the partial change in ownership of plant.

Amendments will: Delete references to 'the plant' where plant is first mentioned in subsections (1) and (2) and substitute '*plant'.

Reason for amendments: Subsection (2) will be amended to clarify that the plant referred to in that subsection is not the same plant referred to in subsection (1). The subsections are mutually exclusive because it's not possible to be both the owner and the quasi-owner of plant.

Subsection (1) will be amended to ensure that its drafting is consistent with the amended subsection (2).

Amendment (53)

Provision being amended: Schedule 1, section 70-10 (page 269) which will contain the definition of 'trading stock' for the new law.

Amendment will: Return the definition of 'trading stock' to substantially the same form it has in the 1936 Act except that the expression 'acquired or purchased' will be reduced to 'acquired'. The word 'acquired' is broad enough to cover purchases.

Reason for amendment: The change is consequential on removing the specific treatment of assets that are converted into trading stock and vice versa (see amendments 55 and 61).

Amendment (54)

Provision being amended: Schedule 1, section 70-20 (page 271) which will treat a non-arm's length purchase of trading stock for more than market value as occurring at market value instead.

Amendment will: Add a note explaining that the section gives way to the rules in Division 13 of Part III of the *Income Tax Assessment Act 1936*. Division 13 deals with international transactions that shift profits out of Australia so that less tax is paid here.

Reason for amendment: Recommended by the Joint Committee of Public Accounts (Report 348, Recommendation 22, page 36) to alert readers to the relationship between the two sets of rules.

Amendment (55)

Provision being amended: Schedule 1, section 70-30 (page 271) which would treat a conversion of an asset into trading stock as being a disposal at cost and immediate re-acquisition at the same amount.

Amendment will: Omit section 70-30 of Schedule 1 to the Bill.

Reason for amendment: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendment (56)

Provision being amended: Schedule 1, section 70-55 (page 276) which will explain that a taxpayer who chooses to value natural increase of live stock at the end of a year at cost can elect that 'cost' is either the animal's actual cost or the value prescribed for that type of animal in the Regulations.

Amendment will: Require the election to be made before the taxpayer lodges the income tax return, or within any further time the Commissioner allows.

Reason for amendment: This rule about when the election must be made is in the present law but was omitted from the rewrite.

Amendments (57) and (58)

Provision being amended: Schedule 1, section 70-95 (page 281) which will explain that when an item of trading stock is disposed of outside the ordinary course of a business, the taxpayer's assessable income includes the market value of that item rather than what is actually received for it.

Amendments will: Make it clear that the provision applies even if the taxpayer is no longer carrying on the business or the item is no longer an asset of the business.

Reason for amendments: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset

converted into trading stock and vice versa. It restores section 70-95 to the form it has in the 1936 Act.

Amendment (59)

Provision being amended: Schedule 1, section 70-100 (page 282) which will treat a partial change in the interests in trading stock (eg. a sole trader taking in partners) as a disposal of that stock to the new taxpayer for its market value.

Amendment will: Remove the note from the end of subsection 70-100(1).

Reason for amendment: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendment (60)

Provision being amended: Schedule 1, section 70-100 (page 283) which will treat a partial change in the interests in trading stock (eg. a sole trader taking in partners) as a disposal of that stock to the new taxpayer for its market value. All the owners (old and new) can elect unanimously to treat it as a disposal for what would have been the stock's cost, market selling value or replacement price at that time.

Amendment will: Allow the Commissioner to extend the time for making that election.

Reason for amendment: Recommended by the Joint Committee of Public Accounts (Report 348, Recommendation 24, page 37). This extension of time is in the present law but was inadvertently omitted from the rewrite.

Amendment (61)

Provision being amended: Schedule 1, section 70-110 (page 285) which would treat a conversion of trading stock into something else as being a disposal at cost and immediate re-acquisition at the same amount.

Amendment will: Omit section 70-110 of Schedule 1 to the Bill and substitute a link note pointing out that the next section is section 70-20.

Reason for amendment: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendment (62) - see discussion at amendment (12).

Amendment (63)

Provision being amended: Schedule 5, item 1, section 70-10 (page 404) which would be a transitional provision explaining what happens to something that was trading stock before the definition changed but was not trading stock after that change.

Amendment will: Omit section 70-10 of Schedule 5 to the Bill and add a link note explaining that the next section is 70-20.

Reason for amendment: Because there will no longer be any substantive change from the definition of 'trading stock' in the 1936 Act (see amendment 53), the case this provision would have dealt with can no longer arise.

Amendment (64)

Provision being amended: Schedule 5, item 64 (page 424) which would prevent subsection 47A(10) of the 1936 Act applying to disposals under sections 70-30 or 70-110 when something was converted to trading stock or vice versa.

Amendment will: Omit item 64 of Schedule 5 to the Bill.

Reason for amendment: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendment (65)

Provision being amended: Schedule 5, item 81 (page 426) which would prevent subsection 103A(3B) of the 1936 Act applying to acquisitions under sections 70-30 or 70-110 when something was converted to trading stock or vice versa.

Amendment will: Omit item 81 of Schedule 5 to the Bill.

Reason for amendment: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendments (66) and (67)

Provisions being amended: Schedule 5, items 84 and 85 (page 427) which would have amended the capital gains and losses provisions in the 1936 Act. Those amendments would have prevented those provisions applying to a disposal of something that was then trading stock rather than only something that had been trading stock since acquisition.

Amendments will: Omit items 84 and 85 of Schedule 5 to the Bill.

Reason for amendments: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendment (68)

Provision being amended: Schedule 5, item 86 (page 427) which would prevent a capital gain or loss accruing on a disposal under sections 70-30 or 70-110 when something was converted to trading stock or vice versa.

Amendment will: Omit item 86 of Schedule 5 to the Bill.

Reason for amendment: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendment (69)

Provision being amended: Schedule 5, item 87 (page 428) which would prevent subsection 160ZD(3) of the 1936 Act applying to a disposal under sections 70-30 or 70-110 when something was converted to trading stock or vice versa.

Amendment will: Omit item 87 of Schedule 5 to the Bill.

Reason for amendment: The change is one of a number of measures designed to remove the rules that provide a specific treatment for an asset converted into trading stock and vice versa.

Amendment (70)

Provision being amended: Schedule 6 (page 434) which contains consequential amendments of the *Income Tax (Transitional Provisions) Act 1997*. Section 42-2 is a consequential amendment arising from the rewritten depreciation provisions in Division 42.

Amendments will: Omit paragraph 42-2(2)(a) which would deal specifically with the application of the hire purchase rules.

Reason for amendment: This amendment is consequential upon the recommendation by the Joint Committee of Public Accounts to remove hire purchase from the depreciation provisions, see discussion at amendment (18).

Amendment (71)

Provision being amended: Schedule 6 (page 434) which contains consequential amendments of the *Income Tax (Transitional Provisions) Act 1997*. Section 42-6 is a consequential amendment which will allow

taxpayers who are depreciating under the 'old depreciation provision' to continue depreciating, but under the new law.

Amendment will: Extend this transitional provision to taxpayers who are depreciating a car under the existing law using one of the car expense methods that allow a deduction for depreciation.

Reason for amendment: The term 'old depreciation provisions' is defined to mean the depreciation provisions in sections 54 to 62AAV of the *Income Tax Assessment Act 1936*. However, it is also possible to claim depreciation using the 'log book' or '1/3 of actual expenses' methods which are contained in the car expense rules which are found outside sections 54 to 62AAV. This amendment will allow those taxpayers to continue depreciating a car under the new law.

Amendment (72) - see discussion at amendment (25).

Amendments (73) to (75) - see discussion at amendment (27).

Amendments (76) to (82)

Provisions being amended: Schedule 6, items 6 (page 449), 8 (page 450), 12 (page 450), 47 (page 458), 49 (page 458), 50 (page 458) and 60 (page 460) which are all consequential amendments to the *Income Tax Assessment Act 1997* arising from the rewritten depreciation provisions.

Amendments will: Remove references to the definition of 'hire purchase agreements'.

Reason for amendment: These amendments are consequential upon the recommendation by the Joint Committee of Public Accounts to remove hire purchase from the depreciation provisions, see discussion at amendment (18).

Amendment (83)

Provision being amended: Schedule 12 (page 538) which contains consequential amendments of the *Income Tax Assessment Act 1997*.

Amendment will: Insert new item 12A which will amend the definition of 'car' which is in section 995-1 of the *Income Tax Assessment Act 1997*, the Dictionary of definitions. The amendment ensures that a motor vehicle is only a car if it was designed to carry *both* less than 1 tonne *and* fewer than 9 passengers.

Reason for amendment: To correct an error in the definition in the *Income Tax Assessment Act 1997* which makes something a car if it satisfies either of those tests. A semi-trailer, for example, should not be a car but would be under the original definition.

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Explanatory Memorandum Textual Changes

This Chapter lists textual changes to the original Explanatory Memorandum for the Tax Law Improvement Bill 1996.

Explanatory Memorandum Textual Changes

The following items make two kinds of changes to the main Explanatory Memorandum for the Tax Law Improvement Bill 1996:

- minor changes to the text of the Explanatory Memorandum, predominantly of a typographical nature; and
 - changes that have arisen from the Joint Committee of Public Accounts' examination of the Bill, specifically items 5 to 8, 14 to 16 and 21 to 23. An explanation of these changes is provided after the item or items which make the change.
1. page 17, second paragraph, omit 'Subdivision 15-A', substitute 'Division 15'.
 2. page 18, omit 'Subdivision 15-A' (wherever occurring), substitute 'Division 15'.
 3. page 18, omit '**What the Subdivision will do**', substitute '**What the Division will do**'.
 4. page 20, line 2, omit '**Section 15-1**', substitute '**Section 15-3**'.
 5. page 21, under change 3 explanation, insert new sentence at the end of the paragraph: 'Nor does it modify the treatment of any bounties and subsidies that are ordinary income where properly returnable on a cash receipts basis.'
 6. page 23, at the end of the first paragraph, insert new sentence: 'Nor does it modify the treatment of any royalties that are ordinary income where properly returnable on a cash receipts basis.'
 7. page 23, under changed explanation for section 15-25, insert new sentence at the end of the paragraph: 'Nor does it modify the treatment of amounts that are ordinary income where properly returnable on a cash receipts basis.'
 8. page 23, at the end of the last paragraph: 'Nor does it modify the treatment of insurance and indemnity amounts that are ordinary income where properly returnable on a cash receipts basis.'

Textual changes 5 to 8 are in response to a recommendation by the Joint Committee of Public Accounts, Recommendation 17, page 32 of Report 348. These changes are to explain that under Division 15 of the Bill amounts properly assessed on a cash basis do not become assessed on an accruals basis.

9. page 25, under D. Transitional arrangements, paragraph 2, omit 'Subdivision 15-A' (wherever occurring), substitute 'Division 15'.
10. page 26, under E. Consequential amendments, dot points, omit 'Subdivision 15-A' (wherever occurring), substitute 'Division 15'.

11. page 27, omit 'Subdivision 15-A' (wherever occurring), substitute 'Division 15'.
12. page 29, under Amendments of other Commonwealth legislation, omit 'Subdivision 15-A', substitute 'Division 15'.
13. page 39, under the discussion of changes in sections 20-35 and 20-40, change 2, fourth paragraph of the explanation, omit 'minor' (wherever occurring).
14. page 39, under the discussion of changes in section 20-35 and 20-40, change 2, after the fourth paragraph of the explanation, insert new paragraph:

'However, in most cases there will be no effect, as the amount of the recoupment is usually received in the same year the deduction is allowed. Even if the recoupment is received in a year after the deduction year, the marginal tax rate will often be the same'.
15. page 40, under the discussion of changes in sections 20-35 and 20-40, insert at the end:

'4. Change

Recoupment amounts will be assessed for amounts that can be deducted in an earlier income year.

Explanation

Provided the amendment period has not expired, a taxpayer can deduct an amount in an earlier income year even if the taxpayer has not yet claimed the deduction. Where an assessable recoupment is received in these circumstances, it will still be assessable - the taxpayer can amend their prior assessment to claim the deduction.

On expiration of the amendment period, the taxpayer can no longer deduct the amount. In these circumstances, an amount that would otherwise be an assessable recoupment will not be assessable, as the taxpayer cannot deduct an amount in the earlier income year.

The words 'you can deduct for the loss of outgoing for the current year, or you have deducted or can deduct for the loss or outgoing for an earlier income year' used in Subdivision 20-A will have the above result. They are comparable to the words '[a deduction] has been allowed or is allowable' that are used in the majority of provisions that use the assessing approach in the existing law.

5. Change

Recoupment amounts received before the income year of deduction will be assessable in the income year the deduction arises.

Explanation

Under the existing law, this result is achieved in provisions that use the reduction of deductions approach. Where the recoupment is received before the income year of deduction, the deduction is reduced to the extent of the recoupment in the year the deduction arises. The treatment under the assessing approach is unclear.

This change adopts a standard approach where a recoupment is received before the income year of deduction. The approach will be that the amount is assessable in the income year the deduction arises.'

Textual changes 14 and 15 are intended to provide a clearer explanation of the operation of the provisions in response to concerns raised at the Joint Committee of Public Accounts' hearings. These changes are not included in the Joint Committee of Public Accounts' formal recommendations contained in Chapter 4 of Report 348.

16. page 51, 'Terminology', explanation of definition of associates. Replace the 3rd dot point with:
- the rules for identifying who public unit trusts are associated with under the new definition are more like those used for companies than for trustees.'

Textual change 16 expands upon the explanation in the original Explanatory Memorandum. This change is in response to concerns raised in evidence to the Joint Committee of Public Accounts. This change was not included in the recommendations in Chapter 4 of Joint Committee of Public Accounts Report 348.

17. page 114, omit '(introduced in the Tax Laws Amendment Bill (No. 2) 1996)'.

Change 17 removes a reference to a Tax Laws Amendment Bill that has now become law.

18. page 129, table, row 1, omit '54AA(1A)'.

Change 18 removes an incorrect reference to the *Income Tax Assessment Act 1936*.

19. page 146, 5th bottom line, delete 'Subdivision 52D Youth training allowance'.
20. Page 148, in the table at the bottom of the page headed **Repealed provision** delete the heading 'Repealed provision' and substitute 'Repealed provisions'.
21. page 148, in the table at the bottom of the page headed **Repealed provision** insert the following row before the first row:

'Paragraph 23(ec)	Thalidomide Foundation	There are no longer persons under the age of 25 years that benefit from the Thalidomide Foundation. This provision is redundant.
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Textual change 21 explains the exclusion of paragraph 23(ec) from the rewrite of the exempt income provisions. The exemption only applies to income earned by the Thalidomide Foundation for the benefit of persons under the age of 25. As there are no longer any beneficiaries under the age of 25, the exemption provision is redundant. The exclusion of the provision was questioned at the public hearings of the Joint Committee of Public Accounts but was not included as a recommendation in Chapter 4 of Joint Committee of Public Accounts Report 348.

22. page 165, after the second paragraph under the heading **Comment**, in the discussion of section 70-45, insert the following 3 paragraphs:

‘The rewrite also uses the word *item* instead of the word *article* in the existing law. This does not change the law.

For commodities like petrol and wheat, *item* means an appropriate unit of measurement.

Where a taxpayer has made a number of purchases of identical items of trading stock at different prices but only disposed of some of that stock, it may be impossible to determine the actual cost of each item of trading stock on hand. This commonly occurs if a taxpayer has a quantity of items which cannot be distinguished from each other. Some accounting methods can be used to determine the cost of stock in these cases provided they produce a true approximation of actual cost and, therefore, of taxable income.’

Textual change 22 is in response to Joint Committee of Public Accounts Recommendation 23, page 37 of Report 348. The change explains the application of the provisions to commodities such as petrol and wheat.

23. page 169, insert immediately before the discussion of Subdivision 385-E:

‘Section 70-115 Compensation for lost trading stock

This section will include in assessable income an insurance or indemnity amount if:

- it is for the loss of trading stock; and
- it is not ordinary income.

Change

The rewritten provision will only assess amounts that are not ordinary income.

Explanation

Insurance and indemnity amounts for the loss of trading stock will generally, and perhaps always, be assessed as ordinary income. If there are any amounts that are not ordinary income, they will be assessable under this provision.

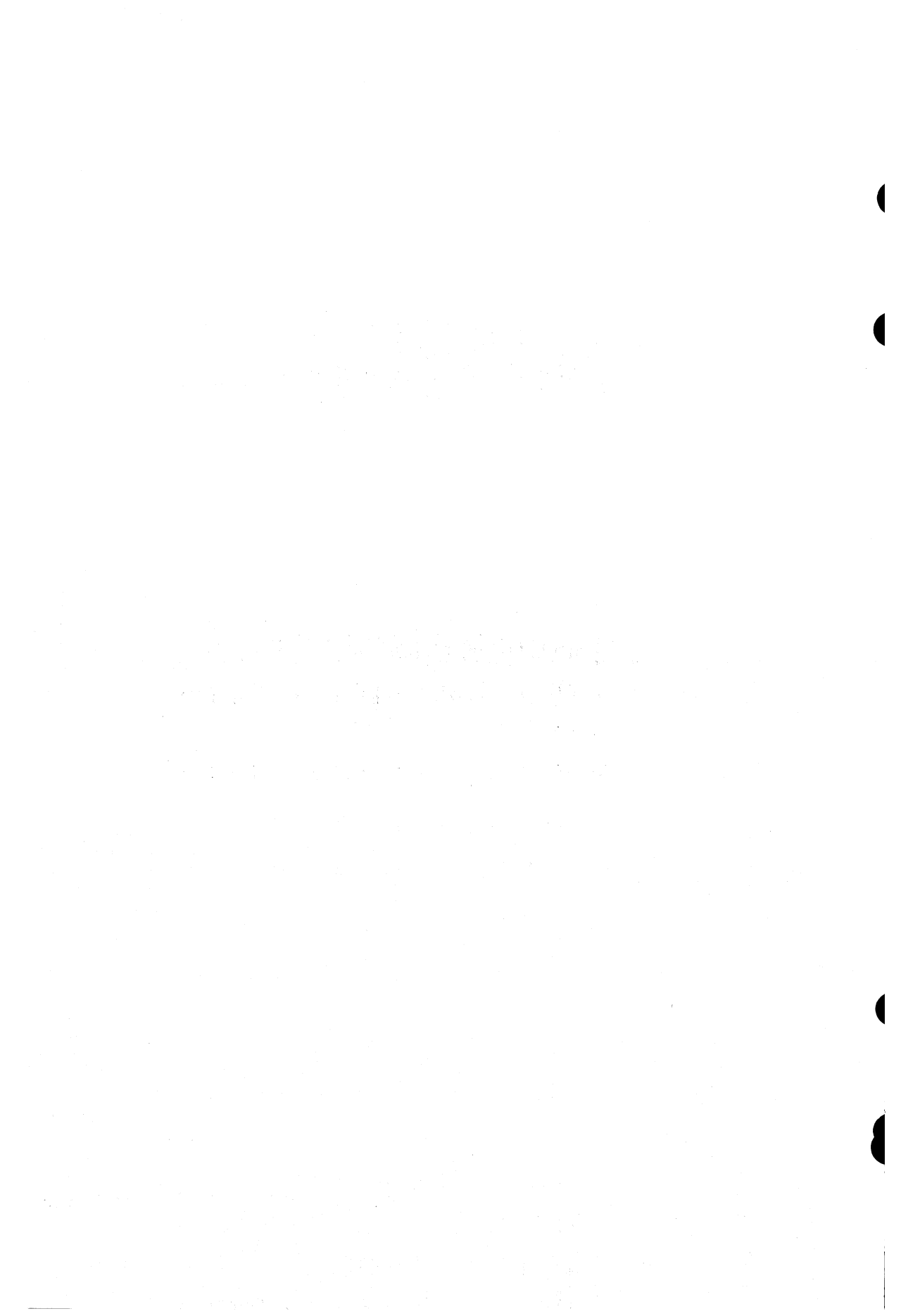
The exclusion of ordinary income makes it clear that the section does not modify the ordinary tax accounting treatment of insurance and indemnity amounts for a loss of trading stock.’

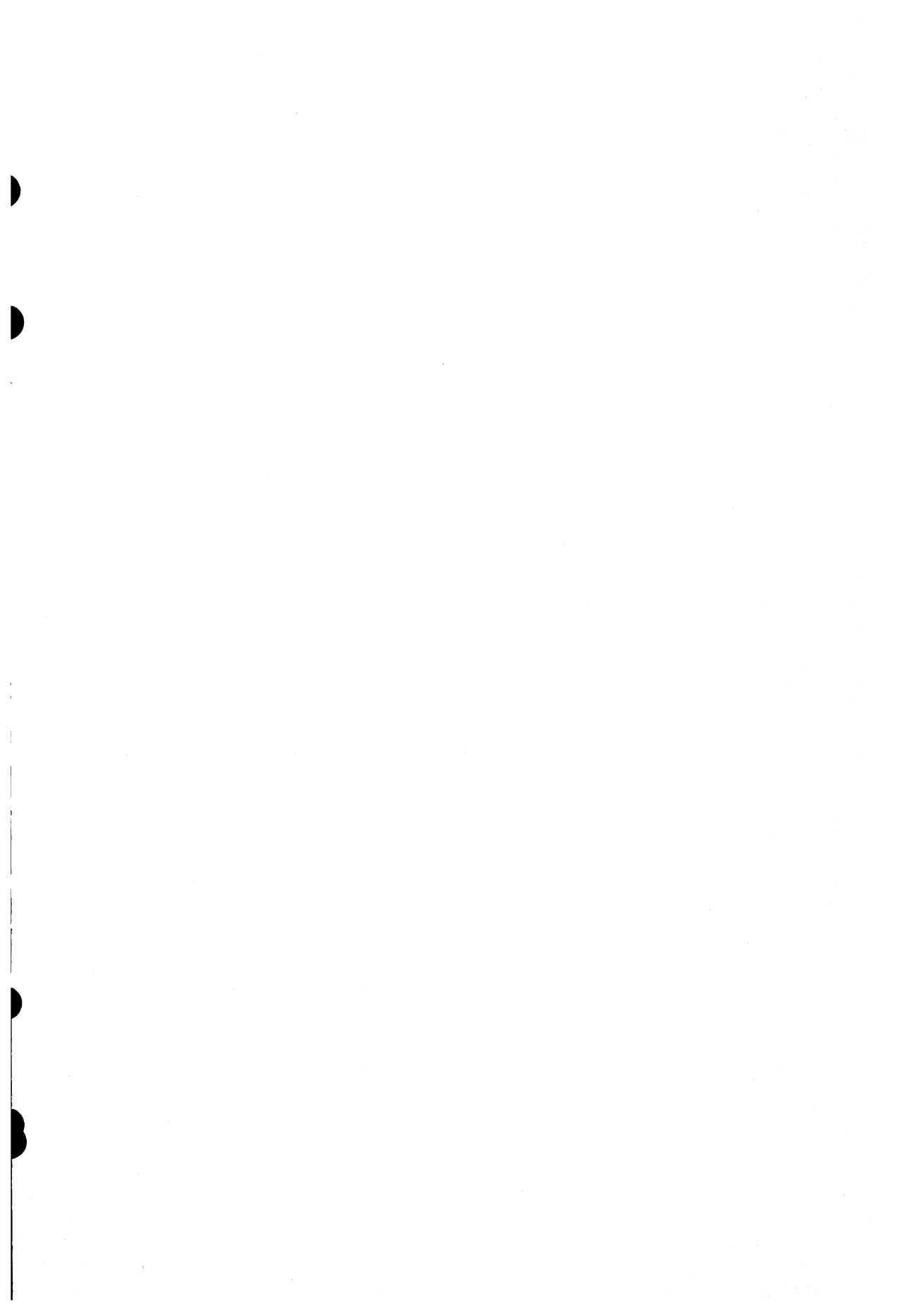
The original Explanatory Memorandum omitted to discuss a clarification of the law contained in section 70-115. Textual change 23 corrects that omission.

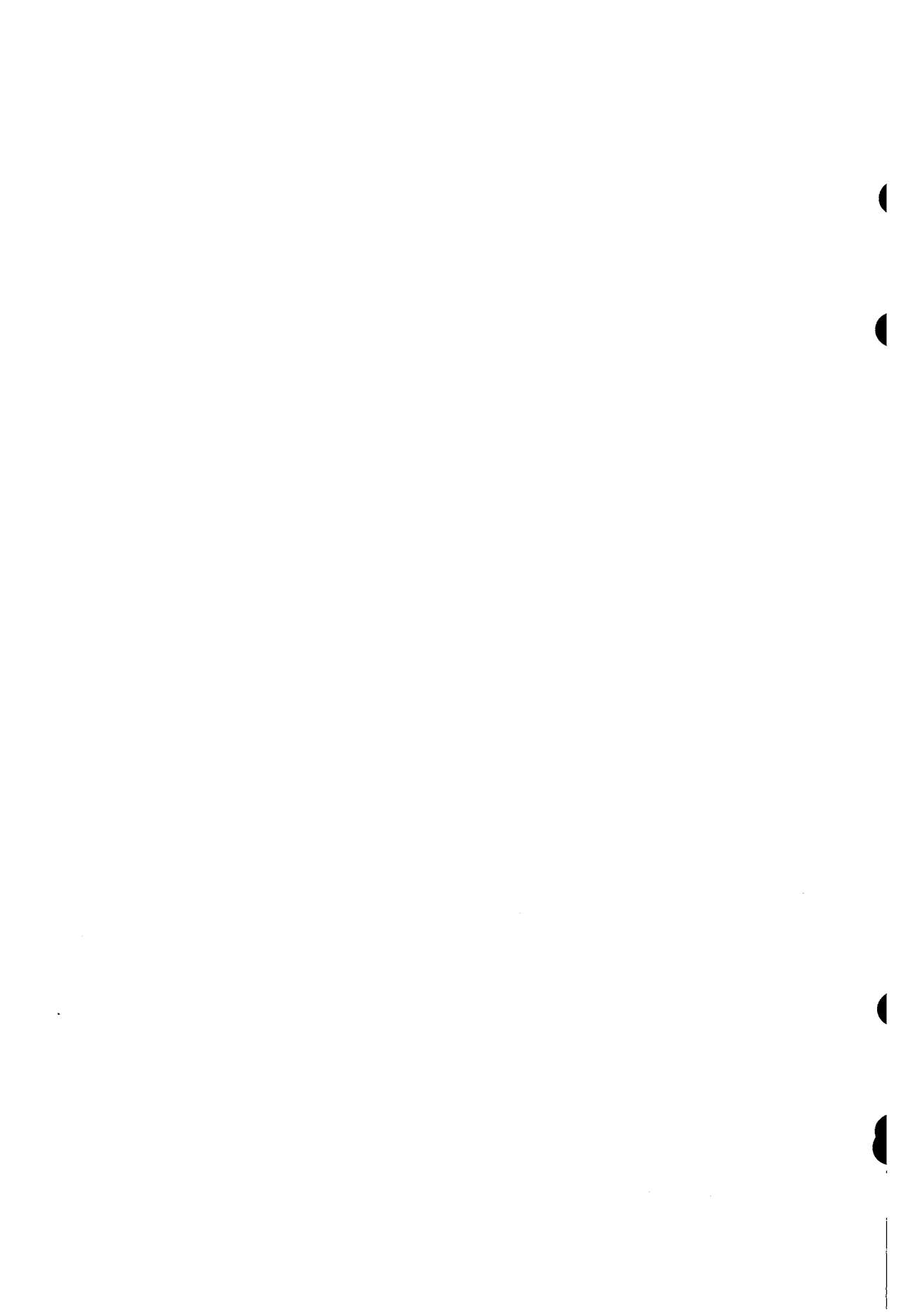
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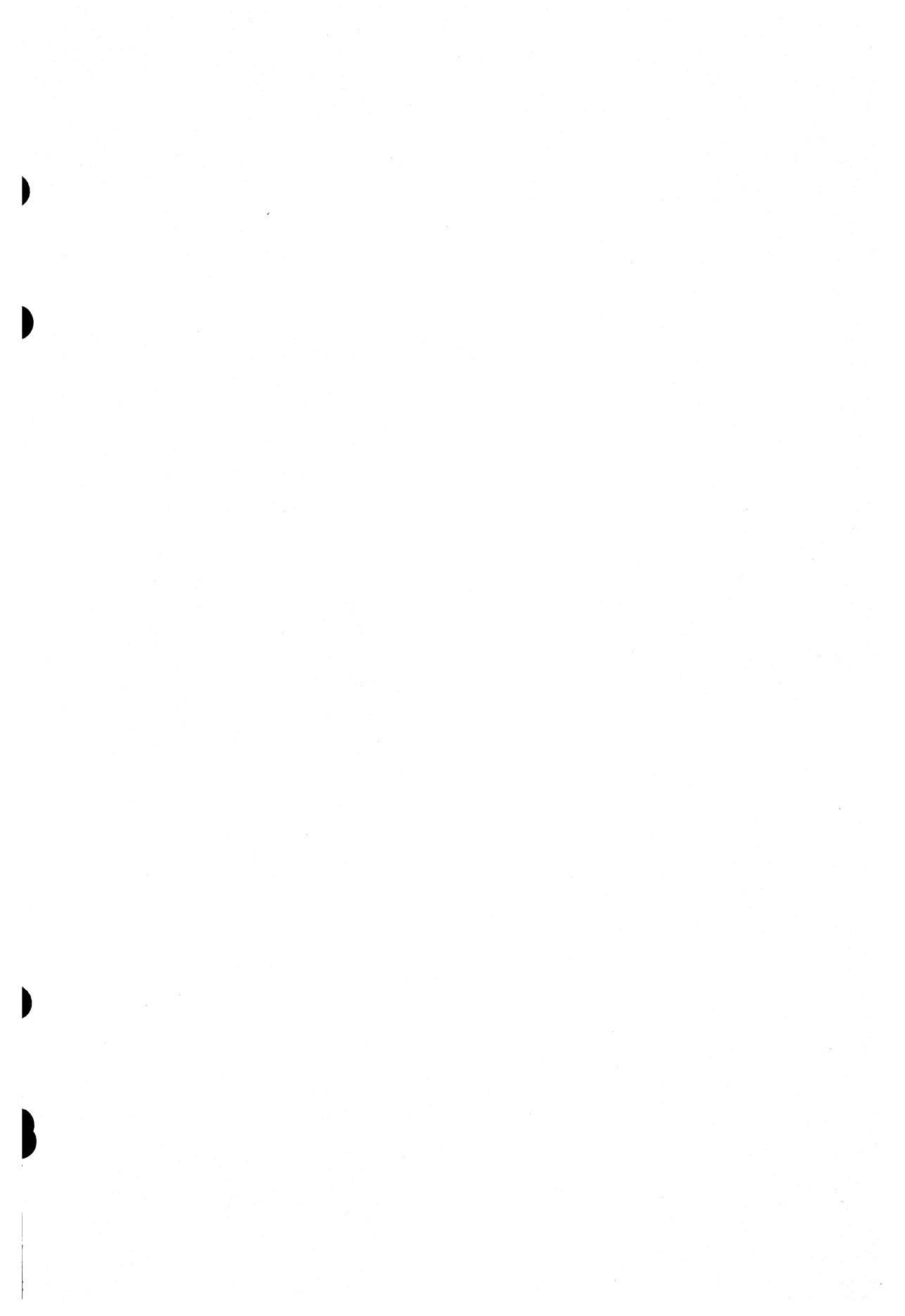
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