



Fringe Benefits Tax Assessment Act 1986

Act No. 39 of 1986 as amended

This compilation was prepared on 18 December 2008
taking into account amendments up to Act No. 145 of 2008

Volume 1 includes: Table of Contents
Sections 1 – 78A

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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**An Act relating to the assessment and collection of
the tax imposed by the *Fringe Benefits Tax Act
1986*, and for related purposes**

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Fringe Benefits Tax Assessment Act 1986*.

2 Commencement [see Note 1]

This Act shall come into operation on the day on which it receives the Royal Assent.

2A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

Part II—Administration

3 General administration of Act

The Commissioner has the general administration of this Act.

4 Annual report

- (1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act, including any breaches or evasions of this Act of which the Commissioner has notice.
- (2) The Minister shall cause a copy of a report furnished under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by subsection (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

5 Secrecy

- (1) In this section, *officer* means a person:
 - (a) who is or has been appointed or employed by the Commonwealth; or
 - (b) to whom powers or functions have been delegated by the Commissioner;and who, by reason of the appointment or employment or in the course of the employment, or by reason of, or in the course of the exercise of powers or the performance of functions under, the delegation, as the case may be, may acquire or has acquired information with respect to the affairs of any other person disclosed or obtained under or for the purposes of this Act.
- (2) For the purposes of this section, a person who, although not appointed or employed by the Commonwealth, performs services

for the Commonwealth shall be taken to be employed by the Commonwealth.

- (3) Subject to subsection (5), a person who is or has been an officer shall not directly or indirectly:
- (a) make a record of any information with respect to the affairs of a second person; or
 - (b) divulge or communicate to a second person any information with respect to the affairs of a third person;

being information disclosed or obtained under or for the purposes of this Act and acquired by the person by reason of the person's appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to the person of powers or functions by the Commissioner, or in the course of the exercise of such powers or performance of such functions, as the case may be.

Penalty: \$10,000 or imprisonment for 2 years, or both.

- (3A) Subsection (3) does not apply to the extent that the person makes the record of the information, or divulges or communicates the information, for the purposes of this Act or in the performance of the person's duties as an officer.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3A), see subsection 13.3(3) of the *Criminal Code*.

- (4) Except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act, a person who is or has been an officer shall not be required:
- (a) to produce in court any document made or given under or for the purposes of this Act; or
 - (b) to divulge or communicate to a court a matter or thing with respect to information disclosed or obtained under or for the purposes of this Act;

being a document or information acquired by the person by reason of the person's appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to the person of powers or functions by the Commissioner, or in the course of the exercise of such powers or the performance of such functions, as the case may be.

Section 5

- (5) Nothing in subsection (3) shall be taken to prohibit the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner from communicating any information to:
- (a) the Tribunal in connection with proceedings under an Act of which the Commissioner has the general administration; or
 - (b) a person performing, as an officer, duties arising under an Act of which the Commissioner has the general administration, or regulations under such an Act, for the purpose of enabling the person to perform those duties; or
 - (c) the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*), for the purpose of the administration of that law; or
 - (d) the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997*, for the purpose of the administration of the social security law (within the meaning of the *Social Security Act 1991*).
- (6) For the purposes of subsection (3), an officer shall be deemed to have communicated information to another person in contravention of that subsection if the officer communicates the information to any Minister.
- (7) An officer shall, if and when required by the Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in a manner and form specified by the Commissioner in writing, to maintain secrecy in conformity with the provisions of this section.

Part IIA—Core provisions

Division 1—Working out an employer's fringe benefits taxable amount

5A Simplified outline of this Division

The following is a simplified outline of this Division:

This Division explains how to work out an employer's fringe benefits taxable amount for a year of tax. This is the amount on which the employer must pay fringe benefits tax (see section 66).

5B Working out an employer's *fringe benefits taxable amount*

Years of tax before year of tax 2000-2001

- (1) An employer's ***fringe benefits taxable amount*** for a year of tax earlier than the year of tax beginning on 1 April 2000 is the amount worked out using the formula:

$$\text{Employer's aggregate fringe benefits amount for the year of tax} \times \frac{1}{1 - \text{Rate of tax for the year of tax}}$$

Note: Other provisions affect the fringe benefits taxable amount. For example, see section 124 (about assessments).

Year of tax 2000-2001 and later years

- (1A) Subject to subsection (1D), an employer's ***fringe benefits taxable amount*** for the year of tax beginning on 1 April 2000 or a later year of tax is the sum of the subsection (1B) amount and the subsection (1C) amount.

Note: Other provisions affect the fringe benefits taxable amount. For example, see section 124 (about assessments).

Part IIA Core provisions

Division 1 Working out an employer's fringe benefits taxable amount

Section 5B

Subsection (1B) amount

- (1B) The **subsection (1B) amount** is the amount worked out using the formula:

$$\text{Type 1 aggregate fringe benefits amount} \times \frac{\text{FBT rate} + \text{GST rate}}{\left(1 - \text{FBT rate}\right) \times \left(1 + \text{GST rate}\right) \times \text{FBT rate}}$$

Subsection (1C) amount

- (1C) The **subsection (1C) amount** is the amount worked out using the formula:

$$\text{Type 2 aggregate fringe benefits amount} \times \frac{1}{1 - \text{FBT rate}}$$

Increase in fringe benefits taxable amount for year of tax 2000-2001 and later years

- (1D) If any benefits provided in respect of the employment of an employee of an employer are exempt benefits under section 57A, the employer's **fringe benefits taxable amount** for the year of tax beginning on 1 April 2000 or a later year of tax as worked out under subsection (1A) is increased by the employer's aggregate non-exempt amount for the year of tax concerned.

How to work out aggregate non-exempt amount

- (1E) An employer's **aggregate non-exempt amount** for the year of tax is worked out as follows.

Method statement

Step 1. For each employee, add:

- (a) the individual grossed-up type 1 non-exempt amount (see subsection (1F)) in relation to the employer for the year of tax; and

- (b) the individual grossed-up type 2 non-exempt amount (see subsection (1G)) in relation to the employer for the year of tax.

The result is the *individual grossed-up non-exempt amount* for the employee.

Step 2. If:

- (b) the employer is a government body and the duties of the employment of one or more employees are as described in paragraph 57A(2)(b) (which is about duties of employment being exclusively performed in or in connection with certain hospitals); or
- (c) the employer is a public hospital; or
- (ca) the employer provides public ambulance services or services that support those services and the employee is predominantly involved in connection with the provision of those services; or
- (d) the employer is a hospital described in subsection 57A(4) (which is about hospitals carried on by non-profit societies and associations);

subtract \$17,000 from the individual grossed-up non-exempt amount for each employee of the employer referred to in paragraph (c), (ca) or (d), or each employee referred to in paragraph (b), for the year of tax. However, if the individual grossed-up non-exempt amount for such an employee is equal to or less than \$17,000, the amount calculated under this step for the employee is nil.

Step 3. If step 2 does not apply in respect of one or more employees of the employer:

- (a) reduce the individual grossed-up non-exempt amount for each such employee for the year of tax beginning on 1 April 2000 to zero; and

Part IIA Core provisions

Division 1 Working out an employer's fringe benefits taxable amount

Section 5B

- (b) reduce the individual grossed-up non-exempt amount for each such employee for a later year of tax by \$30,000, but not below zero.

Step 4. Add together the amounts calculated under steps 2 and 3 in relation to the employees of the employer. The total amount is the employer's **aggregate non-exempt amount** for the year of tax.

Individual grossed-up type 1 non-exempt amount

- (1F) For the purposes of step 1 in the method statement in subsection (1E), the **individual grossed-up type 1 non-exempt amount** of an employee in relation to the employer for the year of tax is:

$$\text{Type 1 individual base non-exempt amount} \times \frac{\text{FBT rate} + \text{GST rate}}{\left(1 - \text{FBT rate}\right) \times \left(1 + \text{GST rate}\right)} \times \frac{\text{FBT rate}}{\text{rate}}$$

Individual grossed-up type 2 non-exempt amount

- (1G) For the purposes of step 1 in the method statement in subsection (1E), the **individual grossed-up type 2 non-exempt amount** of an employee in relation to the employer for the year of tax is:

$$\text{Type 2 individual base non-exempt amount} \times \frac{1}{\left(1 - \text{FBT rate}\right)}$$

Working out the type 1 individual base non-exempt amount

- (1H) An employee's **type 1 individual base non-exempt amount** in relation to the employer for the year of tax is worked out by adding the amounts worked out under step 3 of the method statement in subsection (1K) and step 3 of the method statement in subsection (1L).

Working out the type 2 individual base non-exempt amount

- (1J) An employee's **type 2 individual base non-exempt amount** in relation to the employer for the year of tax is worked out by adding the amounts worked out under step 4 of the method statement in subsection (1K) and step 4 of the method statement in subsection (1L).

Working out the subsection (1K) amounts

- (1K) An employee's subsection (1K) amounts for the year of tax are worked out as follows.

Method statement

- Step 1. Work out under subsection 135Q(3) for each of the employer's employees the amount that would be the employee's individual fringe benefit amount for the year of tax in respect of the employee's employment by the employer if subsection 135Q(1) were amended:
- (a) by omitting "or 58"; and
 - (b) by omitting "one of those sections" from paragraph (b) and "those sections" from paragraph (c) and substituting in each case "that section".
- Step 2. Identify the benefits taken into account in step 1 that are GST-creditable benefits (see section 149A).
- Step 3. So much of the amount worked out under step 1 that relates to the benefits identified under step 2 is the **step 3 of subsection (1K) amount** for the individual.
- Step 4. The remainder of the amount is the **step 4 of subsection (1K) amount** for the individual.

Working out the subsection (1L) amounts

- (1L) An employee's subsection (1L) amounts for the year of tax are worked out as follows.

Part IIA Core provisions

Division 1 Working out an employer's fringe benefits taxable amount

Section 5B

Method statement

- Step 1. Work out for each employee his or her share (if any) of the amounts that, if section 57A did not apply, would be the taxable values of the excluded fringe benefits for the year of tax in respect of the employee's employment by the employer if those benefits were not excluded fringe benefits, but disregarding benefits:
- (a) that constitute the provision of meal entertainment as defined in section 37AD (whether or not the employer made an election under section 37AA); or
 - (b) that are car parking fringe benefits; or
 - (c) whose taxable values are wholly or partly attributable to entertainment facility leasing expenses.
- Step 2. Identify the benefits taken into account in step 1 that are GST-creditable benefits (see section 149A).
- Step 3. So much of the amount worked out under step 1 that relates to the benefits identified under step 2 is the ***step 3 of subsection (1L) amount*** for the individual.
- Step 4. The remainder of the amount is the ***step 4 of subsection (1L) amount*** for the individual.

Using aggregate fringe benefits amount for most recent base year

- (2) This section is subject to section 135G.

Note: Section 135G allows the fringe benefits taxable amount to be worked out using the employer's aggregate fringe benefits amount from an earlier year of tax in special cases.

Definitions

- (3) In this section:

FBT rate means the rate of fringe benefits tax for the year of tax.

GST rate means the rate of goods and services tax payable under the *A New Tax System (Goods and Services Tax) Act 1999* for the year of tax.

type 1 aggregate fringe benefits amount means the employer's type 1 aggregate fringe benefits amount for the year of tax worked out under subsection 5C(3).

type 2 aggregate fringe benefits amount means the employer's type 2 aggregate fringe benefits amount for the year of tax worked out under subsection 5C(4).

Division 2—Working out an employer's aggregate fringe benefits amount

5C Aggregate fringe benefits amount

- (1) Work out an employer's *aggregate fringe benefits amount* for a year of tax earlier than the year of tax beginning on 1 April 2000 as follows:

Method statement

Step 1. Work out under Division 3 for each of the employer's employees the individual fringe benefits amount for the year of tax in respect of the employment of the employee by the employer.

Step 2. Add up all the individual fringe benefits amounts worked out under Step 1.

Step 3. Add up the taxable value of every excluded fringe benefit (other than an amortised fringe benefit) relating to an employee of the employer, the employer and the year of tax.

Note: Subsection 5E(3) explains what is an excluded fringe benefit.

Step 4. Add the total from Step 2 to the total from Step 3.

Note: The result of Step 4 is the employer's aggregate fringe benefits amount if there are no amortised fringe benefits or reducible fringe benefits in relation to the employer.

Step 5. Add to the total from Step 4 the amortised amount for the year of tax of each amortised fringe benefit (if any) relating to an employee of the employer, the employer and any year of tax.

Step 6. Subtract from the total from Step 5 the reduction amount for the year of tax of each reducible fringe benefit (if any) relating to an employee of the employer, the employer and the year of tax.

- (2) An employer's **aggregate fringe benefits amount** for the year of tax beginning on 1 April 2000 or a later year of tax is the sum of the employer's type 1 aggregate fringe benefits amount and the employer's type 2 aggregate fringe benefits amount for the year of tax.
- (3) Work out an employer's **type 1 aggregate fringe benefits amount** for a year of tax as follows.

Method statement

Step 1. Identify the fringe benefits in respect of each of the employer's employees that are GST-creditable benefits (see section 149A), and work out under Division 3 for each of those employees the individual fringe benefits amount for the year of tax in relation to those fringe benefits.

Step 2. Add up all the individual fringe benefits amounts worked out under step 1.

Step 3. Identify the excluded fringe benefits for the year of tax in respect of each of the employer's employees that are GST-creditable benefits (see section 149A), and add up the taxable values of all those excluded fringe benefits.

Note: Subsection 5E(3) explains what is an excluded fringe benefit.

Step 4. Add the total from step 2 to the total from step 3. The total amount is the employer's **type 1 aggregate fringe benefits amount** for the year of tax.

Part IIA Core provisions

Division 2 Working out an employer's aggregate fringe benefits amount

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- (4) Work out an employer's **type 2 aggregate fringe benefits amount** for a year of tax as follows.

Method statement

Step 1. Identify, in respect of each of the employer's employees, the fringe benefits that are not taken into account under step 1 of the method statement in subsection (3), and work out under Division 3 for each of those employees the individual fringe benefits amount for the year of tax in relation to those fringe benefits.

Step 2. Add up all the individual fringe benefits amounts worked out under step 1.

Step 3. Identify, in respect of each of the employer's employees, the excluded fringe benefits for the year of tax that are not taken into account under step 3 of the method statement in subsection (3), and add up the taxable values of all those excluded fringe benefits.

Note: Subsection 5E(3) explains what is an excluded fringe benefit.

Step 4. Add the total from step 2 to the total from step 3. The total amount is the employer's **type 2 aggregate fringe benefits amount** for the year of tax.

Note: Other provisions may affect the aggregate fringe benefits amount. For example, see section 67 (about arrangements to avoid or reduce tax), section 135L (about reducing the aggregate fringe benefits amount of an employer who is in business for only part of a year of tax) and section 152B (about entertainment facility leasing expenses).

Division 3—Employee's individual fringe benefits amount

5D Simplified outline

The following is a simplified outline of this Division:

An employee's individual fringe benefits amount is the employee's share of the taxable value of fringe benefits (with some exclusions) provided in respect of his or her employment.

5E Employee's individual fringe benefits amount

Overview

- (1) This section explains how to work out an employee's **individual fringe benefits amount** for a year of tax in respect of the employee's employment by an employer.

General rule

- (2) The **individual fringe benefits amount** is the sum of the employee's share of the taxable value of each fringe benefit that relates to the year of tax and is provided in respect of the employment other than an excluded fringe benefit.

What is an excluded fringe benefit?

- (3) An **excluded fringe benefit** is a fringe benefit:
 - (a) constituted by the provision of meal entertainment (as defined in section 37AD, whether or not the employer has elected that Division 9A of Part III apply to the employer); or
 - (b) that is a car parking fringe benefit (see subsection 136(1)); or
 - (c) whose taxable value is wholly or partly attributable to entertainment facility leasing expenses; or
 - (e) whose taxable value is worked out under section 59 (about remote area residential fuel); or
 - (f) whose taxable value is reduced under section 60 (about remote area housing); or
 - (g) that is an amortised fringe benefit (see subsection 136(1)); or

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- (h) that is a reducible fringe benefit (see subsection 136(1)); or
- (i) that is a benefit prescribed by the regulations for the purposes of this paragraph; or
- (j) that relates to occasional travel to a major population centre in Australia provided to employees and family members resident in a location that is not in or adjacent to an eligible urban area; or
- (k) that relates to freight costs for foodstuffs provided to employees resident in a location that is not in or adjacent to an eligible urban area; or
- (l) that is provided to address a security concern:
 - (i) relating to the personal safety of an employee, or an associate of an employee; and
 - (ii) that arises in respect of the employee's employment.

If section 135G applies to the employer

- (4) If:
 - (a) section 135G applies for working out the employer's liability to pay tax for the year of tax; and
 - (b) one or more fringe benefits are provided in relation to the year of tax in respect of the employee's employment by the employer;

the employee's ***individual fringe benefits amount*** is the amount determined by the employer in writing. This subsection has effect despite subsection (2).

Note: Section 135G allows use of the employer's aggregate fringe benefits amount for an earlier year of tax in working out the employer's liability for tax for the current year of tax.

Determining individual fringe benefits amounts

- (5) In making a determination under subsection (4), the employer must:
 - (a) ensure that the total of the amount or amounts determined by the employer under that subsection for the year of tax equals the aggregate fringe benefits amount used for working out the employer's liability to pay tax for the year of tax; and
 - (b) if that subsection applies to 2 or more of the employer's employees for the year of tax—act reasonably, having regard

to the fringe benefit or fringe benefits provided in relation to the year of tax in respect of each employee's employment.

Security concerns relating to employees or associates

- (6) A fringe benefit referred to in paragraph (3)(1) is an ***excluded fringe benefit*** only to the extent that its provision is consistent with a threat assessment in relation to the employee or associate made by a person who is recognised by:
- (a) a relevant industry body or government body; or
 - (b) the Commissioner;
- as competent to make threat assessments.

5F Working out the *employee's share*

Overview

- (1) This section explains how to work out an ***employee's share*** of the taxable value of a fringe benefit relating to the employee, an employer and a year of tax.

Individually-valued benefit provided in respect of one employee

- (2) The ***employee's share*** is 100% of the taxable value if:
- (a) the fringe benefit was provided in respect of the employment of the employee by the employer and was not provided in respect of the employment of anyone else; and
 - (b) the taxable value of the fringe benefit was worked out for that particular fringe benefit (not merely as part of the total taxable value of fringe benefits in a class including that particular benefit).

Individually-valued benefit shared by 2 or more employees

- (3) The ***employee's share*** is so much of the taxable value as is reasonably attributable to the provision of the fringe benefit in respect of the employee's employment by the employer, taking account of any relevant matters, if:
- (a) the fringe benefit was provided in respect of the employment of the employee by the employer and in respect of the employment of another employee; and

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- (b) the taxable value of the fringe benefit was worked out for that particular fringe benefit (not merely as part of the total taxable value of fringe benefits in a class including that particular benefit).

Benefits valued in aggregate

(4) If:

- (a) the fringe benefit is one of a class of fringe benefits provided in respect of the employment of one or more employees by the employer; and
- (b) the total taxable value of all the fringe benefits in the class is worked out by a single calculation;

the *employee's share* of the taxable value of the fringe benefit is so much of the total taxable value as is reasonably attributable to the provision of the fringe benefit in respect of the employee's employment by the employer, taking account of any relevant matters.

Shares of different employees must total 100% of taxable value

(5) If:

- (a) the fringe benefit was provided in respect of the employment of 2 or more employees; and
- (b) each of those employees has an employee's share of the taxable value of the fringe benefit;

the sum of those shares must equal the taxable value of the fringe benefit.

Single employee's shares must equal total taxable value

- (6) If all the fringe benefits in a class described in subsection (4) are provided in respect of the employment of the same employee (and none of them is provided in respect of the employment of anyone else), the sum of the employee's shares of the taxable value of the fringe benefits must equal the total taxable value of the fringe benefits.

Part III—Fringe benefits

Division 1—Preliminary

6 Part not to limit generality of *benefit*

The provisions of this Part do not limit the generality of the expression *benefit*.

Division 2—Car fringe benefits

Subdivision A—Car benefits

7 Car benefits

(1) Where:

- (a) at any time on a day, in respect of the employment of an employee, a car held by a person (in this subsection referred to as the *provider*):
 - (i) is applied to a private use by the employee or an associate of the employee; or
 - (ii) is taken to be available for the private use of the employee or an associate of the employee; and
- (b) either of the following conditions is satisfied:
 - (i) the provider is the employer, or an associate of the employer, of the employee;
 - (ii) the car is so applied or available, as the case may be, under an arrangement between:
 - (A) the provider or another person; and
 - (B) the employer, or an associate of the employer, of the employee;

that application or availability of the car shall be taken to constitute a benefit provided on that day by the provider to the employee or associate in respect of the employment of the employee.

- (2) Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:
- (a) a car is held by a person, being:
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
 - (b) the car is garaged or kept at or near a place of residence of the employee or of an associate of the employee;

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

- (2A) Subsection (2) does not apply to a car that:
- (a) is used by an ambulance service, a firefighting service or a police service; and
 - (b) is visibly marked on its exterior for that use; and
 - (c) is fitted with:
 - (i) a flashing warning light; and
 - (ii) a horn, bell or alarm that can give audible warning of the approach or position of the car by making sounds with different amplitude, tones or frequencies on a regular time cycle.
- (3) Where, at a particular time, the following conditions are satisfied in relation to an employee of an employer:
- (a) a car is held by a person, being:
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
 - (b) the car is not at business premises of:
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (other than the employer or an associate of the employer) with whom, or in respect of whom, the employer or an associate of the employer has an arrangement relating to the use or availability of the car;
 - (c) any of the following conditions is satisfied:
 - (i) the employee is entitled to apply the car to a private use;
 - (ii) the employee is not performing the duties of his or her employment and has custody or control of the car;
 - (iii) an associate of the employee is entitled to use, or has custody or control of, the car;

the car shall be taken, for the purposes of this Act, to be available at that time for the private use of the employee or associate, as the case may be.

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- (4) For the purposes of subsection (3), where a prohibition on the application of a car, or on the application of a car for a private use, by a person is not consistently enforced, the person shall be deemed to be entitled to use the car, or to apply the car to a private use, notwithstanding the prohibition.
- (5) For the purposes of this Act, a car shall be deemed to be applied by a person if it is applied in accordance with the directions, instructions or wishes of the person.
- (6) For the purposes of this Division, a car that is let on hire to a person under a hire-purchase agreement shall be deemed:
 - (a) to have been purchased by the person at the time when the person first took the car on hire; and
 - (b) to have been owned by the person at all material times.
- (7) A reference in this Division to a car held by a person (in this subsection referred to as the *provider*) does not include a reference to:
 - (a) a taxi let on hire to the provider; or
 - (b) a car let on hire to the provider under an agreement of a kind ordinarily entered into by persons taking cars on hire intermittently as occasion requires on an hourly, daily, weekly or other short-term basis unless the car has been or may reasonably be expected to be on hire under successive agreements of a kind that result in substantial continuity of the hiring of the car.

8 Exempt car benefits

- (1) Except insofar as section 7 provides that the application or availability of a car held by a person is a benefit, the application or availability of a car held by a person is an exempt benefit.
- (2) A car benefit provided in a year of tax in respect of the employment of a current employee is an exempt benefit in relation to the year of tax if:
 - (a) the car is:
 - (i) a taxi, panel van or utility truck, designed to carry a load of less than 1 tonne; or

- (ii) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and
 - (b) there was no private use of the car during the year of tax and at a time when the benefit was provided other than:
 - (i) work-related travel of the employee; and
 - (ii) other private use by the employee or an associate of the employee, being other use that was minor, infrequent and irregular.
- (3) Where:
- (a) a car benefit relating to a particular car is provided by a particular person (in this subsection called the *provider*) in a year of tax in respect of the employment of a current employee of an employer;
 - (b) at all times during the year of tax when the car was held by the provider, the car was unregistered; and
 - (c) during the period in the year of tax when the car was held by the provider, the car was wholly or principally used directly in connection with business operations of:
 - (i) the employer; or
 - (ii) if the employer is a company—the employer or a company that is related to the employer;
- the car benefit is an exempt benefit in relation to the year of tax.
- (4) A car benefit is an exempt benefit in relation to a year of tax if:
- (a) the car benefit is provided in the year of tax in respect of the employment of a current employee; and
 - (b) the person providing the benefit cannot deduct an amount under the *Income Tax Assessment Act 1997* for providing the benefit because of section 86-60 of that Act.

Note: Section 86-60 of the *Income Tax Assessment Act 1997* (read together with section 86-70 of that Act) limits the extent to which personal service entities can deduct car expenses. Deductions are not allowed for more than one car for private use.

Subdivision B—Taxable value of car fringe benefits

9 Taxable value of car fringe benefits—statutory formula

- (1) Subject to this Part, where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a particular car held by a particular person (in this section referred to as the *provider*), the taxable value of that fringe benefit, or the aggregate of the taxable values of those fringe benefits, as the case may be, in relation to that year of tax, is the amount calculated in accordance with the formula:

$$\frac{ABC}{D} - E$$

where:

A is the base value of the car;

B is the statutory fraction;

C is the number of days during that year of tax on which the car fringe benefits were provided by the provider;

D is the number of days in that year of tax; and

E is the amount (if any) of the recipient's payment.

- (2) For the purposes of this section:

(a) the base value of the car is the sum of:

- (i) where, at the earliest holding time, the car was owned by the provider or an associate of the provider, the amount calculated in accordance with the formula AB , where:

A is the cost price of the car to the provider or associate, as the case may be; and

B is:

- (A) in a case where the commencement of the year of tax is later than the fourth anniversary of the earliest holding time— $\frac{2}{3}$; or
(B) in any other case—1;

- (ii) in a case to which subparagraph (i) does not apply—the amount calculated in accordance with the formula AB , where:
- A is the leased car value of the car at the earliest holding time; and
- B is:
- (A) in a case where the commencement of the year of tax is later than the fourth anniversary of the earliest holding time— $\frac{2}{3}$; or
 - (B) in any other case—1; and
- (iii) the cost price of each non-business accessory that:
- (A) was fitted to the car after the earliest holding time and before the end of the year of tax; and
 - (B) remained fitted to the car at a time during the year of tax when the car was held by the provider;
- (b) the earliest holding time, in relation to a car held by the provider at a particular time (in this paragraph referred to as the *current time*), is the earliest time before the current time when the car was held by the provider or an associate of the provider;
- (c) the statutory fraction is:
- (i) if the annualised number of whole kilometres the car travelled during the year of tax was more than 40,000—0.07; or
 - (ii) if the annualised number of whole kilometres the car travelled during the year of tax was not less than 25,000 and not more than 40,000—0.11; or
 - (iii) if the annualised number of whole kilometres the car travelled during the year of tax was not less than 15,000 and not more than 24,999—0.20; or
 - (iv) in any other case—0.26;
- (d) the annualised number of whole kilometres travelled by the car during the year of tax is the number calculated in accordance with the formula:

$$\frac{AB}{C}$$

where:

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A is the number of whole kilometres travelled by the car during the period in the year of tax when the car was held by the provider (in this subsection referred to as the *holding period*);

B is the number of days in the year of tax; and

C is the number of days in the holding period; and

(e) the amount of the recipient's payment is the sum of:

(i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses;

(ia) in a case where car expenses in respect of fuel or oil for the car were incurred during the holding period by recipients of the car fringe benefits and:

(A) the persons incurring those expenses give to the employer, before the declaration date, declarations, in a form approved by the Commissioner, in respect of those expenses; or

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and

(ii) in a case where:

(A) car expenses in respect of the car (other than car expenses in respect of fuel or oil for the car) were incurred during the holding period by recipients of the car fringe benefits; and

(B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;

the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses.

10 Taxable value of car fringe benefits—cost basis

- (1) An employer may, in relation to a particular car, elect that this section apply in relation to all the car fringe benefits in relation to the employer in relation to a year of tax that relate to that car.
- (2) Subject to this Part, where an election is made under subsection (1), the taxable value, or the aggregate of the taxable values, as the case requires, of the car fringe benefits in relation to the employer in relation to the year of tax that relate to the car while it was held by a particular person (in this section referred to as the *provider*) during a particular period (in this section referred to as the *holding period*) in the year of tax is the amount calculated in accordance with the formula:

$$(C \times (100\% - BP)) - R$$

where:

C is the operating cost of the car during the holding period;

BP is:

- (a) if, under section 10A or 10B, the employer is not entitled to a reduction in the operating cost of the car on account of business journeys undertaken in the car during the holding period—nil; or
- (c) in any other case—the business use percentage applicable to the car for the holding period; and

R is the amount (if any) of the recipient's payment.

- (3) For the purposes of subsection (2):
 - (a) the operating cost of the car during the holding period is the sum of:
 - (i) any car expenses (other than insured repair expenses or expenses in respect of registration and insurance) relating to the car incurred during the holding period (whether the expenses are incurred by the provider or by any other person), not including, in a case where the car

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- is leased to the provider, any car expenses incurred by the lessor pursuant to the lease agreement;
- (ii) so much of any expense paid or payable in respect of the registration of, or insurance in respect of, the car as is attributable to the holding period (whether the expenses are incurred by the provider or by any other person), not including:
 - (A) in a case where the car is owned by the provider—any expense incurred before the provider became the owner of the car; or
 - (B) in a case where the car is leased to the provider—any expense incurred by the lessor pursuant to the lease agreement;
 - (iii) in a case where the car is owned by the provider:
 - (A) the amount of depreciation that is deemed to have been incurred by the provider in respect of the car in respect of the holding period; and
 - (B) the amount of interest that is deemed to have been incurred by the provider in respect of the car in respect of the holding period;
 - (iv) in a case where the car is owned by the provider and a non-business accessory was fitted to the car during the period when the car was owned by the provider and remained fitted to the car at a time during the holding period:
 - (A) the amount of depreciation that would be deemed to have been incurred by the provider in respect of the accessory in respect of the holding period if the accessory were a car; and
 - (B) the amount of interest that would be deemed to have been incurred by the provider in respect of the accessory in respect of the holding period if the accessory were a car;
 - (v) in a case where the car is leased to the provider:
 - (A) where sub-subparagraph (B) does not apply—so much of the charges paid or payable under the lease agreement as are attributable to the holding period; or
 - (B) where the lessor was entitled to privileges or exemptions in relation to sales tax or customs

- duty in respect of a transaction by which the lessor purchased the car—the amount that could reasonably be expected to have been applicable under sub-subparagraph (A) if the lessor had not been entitled to those privileges or exemptions; and
- (vi) in a case where the car is neither owned by, nor leased to, the provider—the amount of depreciation and interest that would be deemed to have been incurred by the provider in respect of the car in respect of the holding period if the car had been purchased by the provider at the time when the provider commenced to hold the car for a consideration equal to the leased car value of the car at that time; and
- (c) the amount of the recipient's payment is the sum of:
- (i) in a case where expenses were incurred to the provider or employer during the holding period by recipients of the car fringe benefits by way of consideration for the provision of the car fringe benefits—the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses;
- (ia) in a case where car expenses in respect of fuel or oil for the car were incurred during the holding period by recipients of the car fringe benefits and:
- (A) the persons incurring those expenses give to the employer, before the declaration date, declarations, in a form approved by the Commissioner, in respect of those expenses; or
- (B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;
- the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses; and
- (ii) in a case where:
- (A) car expenses in respect of the car (other than car expenses in respect of fuel or oil for the car) were incurred during the holding period by recipients of the car fringe benefits; and

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- (B) documentary evidence of those expenses is obtained by the persons incurring the expenses and given to the employer before the declaration date;
- the amount of those expenses paid by the recipients less any amount paid or payable to the recipients by way of reimbursement of those expenses.
- (3A) A reference in subparagraph (3)(a)(i) to an insured repair expense relating to a car is a reference to:
- (a) so much of an expense incurred in respect of repairs to the car as does not exceed an amount:
 - (i) received by way of insurance in respect of the repairs by the person incurring the expense;
 - (ii) paid by way of insurance in respect of the repairs in discharge of the obligation of the insured to pay the expense;
 - (iii) received by way of compensation in respect of the repairs by the person incurring the expense from the person legally responsible for the damage to the car; or
 - (iv) paid by way of compensation in respect of the repairs by the person legally responsible for the damage to the car in discharge of the obligation of the person incurring the expense to pay the expense; or
 - (b) an expense incurred in respect of repairs to the car:
 - (i) by an insurer under a contract of insurance; or
 - (ii) by way of compensation by the person legally responsible for the damage to the car.
- (3B) Where, in accordance with subsection 162K(2), the identity of a car changes one or more times during the period (in this subsection called the *overall holding period*) that, apart from that subsection, would be the holding period, the operating cost of the car during each period (in this subsection called a *statutory holding period*) that is a holding period in relation to the car when the car had a separate identity is so much of the amount that would have been the operating cost of the car during the overall holding period (assuming that the identity of the car had not changed during the overall holding period) as is attributable to the statutory holding period.

- (3C) Where, in accordance with subsection 162K(2), the identity of a car changes one or more times during the period (in this subsection called the *overall holding period*) that, apart from that subsection, would be the holding period, the recipient's payment in relation to each period (in this subsection called a *statutory holding period*) that is a holding period in relation to the car when the car had a separate identity is so much of the amount that would have been the recipient's payment in relation to the overall holding period (assuming that the identity of the car had not changed during the overall holding period) as is attributable to the statutory holding period.
- (3D) In determining, for the purposes of this section, whether:
- (a) an expense is paid or payable in respect of the registration of, or insurance in respect of, a car;
 - (b) a charge is paid or payable under a lease agreement in respect of a car; or
 - (c) a lessor of a car is entitled to privileges or exemptions in relation to sales tax or customs duty in respect of a transaction by which the lessor purchased the car;
- a change, in accordance with subsection 162K(2), to the identity of the car shall be disregarded.
- (4) An election by an employer under subsection (1) in relation to a year of tax:
- (a) shall be made by notice in writing to the Commissioner; and
 - (b) shall be lodged with the Commissioner on or before the declaration date.
- (5) Where:
- (a) an employer elects that this section apply in relation to all the car fringe benefits in relation to the employer in relation to a year of tax that relate to a particular car; and
 - (b) the taxable value, or the aggregate of the taxable values, as the case requires, of the car fringe benefits that relate to the car ascertained under subsection (2) of this section exceeds the taxable value, or the aggregate of the taxable values, as the case requires, that would have been ascertained under section 9 if that election had not been made;
- this Act (other than section 162G) applies, and shall be deemed always to have applied, for the purposes of ascertaining that

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taxable value, or the aggregate of those taxable values, as the case requires, as if that election had not been made.

- (6) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (5).

10A No reduction of operating cost in a log book year of tax unless log book records and odometer records are maintained

Where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a car while it was held by a particular person (in this section called the *provider*) during a particular period (in this section called the *holding period*) in a year of tax that is a log book year of tax of the employer in relation to the car, the employer is entitled to a reduction in the operating cost of the car on account of business journeys undertaken in the car during the holding period if, and only if:

- (a) log book records and odometer records are maintained by or on behalf of the provider for an applicable log book period in relation to the car; and
- (b) odometer records are maintained by or on behalf of the provider for the holding period; and
- (c) if the provider is not the employer—those log book records and odometer records are given to the employer before the declaration date; and
- (d) the employer specifies the employer's estimate of the number of business kilometres travelled by the car during the holding period; and
- (e) the employer specifies a percentage as the business use percentage applicable to the car in relation to the provider for the holding period.

10B No reduction of operating cost in a non-log book year of tax unless log book records and odometer records are maintained in log book year of tax

Where one or more car fringe benefits in relation to an employer in relation to a year of tax relate to a car while it was held by a particular person (in this section called the *provider*) during a particular period (in this section called the *holding period*) in a year of tax that is not a log book year of tax of the employer in

relation to the car, the employer is entitled to a reduction in the operating cost of the car on account of business journeys undertaken during the holding period in the car if, and only if:

- (a) odometer records are maintained by or on behalf of the provider in relation to the car for the holding period and, if the provider is not the employer, are given to the employer before the declaration date; and
- (b) the employer specifies the employer's estimate of the number of business kilometres travelled by the car in the holding period; and
- (c) the employer specifies the business use percentage applicable to the car in relation to the provider for the holding period.

11 Calculation of depreciation and interest

- (1A) For the purposes of this Subdivision, the amount of depreciation that is deemed to have been incurred by a person in respect of a car in respect of the period (in this subsection called the **holding period**) during a year of tax while the car was held by the person is the amount calculated in accordance with the formula:

$$\text{DEP} \times \frac{\text{DHP}}{\text{DCO}}$$

where:

DEP is the amount of depreciation that is deemed to have been incurred by the person in respect of the car in respect of the year of tax;

DHP is the number of days in the holding period during which the car was owned by the person; and

DCO is the number of days in the period in the year of tax during which the car was owned by the person.

- (1) For the purposes of this Subdivision, the amount of depreciation that is deemed to have been incurred by a person in respect of a car in respect of a year of tax is the amount calculated in accordance with the formula:

$$\frac{\text{ABC}}{\text{D}}$$

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where:

A is:

- (a) where the car was owned by the person at the beginning of the year of tax—the depreciated value of the car at that time;
or
- (b) in any other case—the cost price of the car to the person;

B is the amount worked out for the person and the car using the formula in subsection (1AA).

C is the number of days in the period in the year of tax during which the car was owned by the person; and

D is the number of days in the year of tax.

- (1AA) The formula for working out the amount of **B** for the person and the car for subsection (1) is:

$$\frac{\text{DV percentage}}{\text{Effective life of the car}}$$

where:

DV percentage is the percentage applicable in using the diminishing value method (within the meaning of the *Income Tax Assessment Act 1997*) as at the start of the year of tax.

effective life of the car is the number of years in the period specified as the effective life of the car in a determination made by the Commissioner under section 40-100 of the *Income Tax Assessment Act 1997* and in effect at the most recent time (before the end of the year of tax) the person became the owner of the car.

- (1B) For the purposes of this Subdivision, the amount of interest that is deemed to have been incurred by a person in respect of a car in respect of the period (in this subsection called the **holding period**) during a year of tax while the car was held by the person is the amount calculated in accordance with the formula:

$$\text{INT} \times \frac{\text{DHP}}{\text{DCO}}$$

where:

INT is the amount of interest that is deemed to have been incurred by the person in respect of the car in respect of the year of tax;

DHP is the number of days in the holding period during which the car was owned by the person; and

DCO is the number of days in the period in the year of tax during which the car was owned by the person.

- (2) For the purposes of this Subdivision, the amount of interest that is deemed to have been incurred by a person in respect of a car in respect of a year of tax is the amount calculated in accordance with the formula:

$$\frac{ABC}{D}$$

where:

A is:

- (a) where the car was owned by the person at the beginning of the year of tax—the depreciated value of the car at that time;
or
(b) in any other case—the cost price of the car to the person;

B is the statutory interest rate in relation to the year of tax;

C is the number of days in the period in the year of tax during which the car was owned by the person; and

D is the number of days in the year of tax.

12 Depreciated value

- (1) In this Subdivision, the **depreciated value** of a car at a particular time (the **relevant time**) is the amount worked out using the formula:

$$A - B$$

where:

A is:

- (a) if the car was owned by the person at the start of 1 July 1986—the depreciated value worked out under subsection (2); or

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(b) in any other case—the cost price of the car to the person.

B is the total amount of depreciation (if any) that would have been taken to have been incurred by the person in respect of the car for the period after the start of 1 July 1986 and before the relevant time when the person owned the car, if the depreciation taken to have been incurred for that period were calculated in accordance with subsection 11(1).

- (2) The *depreciated value* of a car owned by a person at the start of 1 July 1986 is the cost price of the car to that person, reduced by the total amount of depreciation that would have been taken to have been incurred by the person in respect of the car for the period before that time when it was owned by the person if:
- (a) the depreciation taken to have been incurred for that period were calculated in accordance with subsection 11(1); and
 - (b) each year starting on 1 July were a year of tax.

13 Expenditure to be increased in certain circumstances

- (1) The following provisions apply for the purpose of determining the base value of a car for the purposes of section 9 or the operating cost of a car for the purposes of section 10.
- (2) Where the amount (if any) of expenditure incurred by a person under a transaction that is not an arm's length transaction is less than the amount (in this subsection referred to as the *increased amount*) of expenditure that could reasonably have been expected to have been incurred by the person under the transaction if it had been an arm's length transaction, the person shall be deemed, under the transaction, to have incurred the increased amount of expenditure.
- (3) The reference in subsection (2) to expenditure does not include a reference to expenditure by a recipient of a car benefit in relation to the car by way of reimbursement of expenditure incurred by another person.
- (4) Where, in a case to which subsection (2) does not apply:
 - (a) a person acquires any property, or is provided with any benefit; and
 - (b) the person incurs no expenditure in respect of the acquisition of that property or the provision of that benefit;

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the person shall be deemed to have incurred, in respect of the acquisition of that property or the provision of that benefit, expenditure equal to the amount that the person could reasonably be expected to have been required to pay to purchase that property, or obtain the provision of that benefit, on the open market.

Division 3—Debt waiver fringe benefits

Subdivision A—Debt waiver benefits

14 Debt waiver benefits

Where, at a particular time, a person (in this section referred to as the *provider*) waives the obligation of another person (in this section referred to as the *recipient*) to pay or repay to the provider an amount, the waiver shall be taken to constitute a benefit provided at that time by the provider to the recipient.

Subdivision B—Taxable value of debt waiver fringe benefits

15 Taxable value of debt waiver fringe benefits

Subject to this Part, the taxable value in relation to a year of tax of a debt waiver fringe benefit provided in the year of tax is the amount the payment or repayment of which is waived.

Division 4—Loan fringe benefits

Subdivision A—Loan benefits

16 Loan benefits

- (1) Where a person (in this subsection referred to as the *provider*) makes a loan to another person (in this subsection referred to as the *recipient*), the making of the loan shall be taken to constitute a benefit provided by the provider to the recipient and that benefit shall be taken to be provided in respect of each year of tax during the whole or a part of which the recipient is under an obligation to repay the whole or any part of the loan.

Note: A loan benefit that is taken under this subsection to be provided in respect of a year of tax may not be provided as a fringe benefit if:

- (a) the loan was made in that year of tax or a previous year of tax; and
- (b) a dividend is not taken to be paid under section 109D of the *Income Tax Assessment Act 1936* in relation to the loan, because of section 109N of that Act.

See paragraph (s) of the definition of *fringe benefit* in subsection 136(1) of this Act.

- (2) For the purposes of this Act, where:
- (a) a person (in this subsection referred to as the *debtor*) is under an obligation to pay or repay an amount (in this subsection referred to as the *principal amount*) to another person (in this subsection referred to as the *creditor*);
 - (b) the principal amount is not the whole or a part of the amount of a loan; and
 - (c) after the due date for payment or repayment of the principal amount, the whole or part of the principal amount remains unpaid;
- the following provisions have effect:
- (d) the creditor shall be deemed, immediately after the due date, to have made a loan (in this subsection referred to as the *deemed loan*) of the principal amount to the debtor;
 - (e) at any time when the debtor is under an obligation to repay any part of the principal amount, the debtor shall be deemed

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- to be under an obligation to repay that part of the deemed loan;
- (f) the deemed loan shall be deemed to have been made:
- (i) if interest accrues on so much of the principal amount as remains from time to time unpaid—at the rate of interest at which that interest accrues; or
 - (ii) in any other case—at a nil rate of interest.
- (3) For the purposes of this Act, where a person (in this subsection referred to as the *provider*) makes a deferred interest loan (in this subsection referred to as the *principal loan*) to another person (in this subsection referred to as the *recipient*):
- (a) the provider shall be deemed, at the end of:
 - (i) the period of 6 months commencing on the day on which the principal loan was made; and
 - (ii) each subsequent period of 6 months;(being in either case a period ending on or after 1 July 1986 during the whole of which the recipient is under an obligation to repay the whole or any part of the principal loan) to have made a loan (in this subsection referred to as the *deemed loan*) to the recipient of an amount equal to the amount by which the interest (in this subsection referred to as the *accrued interest*) that has accrued on the principal loan in respect of that period exceeds the amount (if any) paid in respect of the accrued interest before the end of that period;
 - (b) where any part of the accrued interest becomes payable or is paid after the time when the deemed loan is deemed to have been made, the deemed loan shall be reduced accordingly; and
 - (c) the deemed loan shall be deemed to have been made at a nil rate of interest.
- (4) In subsection (3), *deferred interest loan* means a loan in respect of which interest is payable at a rate exceeding nil, other than:
- (a) a loan where the whole of the interest is due for payment within 6 months after the loan is made; or
 - (b) a loan where:
 - (i) the interest is payable by instalments;
 - (ii) the intervals between instalments do not exceed 6 months; and

- (iii) the first instalment is due for payment within 6 months after the loan is made.
- (5) For the purposes of this Act, where no interest is payable in respect of a loan, a nil rate of interest shall be taken to be payable in respect of the loan.

17 Exempt loan benefits

- (1) Where:
- (a) a loan is made by a person who carries on a business that consists of or includes making loans to members of the public; and
 - (b) the rate of interest payable in respect of the loan:
 - (i) is specified in a document in existence at the time the loan is made;
 - (ii) is not less than the rate of interest in respect of a similar arm's length loan made by the person, at or about that time, to a member of the public in the ordinary course of carrying on that business; and
 - (iii) cannot be varied;
- the making of the loan is an exempt benefit.
- (2) Where:
- (a) a loan is made by a person who carries on a business that consists of or includes making loans to members of the public; and
 - (b) the rate of interest from time to time payable in respect of the loan in respect of a year of tax is not less than the rate of interest applicable at the time concerned in respect of a similar arm's length loan made by the person, at or about the time the loan referred to in paragraph (a) is made, to a member of the public in the ordinary course of carrying on that business;
- the making of the loan is an exempt benefit in relation to that year of tax.
- (3) Where:
- (a) a loan consists of an advance by an employer to a current employee of the employer in respect of his or her employment;

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- (b) the sole purpose of the making of the loan is to enable the employee to meet expenses incurred by the employee:
 - (i) in the course of performing the duties of that employment; and
 - (ii) not later than 6 months after the loan is made;
- (c) the amount of the loan does not substantially exceed the amount of those expenses that could reasonably be expected to be incurred by the employee; and
- (d) the employee is required:
 - (i) to account to the employer, not later than 6 months after the loan is made, for expenses met from the loan; and
 - (ii) to repay (whether by set-off or otherwise) any amount not so accounted for;

the making of the loan is an exempt benefit.

(4) Where:

- (a) the making of a loan consisting of an advance by an employer to an employee of the employer constitutes a benefit in respect of the employment of the employee in respect of a year of tax (in this subsection called the *current year of tax*);
- (b) the sole purpose of the making of the loan is to enable the employee to pay any of the following amounts payable by the employee in respect of accommodation:
 - (i) a rental bond;
 - (ii) a security deposit in respect of electricity, gas or telephone services;
 - (iii) any similar amount;
- (c) the employee is required to repay (whether by set-off or otherwise) the loan not later than 12 months after the loan is made;
- (d) any of the following benefits is provided in, or in respect of, any year of tax to the employee in respect of that employment:
 - (i) an expense payment benefit where the recipients expenditure is in respect of a lease or licence in respect of that accommodation;
 - (ii) a housing benefit where the housing right is in respect of that accommodation;

- (iii) a residual benefit where the recipients benefit is constituted by the subsistence of a lease or licence in respect of that accommodation; and
 - (e) either of the following subparagraphs apply:
 - (i) by virtue of section 21 or subsection 47(5), the benefit referred to in paragraph (d) is an exempt benefit in relation to the year of tax referred to in that paragraph;
 - (ii) the benefit referred to in paragraph (d) is a fringe benefit in relation to the year of tax referred to in that paragraph and, under section 61C, the taxable value of the fringe benefit is reduced by the extent to which that taxable value is attributable to the subsistence of a lease or licence in respect of the accommodation during a particular period in that year of tax;
- the making of the loan is an exempt benefit in relation to the current year of tax.

Subdivision B—Taxable value of loan fringe benefits

18 Taxable value of loan fringe benefits

- (1) Subject to this Part, the taxable value, in relation to a year of tax, of a loan fringe benefit provided in respect of the year of tax is the amount (if any) by which the notional amount of interest in relation to the loan in respect of the year of tax exceeds the amount of interest that has accrued on the loan in respect of the year of tax.

19 Reduction of taxable value—*otherwise deductible* rule

- (1) Where:
 - (a) the recipient of a loan fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
 - (b) if the recipient had, on the last day of the period (in this subsection called the *loan period*) during the year of tax when the recipient was under an obligation to repay the whole or any part of the loan, incurred and paid unreimbursed interest (in this subsection called the *gross interest*), in respect of the loan, in respect of the loan period, equal to the notional amount of interest in relation to the loan in relation to the year of tax—a once-only deduction (in this

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subsection called the **gross deduction**) would, or would if not for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross interest; and

- (ba) the amount (in this subsection called the **notional deduction**) calculated in accordance with the formula:

$$GD - RD$$

where:

GD is the gross deduction; and

RD is:

- (i) if no interest accrued on the loan in respect of the loan period—nil; or
- (ii) if interest accrued on the loan in respect of the loan period—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable as a once-only deduction to the recipient under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* in respect of that interest if that interest had been incurred and paid by the recipient on the last day of the loan period;

exceeds nil; and

- (c) except where the fringe benefit is:
- (i) an employee credit loan benefit in relation to the year of tax; or
 - (ii) an employee share loan benefit in relation to the year of tax;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the loan concerned; and

- (ca) where:
- (ii) the loan fringe benefit is a car loan benefit in respect of a car held by the recipient during a period (in this subsection also called the **holding period**) in the year of tax; and

(iii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;

the following conditions are satisfied:

(iv) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;

(v) in a case where the substantiation rules require log book records or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and

(d) where paragraph (ca) does not apply and the loan fringe benefit is a car loan benefit in respect of a car held by the recipient during a period (in this subsection also called the ***holding period***) in the year of tax, the recipient gives to the employer, before the declaration date:

(i) a declaration, in a form approved by the Commissioner, that purports to set out:

(A) the holding period; and

(B) the number of whole business kilometres travelled by the car during the holding period; and

(C) the number of whole kilometres travelled by the car during the holding period; or

(ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:

(A) a declaration referred to in subparagraph (i); or

(B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96;

the taxable value, but for Division 14, of the loan fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

TV – ND

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where:

TV is the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax; and

ND is:

- (e) if neither paragraph (ca) nor (d) applies and paragraph (i) does not apply—the notional deduction; or
- (f) if paragraph (ca) applies and paragraph (i) does not apply—whichever of the following amounts is applicable:
 - (i) if it would be concluded that the amount of interest that has accrued on the loan in respect of the loan period would have been the same even if the loan fringe benefit were not applied or used in producing assessable income of the recipient—the business use percentage of the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax;
 - (ii) if subparagraph (i) does not apply—the business use percentage of the notional amount of interest in relation to the loan in relation to the year of tax; or

(g) where:

- (i) paragraph (d) applies; and
- (ii) a declaration referred to in subparagraph (d)(i) has been given to the employer; and

(ia) paragraph (i) does not apply;

whichever of the following amounts is the least:

- (iii) the notional deduction;
- (iv) if it would be concluded that the amount of interest that has accrued on the loan in respect of the loan period would have been the same even if the loan fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax;
- (v) if subparagraph (iv) does not apply— $33\frac{1}{3}\%$ of the notional amount of interest in relation to the loan in relation to the year of tax; or

- (h) where:
- (i) subparagraph (d)(ii) applies; and
 - (ii) a declaration referred to in subparagraph (d)(i) has not been given to the employer; and
- (ia) paragraph (i) does not apply;
- whichever of the following amounts is applicable:
- (iii) if it would be concluded that the amount of interest that has accrued on the loan in respect of the loan period would have been the same even if the loan fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14, would be the taxable value of the loan fringe benefit in relation to the year of tax;
 - (iv) if subparagraph (iii) does not apply— $33\frac{1}{3}\%$ of the notional amount of interest in relation to the loan in relation to the year of tax; or
- (i) if, under subsection 138(3), the loan fringe benefit is deemed to have been provided to the recipient only—the amount calculated in accordance with subsection (5).
- (2) Where a part of a loan to which a loan fringe benefit relates is used by an employee to:
- (a) purchase a particular car; or
 - (b) pay a Division 28 car expense;
- subsection (1) and the definition of *car loan benefit* in subsection 136(1) apply as if that part of the loan had been a separate loan.
- (3) Where:
- (a) apart from this subsection, paragraph (1)(ca) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in the year of tax; and
 - (b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(f) as representing the component ND in the formula in subsection (1):
 - (i) in all cases—the amount that would have been ascertained under paragraph (1)(g) as representing that component if:

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- (A) paragraph (1)(d) had applied in relation to the fringe benefit; and
 - (B) a declaration of the kind referred to in subparagraph (1)(d)(i) had been given to the employer;
- (ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(h) as representing that component if:
- (A) subparagraph (1)(d)(ii) had applied in relation to that fringe benefit; and
 - (B) a declaration of the kind referred to in subparagraph (1)(d)(i) had not been given to the employer; and
 - (C) a declaration of the kind referred to in sub-subparagraph (1)(d)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

- (4) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (3).
- (5) For the purposes of paragraph (1)(i) (which applies to a loan fringe benefit that, under subsection 138(3), is deemed to have been provided to an employee only), the amount is calculated in accordance with the formula:

Unadjusted ND \times Employee's percentage of interest

where:

employee's percentage of interest:

- (a) is the percentage of the interest held by the employee, during a period (in this subsection called the ***holding period***) in the year of tax, in the asset or other thing that:
 - (i) is purchased or paid for using all or part of the loan to which the loan fringe benefit relates; and
 - (ii) is applied or used for the purpose of producing assessable income of the employee; and

- (b) does not include the percentage of the interest held in that asset or other thing by the employee's associate or associates during the holding period.

unadjusted ND is the amount that would be ascertained as representing the component ND in the formula in subsection (1) if paragraph (1)(i) did not apply in relation to the loan fringe benefit.

Division 5—Expense payment fringe benefits

Subdivision A—Expense payment benefits

20 Expense payment benefits

Where a person (in this section referred to as the *provider*):

- (a) makes a payment in discharge, in whole or in part, of an obligation of another person (in this section referred to as the *recipient*) to pay an amount to a third person in respect of expenditure incurred by the recipient; or
- (b) reimburses another person (in this section also referred to as the *recipient*), in whole or in part, in respect of an amount of expenditure incurred by the recipient;

the making of the payment referred to in paragraph (a), or the reimbursement referred to in paragraph (b), shall be taken to constitute the provision of a benefit by the provider to the recipient.

20A Exemption—no-private-use declaration

- (1) An expense payment fringe benefit that is covered by a no-private-use declaration is an exempt benefit.
- (2) An employer may make a *no-private-use declaration* that covers all the employer's expense payment fringe benefits for an FBT year for which the employer will only pay or reimburse so much of the expense that is the subject of the benefit as would result in the taxable value of the benefit being nil.
- (3) The declaration must be in a form approved in writing by the Commissioner and be made by the declaration date.

21 Exempt accommodation expense payment benefits

Where:

- (a) an expense payment benefit is provided in a year of tax to a current employee of an employer in respect of his or her employment;
- (b) the recipients expenditure is in respect of accommodation for eligible family members;

- (ba) the accommodation is not provided while the employee is undertaking travel in the course of performing the duties of that employment;
 - (c) the accommodation is required solely by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment; and
 - (d) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
 - (i) the employee's usual place of residence; and
 - (ii) the place at which the employee actually resided while living away from his or her usual place of residence;
- the benefit is an exempt benefit in relation to the year of tax.

22 Exempt car expense payment benefits

Where:

- (a) an expense payment benefit provided to an employee of an employer in respect of his or her employment is constituted by the reimbursement of the employee, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the employee in relation to a car owned by, or leased to, the employee;
- (b) in a case where the car is leased to the employee—the recipients expenditure is not attributable to a period when the lessor is the provider of a car benefit in relation to the car in relation to the employee;
- (c) the benefit is not in respect of relocation transport;
- (ca) the benefit is not in respect of an employment interview or selection test;
- (cb) the benefit is not associated with:
 - (i) a work-related medical examination of the employee;
 - (ii) work-related medical screening of the employee;
 - (iii) work-related preventative health care of the employee;
 - (iv) work-related counselling of the employee or of an associate of the employee; or
 - (v) migrant language training of the employee or of an associate of the employee;

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- (cc) neither of the following subparagraphs applies in relation to the transport to which the benefit relates:
 - (i) the transport was provided wholly or partly to enable the employee, or an associate of the employee, to have a holiday;
 - (ii) the transport was provided at a time when the employee had ceased to perform the duties of that employment; and
 - (d) the reimbursement is calculated by reference to the distance travelled by the car;
- the expense payment benefit is an exempt benefit.

Subdivision B—Taxable value of expense payment fringe benefits

22A Taxable value of in-house expense payment fringe benefits

- (1) Subject to this Part, the taxable value in relation to a year of tax of an in-house property expense payment fringe benefit (in this subsection called the *actual fringe benefit*) provided during the year of tax is the amount that, if:
 - (a) the provision of property to which the actual fringe benefit relates were an in-house property fringe benefit (in this subsection called the *notional fringe benefit*); and
 - (b) the recipients contribution in relation to the notional fringe benefit were equal to the recipients expenditure reduced by whichever of the following amounts is applicable:
 - (i) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution in relation to the actual fringe benefit;
 - (ii) the amount of the reimbursement referred to in paragraph 20(b);

would have been calculated under section 42 as the taxable value, but for section 44 and Division 14, of the notional fringe benefit in relation to the year of tax.
- (2) Subject to this Part, the taxable value in relation to a year of tax of an in-house residual expense payment fringe benefit (in this subsection called the *actual fringe benefit*) provided during the year of tax is the amount that, if:

- (a) the provision of the residual benefit to which the actual fringe benefit relates were an in-house residual fringe benefit (in this subsection called the *notional fringe benefit*); and
 - (b) the recipients contribution in relation to the notional fringe benefit were equal to the recipients expenditure reduced by whichever of the following amounts is applicable:
 - (i) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution in relation to the actual fringe benefit;
 - (ii) the amount of the reimbursement referred to in paragraph 20(b);would have been calculated under whichever of sections 48 and 49 is applicable as the taxable value, but for section 52 and Division 14, of the notional fringe benefit in relation to the year of tax.
- (3) For the purposes of subsection (2), section 49 has effect as if:
- (a) “the current identical benefit in relation to” were omitted from paragraph 49(a);
 - (b) the reference in paragraph 49(b) to the recipients current benefit were a reference to the recipients overall benefit; and
 - (c) “insofar as it relates to the recipients current benefit” were omitted from section 49.
- (4) Where the recipients expenditure in relation to each of 2 or more in-house expense payment fringe benefits (whether or not in relation to the same year of tax) is the same expenditure, this Act applies, and shall be deemed to have applied, as if all the payments or reimbursements to which those fringe benefits relate had been made at the time when the first of those payments or reimbursements was made and not otherwise.
- (5) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (4).

23 Taxable value of external expense payment fringe benefits

Subject to this Part, the taxable value in relation to a year of tax of an external expense payment fringe benefit provided during the year of tax is the amount of the payment referred to in paragraph 20(a), or the reimbursement referred to in paragraph 20(b), as the

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case requires, reduced, in a case to which paragraph 20(a) applies, by the amount of the recipients contribution.

24 Reduction of taxable value—otherwise deductible rule

(1) Where:

- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
- (b) if the recipient had, at the time when the recipients expenditure was incurred, incurred and paid unreimbursed expenditure (in this subsection called the *gross expenditure*), in respect of the same matter in respect of which the recipients expenditure was incurred, equal to:
 - (i) in the case of an in-house expense payment fringe benefit—the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or
 - (ii) in the case of an external expense payment fringe benefit—the amount of the recipients expenditure;

a once-only deduction (in this subsection called the *gross deduction*) would, or would if not for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross expenditure; and

- (ba) the amount (in this subsection called the *notional deduction*) calculated in accordance with the formula:

$$GD - RD$$

where:

GD is the gross deduction; and

RD is:

- (i) if there is no recipients portion in relation to the expense payment fringe benefit—nil; or
- (ii) if there is a recipients portion in relation to the expense payment fringe benefit—the amount (if any) that would, or that would but for section 82A of the *Income Tax*

Assessment Act 1936, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable as a once-only deduction to the recipient under either of those Acts in respect of the recipients expenditure (assuming that any payment of that expenditure by the recipient had been paid by the recipient at the time when the recipients expenditure was incurred);

exceeds nil; and

(c) in the case of an expense payment fringe benefit that is not an eligible incidental travel expense payment benefit or an eligible overtime meal expense payment benefit:

(ia) where the recipients expenditure is in respect of fuel or oil for a motor vehicle owned by, or leased to, the recipient:

(A) where the fringe benefit is an eligible small expense payment fringe benefit or an undocumentable expense payment fringe benefit—substitute documentary evidence of the recipients expenditure is maintained by or on behalf of the provider and, if the provider is not the employer, that documentary evidence, or a copy, is given to the employer before the declaration date; or

(B) in any case—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or

(C) in any case—the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; or

(i) where subparagraph (ia) does not apply and the fringe benefit is an undocumentable expense payment fringe benefit or an eligible small expense payment fringe benefit:

(A) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or

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- (B) substitute documentary evidence of the recipients expenditure is maintained by or on behalf of the provider and, if the provider is not the employer, that documentary evidence, or a copy, is given to the employer before the declaration date; or
- (ii) in any other case—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
- (d) where the expense payment fringe benefit is an extended travel expense payment benefit (other than an international aircrew expense payment benefit)—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates; and
- (e) except where the expense payment fringe benefit is:
 - (i) an exclusive employee expense payment benefit; or
 - (ia) covered by a recurring fringe benefit declaration (see section 152A); or
 - (ii) an eligible overtime meal expense payment benefit; or
 - (iii) an eligible incidental travel expense payment benefit; or
 - (iv) an extended travel expense payment benefit; or
 - (v) a car expense payment benefit;the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; and
- (ea) where:
 - (i) the expense payment fringe benefit is a car expense payment benefit in respect of a car held by the recipient during a period (in this section called the ***holding period***) in the year of tax; and
 - (ii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;the following conditions are satisfied:
 - (iii) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;

- (iv) in a case where the substantiation rules require log book records or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and
- (f) where paragraph (ea) does not apply and the expense payment fringe benefit is a car expense payment benefit in respect of a car held by the recipient during a period (in this subsection also called the *holding period*) in the year of tax—the recipient gives to the employer, before the declaration date:
 - (i) a declaration, in a form approved by the Commissioner, that purports to set out:
 - (A) the holding period; and
 - (B) the number of whole business kilometres travelled by the car during the holding period; and
 - (C) the number of whole kilometres travelled by the car during the holding period; or
 - (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:
 - (A) a declaration referred to in subparagraph (i); or
 - (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96;

the taxable value, but for Division 14, of the expense payment fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

$TV - ND$

where:

TV is the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; and

ND is:

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Division 5 Expense payment fringe benefits

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- (g) if neither paragraph (ea) nor paragraph (f) applies and paragraph (l) does not apply—the notional deduction; or
- (h) if paragraph (ea) applies and paragraph (l) does not apply—whichever of the following amounts is applicable:
 - (i) if it would be concluded that the amount of the providers portion would have been the same even if the recipients expenditure were not incurred in producing assessable income of the recipient—the business use percentage of the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax;
 - (ii) if subparagraph (i) does not apply:
 - (A) in the case of an in-house expense payment fringe benefit—the business use percentage of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or
 - (B) in the case of an external expense payment fringe benefit—the business use percentage of the recipients expenditure; or
- (j) where:
 - (i) paragraph (f) applies; and
 - (ii) a declaration referred to in subparagraph (f)(i) has been given to the employer; and
- (ia) paragraph (l) does not apply;
whichever of the following amounts is the least:
 - (iii) the notional deduction;
 - (iv) if it would be concluded that the amount of the providers portion would have been the same even if the recipients expenditure were not incurred in producing assessable income of the recipient—33 $\frac{1}{3}$ % of the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax;
 - (v) if subparagraph (iv) does not apply:

- (A) in the case of an in-house expense payment fringe benefit— $33\frac{1}{3}\%$ of the amount that but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or
 - (B) in the case of an external expense payment fringe benefit— $33\frac{1}{3}\%$ of the recipients expenditure; or
- (k) where:
- (i) subparagraph (f)(ii) applies; and
 - (ii) a declaration referred to in subparagraph (f)(i) has not been given to the employer; and
 - (ia) paragraph (l) does not apply;
- whichever of the following amounts is applicable:
- (iii) if it would be concluded the amount of the providers portion would have been the same even if the recipients expenditure were not incurred in producing assessable income of the recipient— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14, would be the taxable value of the expense payment fringe benefit in relation to the year of tax;
 - (iv) if subparagraph (iii) does not apply:
 - (A) in the case of an in-house expense payment fringe benefit— $33\frac{1}{3}\%$ of the amount that, but for this Subdivision and Division 14 and the recipients contribution, would be the taxable value of the expense payment fringe benefit in relation to the year of tax; or
 - (B) in the case of an external expense payment fringe benefit— $33\frac{1}{3}\%$ of the recipients expenditure; or
- (l) if, under subsection 138(3), the expense payment fringe benefit is deemed to have been provided to the recipient only—the amount calculated in accordance with subsection (9).
- (2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:
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- (a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and
 - (b) does not make, as mentioned in the definition of *travel diary* in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition;
- the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.
- (3) Where the sum of:
 - (a) the recipients expenditure in respect of a small expense payment fringe benefit in relation to an employee in relation to an employer in relation to a year of tax; and
 - (b) the total of the recipients expenditure in respect of all other small expense payment fringe benefits in relation to the employer in relation to the employee in relation to the year of tax, being fringe benefits provided before the fringe benefit referred to in paragraph (a);does not exceed \$200, the fringe benefit referred to in paragraph (a) is an eligible small expense payment fringe benefit.
 - (3A) For the purposes of this section, where the Commissioner is satisfied, having regard to the nature of the recipients expenditure in respect of an expense payment fringe benefit, that it would be unreasonable to expect the recipient to have obtained documentary evidence of the recipients expenditure, the expense payment fringe benefit shall be deemed to be, and always to have been, an undocumentable expense payment fringe benefit.
 - (4) For the purposes of paragraph (1)(c), the part of a petty cash book or similar document that sets out the particulars that would be set out in documentary evidence of the recipients expenditure (other than particulars of the date on which the documentary evidence was made out) is taken to be substitute documentary evidence of the recipients expenditure. The entry must be in English.
 - (5) Where:
 - (a) the recipients expenditure in relation to each of 2 or more expense payment fringe benefits (whether or not in relation to the same year of tax) is the same expenditure; and
 - (b) paragraph (1)(b) applies in relation to the recipients expenditure;

this Act applies, and shall be deemed always to have applied, as if all the payments or reimbursements to which those fringe benefits relate had been made at the time when the first of those payments or reimbursements was made and not otherwise, and nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this subsection.

- (6) For the purposes of the application of this section to an in-house expense payment fringe benefit, a reference to the recipients contribution in relation to the fringe benefit is a reference to the amount ascertained under whichever of paragraphs 22A(1)(b) or (2)(b) is applicable.
- (7) Where:
- (a) apart from this subsection, paragraph (1)(ea) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in a year of tax; and
 - (b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(h) as representing the component ND in the formula in subsection (1):
 - (i) in all cases—the amount that would have been ascertained under paragraph (1)(j) as representing that component if:
 - (A) paragraph (1)(f) had applied in relation to the fringe benefit; and
 - (B) a declaration of the kind referred to in subparagraph (1)(f)(i) had been given to the employer;
 - (ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(k) as representing that component if:
 - (A) subparagraph (1)(f)(ii) had applied in relation to that fringe benefit; and
 - (B) a declaration of the kind referred to in subparagraph (1)(f)(i) had not been given to the employer; and

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(C) a declaration of the kind referred to in sub-paragraph (1)(f)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

- (8) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (7).
- (9) For the purposes of paragraph (1)(l) (which applies to an expense payment fringe benefit that, under subsection 138(3), is deemed to have been provided to an employee only), the amount is calculated in accordance with the formula:

Unadjusted ND \times Employee's percentage of interest

where:

employee's percentage of interest:

- (a) is the percentage of the interest held by the employee, during a period (in this subsection called the ***holding period***) in the year of tax, in the asset or other thing that:
- (i) relates to the matter in respect of which the expense payment fringe benefit is provided; and
 - (ii) is applied or used for the purpose of producing assessable income of the employee; and
- (b) does not include the percentage of the interest held in that asset or other thing by the employee's associate or associates during the holding period.

unadjusted ND is the amount that would be ascertained as representing the component ND in the formula in subsection (1) if paragraph (1)(l) did not apply in relation to the expense payment fringe benefit.

Division 6—Housing fringe benefits

Subdivision A—Housing benefits

25 Housing benefits

The subsistence during the whole or a part of a year of tax of a housing right granted by a person (in this section referred to as the *provider*) to another person (in this section referred to as the *recipient*) shall be taken to constitute a benefit provided by the provider to the recipient in respect of the year of tax.

Subdivision B—Taxable value of housing fringe benefits

26 Taxable value of non-remote housing fringe benefits

- (1) Subject to this Part, the taxable value of a housing fringe benefit provided in respect of the employment of an employee in relation to a year of tax is:
 - (a) where the recipients unit of accommodation is not located in a State or internal Territory—so much of the market value of the recipients current housing right as exceeds the recipients rent;
 - (b) where:
 - (i) paragraph (a) does not apply;
 - (ii) the recipients unit of accommodation is a caravan or mobile home or is in a hotel, motel, hostel or guesthouse; and
 - (iii) during the whole or a part of the tenancy period, the provider carried on a business consisting of or including the provision to outsiders, in respect of identical or similar caravans or mobile homes or in respect of identical or similar units of accommodation in the hotel, motel, hostel or guesthouse, of leases or licences that are identical or similar to the recipients overall housing right;
- the amount calculated in accordance with the formula AB,
where:

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A is the market value of the recipients current housing right;
and

B is:

(iv) in a case where, if the fringe benefit were not a housing fringe benefit, it would be an in-house residual fringe benefit—0.75; and

(v) in any other case—1;

reduced by the recipients rent; and

(c) in any other case—the amount calculated in accordance with the formula:

$$\frac{AB}{C}$$

where:

A is the statutory annual value of the recipients current housing right;

B is the number of whole days in the tenancy period; and

C is the number of days in the year of tax;
reduced by the recipients rent.

(2) For the purposes of the application of subsection (1) in relation to a housing fringe benefit in relation to an employer in relation to a year of tax (in this subsection referred to as the *current year of tax*), the statutory annual value of the recipients current housing right is:

(a) if the current year of tax is a base year of tax in relation to the recipients current housing right—the amount calculated in accordance with the formula:

$$\frac{AB}{C}$$

where:

A is the market value of the recipients current housing right;

B is the number of days in the current year of tax; and

C is the number of whole days in the tenancy period; and

- (b) in any other case—the amount ascertained in accordance with the formula AB , where:

A is:

- (i) if the year of tax immediately preceding the current year of tax was a base year of tax for the purpose of calculating the taxable value of:
- (A) a housing fringe benefit in relation to the employer in respect of the recipients overall housing right or in respect of an equivalent housing right; or
 - (B) each of 2 or more such housing fringe benefits; the statutory annual value for the purposes of calculating the taxable value of the fringe benefit referred to in sub-subparagraph (A) or the weighted average of the statutory annual values for the purpose of calculating the taxable values of the housing fringe benefits referred to in sub-subparagraph (B) (those statutory annual values being weighted on the basis of the lengths of the respective periods during that preceding year of tax during which the housing rights to which those housing fringe benefits relate subsisted), as the case may be; and
- (ii) in any other case—the statutory annual value for the purpose of calculating the taxable values of housing fringe benefits in relation to the employer in relation to the year of tax immediately preceding the current year of tax, being housing fringe benefits in respect of the recipients overall housing right or equivalent housing rights; and

B is the indexation factor in respect of the current year of tax in respect of the State or Territory in which the recipients unit of accommodation is situated.

- (3) For the purposes of the application of subsection (2) in relation to a housing fringe benefit in relation to an employer in relation to a year of tax (in this subsection referred to as the **current year of tax**), the current year of tax is a base year of tax in relation to the recipients current housing right if:

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- (aa) the employer elects that the current year of tax be treated as a base year of tax in relation to the recipients overall housing right or an equivalent housing right;
 - (b) there was no housing fringe benefit, in relation to the employer in relation to the year of tax immediately preceding the current year of tax, in respect of the recipients overall housing right or in respect of an equivalent housing right; or
 - (c) the following conditions are satisfied:
 - (i) in relation to each of the 9 years of tax immediately preceding the current year of tax there was a housing fringe benefit in relation to the employer in respect of the recipients overall housing right or an equivalent housing right;
 - (ii) none of those 9 years of tax was a base year of tax for the purpose of calculating the taxable value of a housing fringe benefit to which subparagraph (i) applies.
- (4) For the purposes of this section:
- (a) 2 or more housing rights shall be taken to be included in the same class of housing rights if:
 - (i) the housing rights are in respect of the same unit of accommodation; and
 - (ii) the conditions (other than as to duration or consideration) of the housing rights are the same or substantially the same; and
 - (b) a housing right shall be taken to be equivalent to another housing right if each of those housing rights is included in the same class of housing rights.
- (5) For the purposes of this section, where a material alteration to a unit of accommodation results in an increase or decrease of not less than 10% in the market value of the right to occupy or use the unit:
- (a) the unit of accommodation after the alteration shall be deemed to be a different unit of accommodation from the unit of accommodation before the alteration; and
 - (b) if the alteration occurs during the subsistence of a housing right granted to a person in respect of the unit of accommodation, that housing right, as it subsists after the alteration, shall be deemed to have been granted to the person in respect of the unit of accommodation as it existed after the

alteration and to have been so granted in the same circumstances as the first-mentioned housing right.

- (6) A reference in subsection (5) to a material alteration to a unit of accommodation is a reference to:
- (a) additions or improvements made to, or other work carried out in relation to;
 - (b) any damage to; or
 - (c) the addition of facilities to, or the removal of facilities from; the unit of accommodation or any building, place or facility associated with the occupation or use of the unit of accommodation.
- (7) An election by an employer under paragraph (3)(aa) in relation to a year of tax:
- (a) shall be made by notice in writing to the Commissioner; and
 - (b) shall be lodged with the Commissioner on or before the declaration date in relation to the year of tax.

27 Determination of market value of housing right

- (1) For the purposes of determining the market value of the recipients current housing right in relation to a housing fringe benefit, where the recipient is entitled, pursuant to the housing right, to require a second person to:
- (a) make a payment in discharge, in whole or in part, of an obligation of the recipient to pay an amount to a third person in respect of expenditure incurred by the recipient; or
 - (b) to reimburse the recipient, in whole or in part, in respect of an amount of expenditure incurred by the recipient;
- that entitlement shall be disregarded.
- (2) For the purposes of determining the market value of the recipients current housing right in relation to a housing fringe benefit provided in respect of the employment of an employee, any onerous conditions that are attached to the housing right and that relate to his or her employment shall be disregarded.

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28 Indexation factor for valuation purposes—non-remote housing

- (1) For the purposes of section 26, the indexation factor in respect of a year of tax (in this subsection referred to as the *current year of tax*) in respect of a State or Territory is the number (calculated to 3 decimal places) ascertained, as at the date on which the rent index number in respect of the State or Territory for the December quarter immediately preceding the current year of tax was first published, by dividing the sum of:
 - (a) the rent index number in respect of the State or Territory in respect of the December quarter immediately preceding the current year of tax; and
 - (b) the rent index numbers in respect of the State or Territory in respect of the 3 quarters that immediately preceded that quarter;by the sum of:
 - (c) the rent index number in respect of the State or Territory in respect of the December quarter immediately preceding the year of tax that next preceded the current year of tax; and
 - (d) the rent index numbers in respect of the State or Territory in respect of the 3 quarters that immediately preceded the last-mentioned quarter.
- (2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes a rent index number in respect of a State or Territory in respect of a quarter in substitution for a rent index number in respect of the State or Territory previously published in respect of that quarter, the publication of the later rent index number shall be disregarded for the purposes of this section.
- (3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the rent sub-group of the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to the index numbers published in terms of the new reference base.
- (4) Where the factor ascertained in accordance with subsection (1) in relation to a year of tax would, if it were calculated to 4 decimal places, end with a number greater than 4, the factor ascertained in accordance with that subsection in relation to that year of tax shall

be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

- (5) For the purposes of this Subdivision:
- (a) the Jervis Bay Territory shall be deemed to be part of the State of New South Wales; and
 - (b) the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands shall be deemed to be part of the Northern Territory.

Division 7—Living-away-from-home allowance fringe benefits

Subdivision A—Living-away-from-home allowance benefits

30 Living-away-from-home allowance benefits

(1) Where:

- (a) at a particular time, in respect of the employment of an employee of an employer, the employer pays an allowance to the employee; and
- (b) it would be concluded that the whole or a part of the allowance is in the nature of compensation to the employee for:
 - (i) additional expenses (not being deductible expenses) incurred by the employee during a period; or
 - (ii) additional expenses (not being deductible expenses) incurred by the employee, and other additional disadvantages to which the employee is subject, during a period;

by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment;

the payment of the whole, or of the part, as the case may be, of the allowance constitutes a benefit provided by the employer to the employee at that time.

(2) If:

- (a) at a particular time after 10 October 1991, in respect of the employment of an employee of an employer, the employer pays an allowance to the employee; and
- (b) the employee's usual place of employment is on an oil rig, or other petroleum or gas installation, at sea; and
- (c) the employee is provided with residential accommodation at or near that usual place of employment; and
- (d) the allowance is expressed to be paid as a living-away-from-home allowance; and
- (e) no part of the allowance is covered by subsection (1); and

- (f) it would be concluded that the whole or a part of the allowance is in the nature of compensation to the employee for disadvantages to which the employee is subject, during a period, by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment;

the payment of the whole of the allowance constitutes a benefit provided by the employer to the employee at that time.

Subdivision B—Taxable value of living-away-from-home allowance fringe benefits

31 Taxable value of living-away-from-home allowance fringe benefits

Subject to this Part, the taxable value of a living-away-from-home allowance fringe benefit in relation to a year of tax is:

- (a) if the fringe benefit is covered by subsection 30(1)—the amount of the recipients allowance reduced by:
- (i) any exempt accommodation component; and
 - (ii) any exempt food component; or
- (b) if the fringe benefit is covered by subsection 30(2)—the amount of the recipients allowance.

Division 8—Airline transport fringe benefits

Subdivision A—Airline transport benefits

32 Airline transport benefits

Where:

- (a) in respect of the employment of an employee of an employer, a person (in this section referred to as the *provider*) provides transport, in a passenger aircraft of the provider, to another person (in this section referred to as the *recipient*), being the employee or an associate of the employee;
- (b) at or about the time when that transport commences to be provided:
 - (i) the provider is an airline operator; and
 - (ii) either of the following conditions is satisfied:
 - (A) the employer, or an associate of the employer, is an airline operator;
 - (B) the employer is a travel agent; and
- (c) the transport is provided subject to the stand-by restrictions that customarily apply in relation to the provision of airline transport to employees in the airline industry;

the provision of that transport and any incidental services provided on board the aircraft shall be deemed to constitute a benefit provided by the provider to the recipient at the time when the transport commences to be provided, and not otherwise.

Subdivision B—Taxable value of airline transport fringe benefits

33 Taxable value of airline transport fringe benefits

Subject to this Part, the taxable value of an airline transport fringe benefit in relation to a year of tax is the stand-by value of the recipients transport reduced by the amount of the recipients contribution.

34 Reduction of taxable value—*otherwise deductible* rule

- (1) Where:
- (a) the recipient of an airline transport fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
 - (b) if the recipient had, at the comparison time, incurred and paid unreimbursed expenditure (in this subsection called the **gross expenditure**), in respect of the provision of the recipients transport, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the airline transport fringe benefit in relation to the year of tax—a once-only deduction (in this subsection called the **gross deduction**) would, or would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross expenditure;
 - (ba) the amount (in this subsection called the **notional deduction**) calculated in accordance with the formula:

$$GD - RD$$

where:

GD is the gross deduction; and

RD is:

- (i) if there is no recipients contribution in relation to the airline transport fringe benefit—nil; or
- (ii) if there is a recipients contribution in relation to the airline transport fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipients transport—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable as a once-only deduction to the recipient under either of those Acts in respect of that consideration if that consideration had been incurred and paid by the recipient at the comparison time; exceeds nil;

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(c) except where the fringe benefit is:

(i) an exclusive employee airline transport benefit; or

(ii) an extended travel airline transport benefit;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients transport; and

(d) where the fringe benefit is an extended travel airline transport benefit—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient in connection with the recipients transport;

the amount that, but for this subsection and Division 14, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the notional deduction.

(2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:

(a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and

(b) does not make, as mentioned in the definition of *travel diary* in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition;

the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.

Division 9—Board fringe benefits

Subdivision A—Board benefits

35 Board benefits

Where, at a particular time, a person (in this section referred to as the *provider*) provides a board meal to another person (in this section referred to as the *recipient*), the provision of the meal shall be taken to constitute a benefit provided by the provider to the recipient at that time.

Subdivision B—Taxable value of board fringe benefits

36 Taxable value of board fringe benefits

Subject to this Part, the taxable value of a board fringe benefit in relation to a year of tax is:

- (a) in a case where the recipient had attained the age of 12 years before the beginning of the year of tax—\$2.00; or
 - (b) in any other case—\$1.00;
- reduced by the amount of the recipients contribution.

37 Reduction of taxable value—*otherwise deductible* rule

Where:

- (a) the recipient of a board fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) if the recipient had, at the time when the benefit was provided, incurred and paid unreimbursed expenditure (in this section called the *gross expenditure*), in respect of the provision of the recipients meal, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the board fringe benefit in relation to the year of tax—a deduction (in this section called the *gross deduction*) would, or would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient section 8-1 of the

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Income Tax Assessment Act 1997 in respect of the whole or a part of the gross expenditure; and

- (c) the amount (in this section called the **notional deduction**) calculated in accordance with the formula:

$$GD - RD$$

where:

GD is the gross deduction; and

RD is:

- (i) if there is no recipients contribution in relation to the board fringe benefit—nil; or
- (ii) if there is a recipients contribution in relation to the board fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipients meal—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient section 8-1 of the *Income Tax Assessment Act 1997* in respect of the whole or a part of that consideration if that consideration had been incurred and paid by the recipient at the time when the benefit was provided;

exceeds nil;

the amount that, but for this section and Division 14, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the notional deduction.

Division 9A—Meal entertainment

Subdivision A—Meal entertainment

37A Key principle

An employer may elect that this Division will apply to the employer for an FBT year. If the employer does this, the taxable value of meal entertainment fringe benefits provided to the employer's employees and associates of those employees by the employer will either be half the expenses incurred for the FBT year by the employer in providing meal entertainment benefits or, if the employer makes a further election, an amount worked out based on a 12 week register kept by the employer.

37AA Division only applies if election made

An employer may elect that this Division applies to the employer for an FBT year.

37AB Employee contributions to be excluded

For the purposes of this Division any reference to expenses or expenditure in relation to meal entertainment or meal entertainment benefits excludes any contribution from an employee or an associate of an employee that is not subject to reimbursement by the employer.

37AC Meal entertainment benefits

Where at a particular time an employer (the *provider*) to whom this Division applies provides meal entertainment to another person (the *recipient*) the provision of the meal entertainment is taken to constitute a meal entertainment benefit provided by the provider to the recipient at that time.

37AD Meaning of *provision of meal entertainment*

A reference to the *provision of meal entertainment* is a reference to the provision of:

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- (a) entertainment by way of food or drink; or
- (b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies; or
- (c) the payment or reimbursement of expenses incurred in providing something covered by paragraph (a) or (b);
whether or not:
 - (d) business discussions or business transactions occur; or
 - (e) in connection with the working of overtime or otherwise in connection with the performance of the duties of any office or employment; or
 - (f) for the purposes of promotion or advertising; or
 - (g) at or in connection with a seminar.

37AE Fringe benefits only arise if employer is provider

No meal entertainment fringe benefit arises where the employer in relation to whom the benefit would otherwise arise is not the provider of the benefit.

37AF No other fringe benefits arise if election made

If a meal entertainment fringe benefit arises in respect of the provision of meal entertainment, no other fringe benefit arises in relation to any person in respect of the provision of the meal entertainment.

37AG Some benefits still arise

To avoid doubt, sections 37AE and 37AF do not prevent a fringe benefit in relation to an employer arising under any provision of this Act where the employer is not the provider of the benefit.

Subdivision B—50/50 split method of valuing meal entertainment

37B Key principle

If an employer elects that this Division applies, then (unless the employer elects that Subdivision C applies) the taxable value of meal entertainment fringe benefits provided to the employer's employees and associates of those employees by the employer is half the expenses incurred for the FBT year by the employer in providing meal entertainment benefits.

37BA Taxable value using 50/50 split method

If this Division applies to an employer for an FBT year then, unless the employer elects that Subdivision C applies, the total taxable value of meal entertainment fringe benefits of the employer for the FBT year is 50% of the expenses incurred by the employer in providing meal entertainment for the FBT year.

Note: This means that the employer's *aggregate fringe benefits amount* (see section 5C) for the FBT year will include 50% of the total expenses incurred by the employer for the provision of meal entertainment to all persons in the FBT year.

Subdivision C—12 week register method

37C Key principle

If an employer elects that this Subdivision applies, the taxable value of meal entertainment fringe benefits is to be calculated by reference to a 12 week register kept by the employer.

37CA Election by employer

An employer who elects that this Division applies may elect also that this Subdivision applies to meal entertainment provided by the employer for an FBT year if the employer has a valid meal entertainment register for that year.

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37CB Taxable value using 12 week register method

- (1) If the employer elects that this Subdivision applies for an FBT year then, despite any other provision of this Act, the taxable value of meal entertainment fringe benefits for the employer for the FBT year is worked out using the formula:

Total meal entertainment expenditure × Register percentage

Note: This means that the employer's *aggregate fringe benefits amount* (see section 5C) for the FBT year will include a proportion of the expenses incurred by the employer for the provision of meal entertainment for all persons in the FBT year. The proportion is worked out on the basis of the 12 week register.

- (2) The *register percentage* is the percentage worked out using the formula:

$$\frac{\text{Total value of meal entertainment fringe benefits}}{\text{Total value of meal entertainment}} \times 100\%$$

where:

total value of meal entertainment fringe benefits means the total value of meal entertainment fringe benefits that are provided by the employer in the 12 week period covered by the employer's register.

total value of meal entertainment means the total value of meal entertainment provided by the employer during the 12 week period covered by the register.

- (3) The *total meal entertainment expenditure* is the total of expenses incurred by the employer in providing meal entertainment for the FBT year.

37CC Choosing the 12 week period for a register

- (1) The register must be kept for a continuous period of at least 12 weeks throughout which meal entertainment is provided by the employer.
- (2) The period for which the register is kept must be representative of the first FBT year for which it is valid.
- (3) If the register does not meet these conditions it is not valid.

37CD FBT years for which register is valid

12 week period in one FBT year

- (1) If the 12 week period begins and ends in the same FBT year, the register is valid for that FBT year and, subject to subsection (3), for each of the 4 FBT years immediately following that year.

12 week period over 2 FBT years

- (2) If the 12 week period begins in one FBT year and ends in another FBT year, the register is only valid for the second FBT year and, subject to subsection (3), for each of the 4 FBT years immediately following that year.

When register ceases to be valid

- (3) A register that is valid for an FBT year ceases to be valid at the end of that FBT year if the total of expenses incurred by the employer in providing meal entertainment for that FBT year is more than 20% higher than the corresponding total for the first FBT year for which the register was valid. A register also ceases to be valid for an FBT year if there is a later valid register for that FBT year.

37CE Matters to be included in register

- (1) The register must include the details of the following:
 - (a) the date the employer provided meal entertainment;
 - (b) for each recipient of meal entertainment—whether the recipient is an employee of the employer or an associate of an employee of the employer;
 - (c) the cost of the meal entertainment;
 - (d) the kind of meal entertainment provided;
 - (e) where the meal entertainment is provided;
 - (f) if the meal entertainment is provided on the employer's premises—whether it is provided in an *in-house dining facility* within the meaning of section 32-55 of the *Income Tax Assessment Act 1997*.
- (2) A person responsible for making entries in the register must make the entry as soon as practicable after he or she knows the details required by subsection (1).

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37CF False or misleading entries invalidate register

For the purposes of this Act, a register is not valid if the register contains an entry that is false or misleading in a material particular.

Division 10—Tax-exempt body entertainment fringe benefits

Subdivision A—Tax-exempt body entertainment benefits

38 Tax-exempt body entertainment benefits

Where, at a particular time, a person (in this section referred to as the *provider*) incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision, in respect of the employment of an employee, of entertainment to a person (in this section referred to as the *recipient*) being the employee or an associate of the employee, the incurring of the expenditure shall be taken to constitute a benefit provided by the provider to the recipient at that time in respect of that employment.

Subdivision B—Taxable value of tax-exempt body entertainment fringe benefits

39 Taxable value of tax-exempt body entertainment fringe benefits

Subject to this Part, the taxable value of a tax-exempt body entertainment fringe benefit in relation to an employer in relation to a year of tax is so much of the expenditure referred to in section 38 as is attributable to the provision of the entertainment referred to in that section.

Division 10A—Car parking fringe benefits

Subdivision A—Car parking benefits

39A Car parking benefits

- (1) If the following conditions are satisfied in relation to a daylight period, or a combination of daylight periods, on a particular day:
 - (a) during the period or periods, a car is parked on one or more premises of a person (the *provider*), where:
 - (i) the premises, or each of the premises, on which the car is parked are business premises, or associated premises, of the provider; and
 - (ii) a commercial parking station is located within a 1 km radius of the premises, or each of the premises, on which the car is parked; and
 - (iii) the lowest fee charged by the operator of any such commercial parking station in the ordinary course of business to members of the public for all-day parking on the first business day of the FBT year is more than the car parking threshold;
 - (b) the total duration of the period or periods exceeds 4 hours;
 - (c) any of the following applies:
 - (i) a car benefit relating to the car is provided on that day to an employee or an associate of an employee in respect of the employment of the employee;
 - (ii) the car is owned by, or leased to, an employee or an associate of an employee at any time during the period or periods;
 - (iii) the car is made available to an employee or an associate of an employee at any time during the period or periods by another person, where:
 - (A) the other person is neither the employer of the employee nor an associate of the employer of the employee; and
 - (B) the other person did not make the car available under an arrangement to which the employer of the employee, or an associate of the employer of the employee, is a party;

- (d) the provision of parking facilities for the car during the period or periods is in respect of the employment of the employee;
 - (e) on that day, the employee has a primary place of employment;
 - (f) during the period or periods, the car is parked at, or in the vicinity of, that primary place of employment;
 - (g) on that day, the car is used in connection with travel by the employee between:
 - (i) the place of residence of the employee; and
 - (ii) that primary place of employment;
 - (h) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this section;
 - (i) the day is on or after 1 July 1993;
- the provision of parking facilities for the car during the period or periods is taken to constitute a benefit provided by the provider to the employee or the associate of the employee in respect of the employment of the employee.
- (2) For the purposes of this section:
 - (a) the carparking threshold for the FBT year beginning on 1 April 1995 is \$5.00; and
 - (b) for later years the carparking threshold is the threshold for the previous FBT year as adjusted on the first business day of the later FBT year by a factor equivalent to the movement in the preceding twelve months in the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician.
 - (2A) However, the factor mentioned in paragraph (2)(b) is taken to be 1 if the movement described in that paragraph is down.
 - (3) Subject to subsection (4), if at any time, whether before or after the commencement of this Act, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number is to be disregarded for the purposes of this section.
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- (4) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change, regard is to be had only to the index numbers published in terms of the new reference base.

39AA Anti-avoidance—fee on first business day not representative

For the purposes of subparagraph 39A(1)(a)(iii), any fee charged on the first business day of an FBT year that is not representative is to be disregarded.

39AB When fees are *not representative*

A fee charged by an operator of a commercial parking station on a particular day is *not representative* if the fee is substantially greater or less than the average of the lowest fee charged by the operator in the ordinary course of business to members of the public for all-day parking on each of the days in whichever of the following periods is chosen by the employer:

- (a) the 4 week period beginning on the day; or
- (b) the 4 week period ending on the day.

39B When commercial parking stations are located within a 1 km radius of business premises or associated premises

For the purposes of this Division, a commercial parking station is taken to be located within a 1 km radius of particular business premises or particular associated premises if, and only if, a car entrance to the commercial parking station is situated less than 1 km, by the shortest practicable route, from a car entrance to those premises.

Subdivision B—Taxable value of car parking fringe benefits

39C Taxable value of car parking fringe benefits—*commercial parking station method*

Subject to this Part, the taxable value, in relation to an FBT year, of a car parking fringe benefit provided on a day in the FBT year in connection with one or more premises is equal to:

- (a) if, on that day, there is only one commercial parking station located within a 1 km radius of any of those premises—the lowest fee charged by the operator of the parking station in the ordinary course of business to members of the public for all-day parking on that day; or
 - (b) if, on that day, there are 2 or more commercial parking stations located within a 1 km radius of any of those premises—the lowest fee charged by any of the operators of those parking stations in the ordinary course of business to members of the public for all-day parking on that day;
- reduced by the amount of the recipients contribution.

39D Taxable value of car parking fringe benefits—*market value* basis

[Employer may choose market value basis]

- (1) An employer may elect that this section apply in relation to any or all of the car parking fringe benefits in relation to the employer in relation to a particular FBT year.

[Market value basis of working out taxable value]

- (2) Subject to this Part, if an election is made under subsection (1) in relation to a car parking fringe benefit provided on a day in an FBT year, the taxable value, in relation to the FBT year, of the fringe benefit is:
 - (a) the amount that the recipient could reasonably be expected to have been required to pay the provider in respect of the provision of the benefit if it were assumed that the provider and the recipient were dealing with each other at arm's length;reduced by:
 - (b) the amount of the recipients contribution.

[Valuer's report must be given to employer]

- (3) An election purporting to be made under subsection (1) in relation to one or more car parking fringe benefits is of no effect unless:
 - (a) a suitably qualified valuer gives to the employer, before the declaration date, a report, in a form approved by the Commissioner, about the valuation of the fringe benefits; and

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- (b) the valuer is at arm's length in relation to the valuation; and
- (c) the return of the employer of the FBT year, in so far as it relates to the taxable values of the fringe benefits, is based on the report.

39DA Taxable value of car parking fringe benefits—*average cost* method

Election

- (1) An employer may elect that this section applies to any or all of the employer's car parking fringe benefits for a particular FBT year.

Taxable value

- (2) Subject to this Part, if an election covers a car parking fringe benefit, the taxable value of the fringe benefit is the average cost worked out under subsection (3) reduced by the recipients contribution.

Method of working out average cost

- (3) The *average cost* is:

$$\frac{A + B}{2}$$

where:

A is the lowest fee charged in the ordinary course of business to members of the public for all-day parking by any operator of a commercial parking station located within a 1 km radius of any of the relevant parking premises on the day on which a car parking benefit is first provided in that FBT year in relation to the employer in connection with any of those premises.

B is the lowest fee charged in the ordinary course of business to members of the public for all-day parking by any operator of a commercial parking station located within a 1 km radius of any of the relevant parking premises on the day on which a car parking benefit is last provided in that FBT year in relation to the employer in connection with any of those premises.

relevant parking premises means the premises referred to in paragraph 39A(1)(a).

Fees must be representative

- (4) An election is of no effect if the fees referred to in subsection (3) are **not representative** (see section 39AB).

39E Fees charged by commercial parking stations for all-day parking

[Daily rate equivalent for periodic parking arrangements]

- (1) For the purposes of this Division, if the operator of a commercial parking station provides all-day parking in the ordinary course of business to members of the public on a weekly, monthly, yearly or other periodic basis, the operator is taken to charge a fee for all-day parking on a particular day during the period equal to the amount worked out using the formula:

$$\frac{\text{Total fee}}{\text{Business days in period}}$$

where:

Total fee is the total fee charged by the operator in respect of all-day parking on days in that period.

Business days in period means the number of business days in that period.

[Anti-avoidance]

- (2) If either or both of the following apply:
- (a) a transaction between the operator of a commercial parking station and a customer is not at arm's length;
 - (b) the operator of a commercial parking station sets the level of a fee for the sole or dominant purpose of enabling one or more employers to obtain reductions in the taxable values of car parking fringe benefits;
- then, for the purposes of this Subdivision:
- (c) if only paragraph (a) applies—it is to be assumed that the fee is the fee that would have been payable if the operator and

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the customer had been dealing with each other at arm's length in relation to the transaction; and

- (d) if only paragraph (b) applies—it is to be assumed that the fee is the fee that would have been payable if it had been set without that purpose in mind; and
- (e) if both paragraphs (a) and (b) apply—it is to be assumed that the fee is the fee that would have been payable if:
 - (i) the operator and the customer had been dealing with each other at arm's length in relation to the transaction; and
 - (ii) it had been set without that purpose in mind.

Subdivision C—Statutory formula method—spaces

39F The key principle

Under this Subdivision, an employer may elect to calculate the value of certain car parking fringe benefits by using a statutory formula based on the number and value of spaces available to employees covered by the election.

39FA Spaces method of calculating total taxable value of car parking fringe benefits

Election

- (1) If a provider provides one or more car parking benefits in respect of one or more employees of an employer in a particular FBT year, the employer may elect that this Subdivision applies to the employer's car parking fringe benefits for some or all of the employees for that FBT year.

Employer must specify employees covered by election

- (2) The employer must specify that the election covers:
 - (a) all the employees; or
 - (b) all employees of a particular class; or
 - (c) particular employees.

Total value of car parking fringe benefits

- (3) Despite any other provision of this Act (other than section 39FB) the total taxable value of the employer's car parking fringe benefits for employees covered by the election for the FBT year is the amount worked out using the spaces method under subsection (4).

Note: Section 39FB covers the situation where the number of spaces available to employees exceeds the number of employees.

Method

- (4) The spaces method is:

Step 1: Work out an amount using the following formula, for each space for which there is, in the FBT year, at least one car parking benefit for an employee covered by the election:

$$\text{Daily rate amount} \times \frac{\text{Number of days in availability periods in relation to the space}}{366} \times 228$$

Step 2: Work out the total of all the amounts calculated under Step 1 (the *total statutory benefit*).

Step 3: Subtract from the total statutory benefit the sum of all relevant recipients contributions.

Note 1: Section 39FC defines *daily rate amount*.

Note 2: Section 39FD defines *availability period*.

Note 3: Section 39FE defines *relevant recipients contribution*.

- (5) The election is of no effect if, in working out the daily rate for a space, the fees referred to in subsection 39DA(3) are *not representative* (see section 39AB).

39FB Number of spaces exceeds number of employees

- (1) This section applies if, throughout the parking period (see subsection (5)), the average number of employees covered by the election is less than the average number of spaces (*eligible spaces*) for which there is an availability period.

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Formula to reduce total statutory benefits

- (2) If this section applies, the total statutory benefit (see Step 2 in subsection 39FA(4)) is multiplied by the following fraction:

$$\frac{\text{Average number of employees}}{\text{Average number of eligible spaces}}$$

- (3) The *average number of employees* is:

$$\frac{\begin{array}{l} \text{Number of employees covered} \\ \text{by election at the beginning of} \\ \text{the parking period} \end{array} + \begin{array}{l} \text{Number of employees} \\ \text{covered by election at the end} \\ \text{of the parking period} \end{array}}{2}$$

- (4) The *average number of eligible spaces* is:

$$\frac{\begin{array}{l} \text{Number of eligible spaces at} \\ \text{the beginning of the parking} \\ \text{period} \end{array} + \begin{array}{l} \text{Number of eligible spaces at} \\ \text{the end of the parking period} \end{array}}{2}$$

- (5) The *parking period* is the period:

- (a) beginning on the first day in the FBT year on which the parking of a car in any space referred to in subsection 39FA(4) gives rise to a car parking fringe benefit of the employer for an employee covered by the election; and
- (b) ending on the last day in the FBT year on which the parking of a car in any space referred to in subsection 39FA(4) gives rise to a car parking fringe benefit of the employer for an employee covered by the election.

Number of employees and number of spaces must be representative

- (6) This section does not apply if the number of employees or the number of eligible spaces referred to in subsections (3) and (4) are **not representative** (see subsection (7)).

Meaning of not representative

- (7) A number of employees, or a number of eligible spaces, as the case requires, is **not representative** if the number of employees, or eligible spaces, as the case requires, is substantially greater or less

than the average number throughout whichever of the following periods is chosen by the employer:

- (a) the 4 week period ending on the first day of the parking period; or
- (b) the 4 week period beginning on the last day of the parking period.

39FC Meaning of *daily rate amount*

The *daily rate amount* for a space is the amount that would be worked out using whichever of the following methods that the taxpayer chooses:

- (a) the commercial parking station method;
- (b) the market value method;
- (c) the average cost method;

as the taxable value of the car parking fringe benefit for the space, if there were no recipients contribution.

39FD Meaning of *availability period*

An *availability period* for a space begins on the first day in the FBT year on which there is a car parking benefit for the space for an employee covered by the election and ends on the last day in the FBT year on which there is a car parking benefit for the space for an employee covered by the election.

39FE Meaning of *relevant recipients contribution*

A *relevant recipients contribution* is a recipients contribution in respect of any car parking fringe benefit provided in respect of the employment of an employee covered by the election for the FBT year.

Subdivision D—12 week record keeping method

39G The key principle

Under this Subdivision, an employer may keep a 12 week register of car parking provided to employees. An employer who keeps such a register may elect that the total value of certain car parking fringe benefits for an FBT year for which the register is valid is to be determined in accordance with the register.

39GA Employer may elect to use 12 week record keeping method

- (1) An employer may elect that this Subdivision applies to the employer's car parking fringe benefits for some or all of the employer's employees for that FBT year if the employer has a valid register for that FBT year covering those employees.
- (2) The employer must specify that the election covers:
 - (a) all the employees; or
 - (b) all employees of a particular class; or
 - (c) particular employees.

39GB Value of fringe benefits for year

Despite any other provision of this Act (other than this section), the total taxable value of the employer's car parking fringe benefits for employees covered by the election for the FBT year is the amount worked out using the formula:

$$\left[\text{Total value of car parking benefits (register)} \times \frac{52}{12} \right] \times \frac{\text{Number of days in car parking availability periods}}{366}$$

39GC Meaning of *total value of car parking benefits (register)*

The *total value of car parking benefits (register)*, in relation to the FBT year, means the amount that would be the total taxable value of car parking fringe benefits for employees covered by the election for the 12 week period for which a register is kept, assuming that:

- (a) the register had been kept in that FBT year; and

- (b) the value of the benefits were calculated in accordance with the information in the register; and
- (c) the value of the benefits were calculated using whichever of the following methods that the taxpayer chooses:
 - (i) the commercial parking station method;
 - (ii) the market value method;
 - (iii) the average cost method.

39GD Meaning of *car parking availability period*

The *car parking availability period* is the period:

- (a) beginning on the first day in the FBT year on which there is a car parking benefit for an employee covered by the election; and
- (b) ending on the last day in the FBT year on which there is a car parking benefit for an employee covered by the election.

39GE Choosing the 12 week period for a register

- (1) The register must be kept for a continuous period of at least 12 weeks throughout which car parking benefits are provided to employees covered by the election.
- (2) The period for which the register is kept must be representative of usage for the first FBT year for which it is valid.
- (3) If subsection (1) or (2) is not satisfied, the register is not valid.

39GF FBT years for which register is valid

12 week period in one FBT year

- (1) If the 12 week period begins and ends in the one FBT year, the register is valid for that FBT year and, subject to subsections (3) and (4), for each of the 4 FBT years immediately following that year.

12 week period over 2 FBT years

- (2) If the 12 week period begins in one FBT year and ends in another FBT year, the register is only valid for the second FBT year and,

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subject to subsections (3) and (4), for each of the 4 years immediately following that year.

When register ceases to be valid—increase in benefits

- (3) A register that is valid for an FBT year ceases to be valid at the end of that FBT year if the number of car parking fringe benefits for the employer for employees covered by the election increases by more than 10% on any day in that FBT year.

Note: This means that if the number of car parking fringe benefits increases by more than 10%, the employer will have to keep a new register in the FBT year following the year of the increase if the employer wants to use the method in this Subdivision for that following year.

When a register ceases to be valid—later register

- (4) A register that is valid for an FBT year ceases to be valid if there is a later valid register for that FBT year that covers the same employee.

39GG Matters to be included in register

- (1) The register must include details of the following:
- (a) the date on which each car covered by subsection (4) was parked;
 - (b) whether the car was parked for a total that exceeds 4 hours;
 - (c) whether the car travelled between the place of residence of an employee covered by the election and his or her primary place of employment on that day;
 - (d) the place where the car was parked.
- (2) The person responsible for making entries in the register must make the entry as soon as practicable after he or she knows the details required by subsection (1).
- (3) If subsection (1) or (2) is not satisfied, the register is not valid.
- (4) A car is covered by this subsection if:
- (a) a car benefit relating to the car is provided on a day during the 12 week period to an employee covered by the election in respect of the employee's employment; or
 - (b) the car is owned by, or leased to, an employee covered by the election at any time during the 12 week period; or

- (c) the car is made available by another person to an employee covered by the election at any time during the 12 week period where:
 - (i) the other person is not the employee's employer; and
 - (ii) the other person did not make the car available under an arrangement to which the employee's employer is a party.

39GH Fraudulent entries invalidate register

For the purposes of this Act, a register is not valid if the register contains an entry that is false or misleading in a material particular.

Division 11—Property fringe benefits

Subdivision A—Property benefits

40 Property benefits

Where, at a particular time, a person (in this section referred to as the *provider*) provides property to another person (in this section referred to as the *recipient*), the provision of the property shall be taken to constitute a benefit provided by the provider to the recipient at that time.

41 Exempt property benefits

- (1) Where:
 - (a) a property benefit is provided to a current employee of an employer in respect of his or her employment; and
 - (b) the property is provided to, and consumed by, the employee on a working day and on business premises of:
 - (i) the employer; or
 - (ii) if the employer is a company, of the employer or of a company that is related to the employer;

the benefit is an exempt benefit.
- (2) This section does not apply to food or drink provided to, and consumed by, an employee if the food or drink is provided:
 - (a) because of the employee agreeing to receive the food or drink in return for a reduction in the employee's salary or wages that would not have happened apart from the agreement; or
 - (b) as part of the employee's remuneration package, in circumstances where it is reasonable to conclude that the employee's salary or wages would be greater if the food or drink were not made part of that package.

Subdivision B—Taxable value of property fringe benefits

42 Taxable value of in-house property fringe benefits

- (1) Subject to this Part, the taxable value of an in-house property fringe benefit in relation to an employer in relation to a year of tax is:
- (a) where the recipients property was manufactured, produced, processed or treated by the provider:
 - (i) if identical property that was manufactured, produced, processed or treated, as the case may be, by the provider was, at or about the provision time, sold by the provider in the ordinary course of business to purchasers being manufacturers, wholesalers or retailers, an amount equal to:
 - (A) if any of that identical property was, at or about the provision time, sold by the provider under an arm's length transaction or arm's length transactions—the lowest price at which it was sold under such a transaction; or
 - (B) if sub-subparagraph (A) does not apply—the lowest price at which any of that identical property could reasonably be expected to have been sold by the provider at or about the provision time under an arm's length transaction;increased, where sales tax was not, or would not have been, payable, by the provider in respect of the sale concerned, by the amount of any sales tax payable by the provider in respect of the provision of the recipient's property to the recipient;
 - (ii) where subparagraph (i) does not apply but identical property that was manufactured, produced, processed or treated, as the case may be, by the provider was, at or about the provision time, sold by the provider:
 - (A) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and
 - (B) in similar circumstances and subject to identical terms and conditions (other than as to price) as

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- those that applied in relation to the provision of the recipients property to the recipient;
an amount equal to 75% of the lowest price at which that property was so sold to a member of the public; or
- (iii) in any other case—an amount equal to 75% of the notional value of the recipients property at the provision time;
- (b) where paragraph (a) does not apply and the property was acquired by the provider—an amount equal to the lesser of:
- (i) the arm's length price in respect of the acquisition of the recipients property by the provider increased, in a case where sales tax was not payable by the person from whom the provider acquired the property in respect of the disposal of the property to the provider, by the amount of any sales tax payable in respect of the provision of the recipients property to the recipient; or
- (ii) the notional value of the recipients property at the provision time; or
- (c) in any other case—an amount equal to 75% of the notional value of the recipients property at the provision time; reduced by the amount of the recipients contribution.
- (2) In subsection (1), *arm's length price*, in respect of the acquisition of the recipients property by the provider, means:
- (a) if the recipients property was acquired by the provider in the ordinary course of business under an arm's length transaction—the cost price of the recipients property to the provider; or
- (b) in any other case—the amount that the provider could reasonably be expected to have been required to pay to acquire the recipients property under an arm's length transaction in the ordinary course of business.

43 Taxable value of external property fringe benefits

Subject to this Part, the taxable value of an external property fringe benefit in relation to an employer in relation to a year of tax is:

- (a) where the provider was the employer or an associate of the employer and the recipients property was purchased by the provider under an arm's length transaction at or about the

provision time—the cost price of the recipients property to the provider;

- (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the property—the amount of that expenditure; or
 - (c) in any other case—the notional value of the recipients property at the provision time;
- reduced by the amount of the recipients contribution.

44 Reduction of taxable value—otherwise deductible rule

(1) Where:

- (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
- (b) if the recipient had, at the provision time, incurred and paid unreimbursed expenditure (in this subsection called the **gross expenditure**), in respect of the purchase of the recipients property, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax—a once-only deduction (in this subsection called the **gross deduction**) would, or would if not for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross expenditure; and
- (ba) the amount (in this subsection called the **notional deduction**) calculated in accordance with the formula:

$$GD - RD$$

where:

GD is the gross deduction; and

RD is:

- (i) if there is no recipients contribution in relation to the property fringe benefit—nil; or

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- (ii) if there is a recipient's contribution in relation to the property fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipient's property—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable as a once-only deduction to the recipient under either of those Acts in respect of that consideration if that consideration had been incurred and paid by the recipient at the provision time; exceeds nil; and
- (c) except where the property fringe benefit is:
 - (i) an exclusive employee property benefit; or
 - (ia) covered by a recurring fringe benefit declaration (see section 152A); or
 - (ii) an extended travel property benefit; or
 - (iii) a car property benefit;the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipient's property; and
- (d) where the property fringe benefit is an extended travel property benefit (other than an international aircrew property benefit)—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates; and
- (da) where:
 - (i) the property fringe benefit is a car property benefit in respect of a car held by the recipient during a period (in this section called the *holding period*) in the year of tax; and
 - (ii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;the following conditions are satisfied:
 - (iii) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;

- (iv) in a case where the substantiation rules require log book records or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and
- (e) where paragraph (da) does not apply and the property fringe benefit is a car property benefit in respect of a car held by the recipient during a period (in this section also called the **holding period**) in the year of tax—the recipient gives to the employer, before the declaration date:
 - (i) a declaration, in a form approved by the Commissioner, that purports to set out:
 - (A) the holding period; and
 - (B) the number of whole business kilometres travelled by the car during the holding period; and
 - (C) the number of whole kilometres travelled by the car during the holding period; or
 - (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:
 - (A) a declaration referred to in subparagraph (i); or
 - (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96;

the taxable value, but for Division 14, of the property fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

$$TV - ND$$

where:

TV is the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax; and

ND is:

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- (f) if neither paragraph (da) nor paragraph (e) applies and paragraph (k) does not apply—the notional deduction; or
- (g) where paragraph (da) applies and paragraph (k) does not apply—whichever of the following amounts is applicable:
 - (i) if it would be concluded that the amount of the recipients contribution would have been the same even if the property fringe benefit were not applied or used in producing assessable income of the recipient—the business use percentage of the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax;
 - (ii) if subparagraph (i) does not apply—the business use percentage of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax; or
- (h) where:
 - (i) paragraph (e) applies; and
 - (ii) a declaration referred to in subparagraph (e)(i) has been given to the employer; and
 - (ia) paragraph (k) does not apply;whichever of the following amounts is the least:
 - (iii) the notional deduction;
 - (iv) if it would be concluded that the amount of the recipients contribution would have been the same even if the property fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax;
 - (v) if subparagraph (iv) does not apply— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax; or
- (j) where:
 - (i) subparagraph (e)(ii) applies; and

- (ii) a declaration referred to in subparagraph (e)(i) has not been given to the employer; and
 - (iia) paragraph (k) does not apply;
- whichever of the following amounts is applicable:
- (iii) if it would be concluded that the amount of the recipients contribution would have been the same even if the property fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14, would be the taxable value of the property fringe benefit in relation to the year of tax;
 - (iv) if subparagraph (iii) does not apply— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the property fringe benefit in relation to the year of tax; or
- (k) if, under subsection 138(3), the property fringe benefit is deemed to have been provided to the recipient only—the amount calculated in accordance with subsection (5).
- (2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:
- (a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and
 - (b) does not make, as mentioned in the definition of *travel diary* in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition;
- the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.
- (3) Where:
- (a) apart from this subsection, paragraph (1)(da) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in a year of tax; and
 - (b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(g) as representing the component ND in the formula in subsection (1):

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- (i) in all cases—the amount that would have been ascertained under paragraph (1)(h) as representing that component if:
 - (A) paragraph (1)(e) had applied in relation to the fringe benefit; and
 - (B) a declaration of the kind referred to in subparagraph (1)(e)(i) had been given to the employer;
- (ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would have been ascertained under paragraph (1)(j) as representing that component if:
 - (A) subparagraph (1)(e)(ii) had applied in relation to that fringe benefit; and
 - (B) a declaration of the kind referred to in subparagraph (1)(e)(i) had not been given to the employer; and
 - (C) a declaration of the kind referred to in subparagraph (1)(e)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

- (4) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (3).
- (5) For the purposes of paragraph (1)(k) (which applies to a property fringe benefit that, under subsection 138(3), is deemed to have been provided to an employee only), the amount is calculated in accordance with the formula:

Unadjusted ND × Employee's percentage of interest

where:

employee's percentage of interest:

- (a) is the percentage of the interest held by the employee, during a period (in this subsection called the ***holding period***) in the year of tax, in the asset or other thing that:

- (i) is the property to which the property fringe benefit relates; and
- (ii) is applied or used for the purpose of producing assessable income of the employee; and
- (b) does not include the percentage of the interest held in that asset or other thing by the employee's associate or associates during the holding period.

unadjusted ND is the amount that would be ascertained as representing the component ND in the formula in subsection (1) if paragraph (1)(k) did not apply in relation to the property fringe benefit.

Division 12—Residual fringe benefits

Subdivision A—Residual benefits

45 Residual benefits

A benefit is a residual benefit for the purposes of this Act if the benefit is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 11 (inclusive).

46 Year of tax in which residual benefits taxed

- (1) Subject to this section, a residual benefit that is provided during a period shall be deemed to have been provided in respect of each year of tax during which any part of that period occurred.
- (2) Where:
 - (a) a residual benefit (in this subsection referred to as the *eligible benefit*), not being a residual benefit constituted by a lease or licence in respect of property, is provided on the basis that, in respect of each of a number of regular periods (in this subsection referred to as a *billing period*) commencing on or after 1 July 1986 (whether or not there were any such periods before that date), a payment is to be made in respect of the provision of the benefit during the billing period; and
 - (b) identical benefits are provided to members of the public on the same basis and in the ordinary course of a business carried on by the person providing the eligible benefit;the following provisions have effect:
 - (c) the provision of the eligible benefit during each billing period shall be taken to constitute a separate benefit;
 - (d) each such separate residual benefit shall be deemed to have been provided at the time at which the payment in respect of the billing period concerned is due and payable, and not otherwise.

47 Exempt residual benefits

- (1) Where:
- (a) in respect of the employment of a current employee, the employer, or an associate of the employer, provides a residual benefit to the employee that consists of transport of the employee, otherwise than in an aircraft:
 - (i) between:
 - (A) the place of residence of the employee; and
 - (B) the place of employment of the employee or any other place from which or at which the employee performs duties of that employment; or
 - (ii) in a case where the place referred to in sub-subparagraph (i)(B) is in a metropolitan area—on a regular and scheduled service over a route wholly within that metropolitan area;
 - (b) where the provider is the employer—the employer carries on a business of providing transport to members of the public;
 - (c) where the provider is an associate of the employer—the employer and the associate each carries on a business of providing transport to members of the public;
 - (d) the transport referred to in paragraph (a) is provided in the same, or substantially the same, circumstances as transport provided to members of the public in the ordinary course of carrying on a business of providing transport to members of the public; and
 - (e) the employee is employed in the business of providing transport to members of the public;
- the benefit is an exempt benefit.

- (1A) Where:
- (a) a person is an employee of a government body; and
 - (b) the person's duties of employment are performed in a police service; and
 - (c) the person is provided with a residual benefit consisting of the provision of travel on public transport; and
 - (d) the benefit is provided for the purpose of travel between:
 - (i) the person's place of residence; and
 - (ii) the person's primary place of employment;

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the benefit is an *exempt benefit*.

(2) Where:

- (a) a residual benefit provided to a current employee in respect of his or her employment consists of:
 - (i) the provision, or use, of a recreational facility; or
 - (ii) the care of children of the employee in a child care facility; and
- (b) the recreational facility or child care facility, as the case may be, is located on business premises of:
 - (i) the employer; or
 - (ii) if the employer is a company, of the employer or of a company that is related to the employer;

the benefit is an exempt benefit.

(3) Where a residual benefit provided to a current employee in respect of his or her employment consists of the use of property (other than a motor vehicle) that is ordinarily located on business premises of, and is wholly or principally used directly in connection with business operations of:

- (a) the employer; or
- (b) if the employer is a company—the employer or a company that is related to the employer;

the benefit is an exempt benefit.

(4) For the purposes of subsection (3), toilets, bathroom facilities, food or drink vending machines, tea or coffee making facilities, water dispensers or other amenities (not being facilities for drinking or dining) for the use of employees of an employer shall be taken to be principally used directly in connection with business operations of the employer.

(4A) For the purposes of subsection (3), a building site, construction site or any similar place where a person carries on business operations shall be taken to be business premises of the person.

(5) Where:

- (a) a residual benefit consisting of the subsistence, during a year of tax, of a lease or licence in respect of a unit of accommodation is provided to an employee of an employer in respect of his or her employment;

- (b) the unit of accommodation is for the accommodation of eligible family members and is provided solely by reason that the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment;
- (c) the accommodation is not provided while the employee is undertaking travel in the course of performing the duties of that employment; and
- (d) either of the following conditions is satisfied:
 - (i) subsection (7) applies in relation to the provision of transport for the employee in connection with travel in the period in the year of tax when the lease or licence subsisted, being travel between the employee's usual place of residence and the employee's usual place of employment;
 - (ii) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
 - (A) the employee's usual place of residence; and
 - (B) the place at which the employee actually resided while living away from his or her usual place of residence;

the benefit is an exempt benefit in relation to the year of tax.

- (6) Where:
 - (a) a residual benefit consisting of the provision or use of a motor vehicle is provided in a year of tax in respect of the employment of a current employee;
 - (aa) the motor vehicle is not:
 - (i) a taxi let on hire to the provider; or
 - (ii) a car, not being:
 - (A) a panel van or utility truck; or
 - (B) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and
 - (b) there was no private use of the motor vehicle during the year of tax and at a time when the benefit was provided other than:
 - (i) work-related travel of the employee; and

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(ii) other private use of the motor vehicle by the employee or an associate of the employee, being other use that was minor, infrequent and irregular;
the benefit is an exempt benefit in relation to the year of tax.

(6A) Where:

- (a) a residual benefit consisting of the provision or use of a motor vehicle is provided by a particular person (in this subsection called the *provider*) in a year of tax in respect of the employment of a current employee of an employer;
- (b) at all times during the year of tax when the motor vehicle was held by the provider, the motor vehicle was unregistered; and
- (c) during the period in the year of tax when the motor vehicle was held by the provider, the motor vehicle was wholly or principally used directly in connection with business operations of:
 - (i) the employer; or
 - (ii) if the employer is a company—the employer or a company that is related to the employer;

the benefit is an exempt benefit in relation to the year of tax.

(6B) A reference in subsection (6A) to a motor vehicle held by a provider is a reference to:

- (a) a motor vehicle owned by the provider;
- (b) a motor vehicle leased to the provider; or
- (c) a motor vehicle otherwise made available to the provider by another person.

(7) Where, during a period of employment with an employer:

- (a) an employee's usual place of employment is:
 - (i) on an oil rig, or other installation, at sea; or
 - (ii) at a location in a State or internal Territory but not in, or adjacent to, an eligible urban area;
- (b) the employee is provided with residential accommodation, at or near that usual place of employment, by:
 - (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (in this subparagraph referred to as the *arranger*) other than the employer or an associate of the employer under an arrangement between:

- (A) the employer or an associate of the employer;
and
 - (B) the arranger or another person;
- (c) the employee, on a regular basis:
- (i) works for a number of days and has a number of days off; and
 - (ii) on completion of the working days, travels from that usual place of employment to his or her usual place of residence and, on completion of the days off, returns from his or her usual place of residence to that usual place of employment; and
- (d) the employee is provided with transport on a regular basis in connection with the travel referred to in subparagraph (c)(ii) and that transport is provided by:
- (i) the employer;
 - (ii) an associate of the employer; or
 - (iii) a person (in this subparagraph referred to as the **arranger**) other than the employer or an associate of the employer under an arrangement between:
 - (A) the employer or an associate of the employer;
and
 - (B) the arranger or another person;

and, having regard to the location of that usual place of employment and the location of the employee's usual place of residence, it would be unreasonable to expect the employee to travel between those places on work days on a daily basis, the residual benefit constituted by the provision of the transport referred to in paragraph (d) is an exempt benefit.

- (8) If:
- (a) a residual benefit provided in respect of the employment of an employee arose out of priority of access, for a child or children of the employee, to:
 - (i) a place that is an eligible child care centre for the purposes of any provision of the *Child Care Act 1972*; or
 - (ii) family day care provided before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; or

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- (iii) care outside school hours provided before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; or
 - (iv) care in school vacations provided before the commencement of item 1 of Schedule 10 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*; or
 - (v) an approved centre based long day care service within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*; or
 - (vi) an approved family day care service within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*; or
 - (vii) an approved outside school hours care service within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*; or
 - (viii) an approved in-home care service within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*; and
- (b) in order to obtain that priority of access, the employer of the employee, or an associate of the employer, made a contribution under a program administered by the Department of Health, Housing, Local Government and Community Services;
- the residual benefit is an exempt benefit.

47A Exemption—no-private-use declaration

- (1) A residual fringe benefit that is covered by a no-private-use declaration is an exempt benefit.
- (2) An employer may make a *no-private-use declaration* that covers all the employer's residual fringe benefits for an FBT year that are covered by a consistently enforced policy in relation to the use of the property that is the subject of the benefit that would result in the taxable value of the benefit being nil.
- (3) The declaration must be in a form approved in writing by the Commissioner and be made by the declaration date.

Subdivision B—Taxable value of residual fringe benefits

48 Taxable value of in-house non-period residual fringe benefits

Subject to this Part, the taxable value of an in-house non-period residual fringe benefit in relation to an employer in relation to a year of tax is:

- (a) where, at or about the comparison time, identical benefits were provided by the provider:
 - (i) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and
 - (ii) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients benefit to the recipient;

an amount equal to 75% of the lowest price at which an identical benefit was so sold to a member of the public; or

- (b) in any other case—an amount equal to 75% of the notional value of the benefit at the comparison time;

reduced by the amount of the recipients contribution.

49 Taxable value of in-house period residual fringe benefits

Subject to this Part, the taxable value of an in-house period residual fringe benefit in relation to a year of tax is:

- (a) where, at or about the comparison time, identical overall benefits were provided by the provider:
 - (i) in the ordinary course of business to members of the public under an arm's length transaction or arm's length transactions; and
 - (ii) in similar circumstances and subject to identical terms and conditions (other than as to price) as those that applied in relation to the provision of the recipients overall benefit;

an amount equal to 75% of the lowest amount paid or payable by any such member of the public in respect of the current identical benefit in relation to an identical overall benefit so provided; or

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- (b) in any other case—an amount equal to 75% of the notional value of the recipients current benefit;
reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

50 Taxable value of external non-period residual fringe benefits

Subject to this Part, the taxable value of an external non-period residual fringe benefit in relation to an employer in relation to a year of tax is:

- (a) where the provider was the employer or an associate of the employer and the benefit was purchased by the provider under an arm's length transaction—the amount paid or payable by the provider for the benefit;
- (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the benefit—the amount of that expenditure; or
- (c) in any other case—the notional value of the benefit at the comparison time;
reduced by the amount of the recipients contribution.

51 Taxable value of external period residual fringe benefits

Subject to this Part, the taxable value of an external period residual fringe benefit in relation to an employer in relation to a year of tax is:

- (a) where the provider was the employer or an associate of the employer and the recipients overall benefit was purchased by the provider under an arm's length transaction—the amount paid or payable by the provider in respect of the recipients current benefit;
- (b) where the provider was not the employer or an associate of the employer and the employer, or an associate of the employer, incurred expenditure to the provider under an arm's length transaction in respect of the provision of the recipients current benefit—the amount of that expenditure; or
- (c) in any other case—the notional value of the recipients current benefit;

reduced by the amount of the recipients contribution insofar as it relates to the recipients current benefit.

52 Reduction of taxable value—otherwise deductible rule

(1) Where:

- (a) the recipient of a residual fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
- (b) if the recipient had, at the comparison time, incurred and paid unreimbursed expenditure (in this subsection called the *gross expenditure*), in respect of the provision of the recipients benefit, equal to the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax—a once-only deduction (in this subsection called the *gross deduction*) would, or would if not for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997*, have been allowable to the recipient under either of those Acts in respect of the gross expenditure; and
- (ba) the amount (in this subsection called the *notional deduction*) calculated in accordance with the formula:

$$GD - RD$$

where:

GD is the gross deduction; and

RD is:

- (i) if there is no recipients contribution in relation to the residual fringe benefit—nil; or
- (ii) if there is a recipients contribution in relation to the residual fringe benefit equal to, or calculated by reference to, an amount of consideration paid by the recipient to the provider or to the employer in respect of the provision of the recipients benefit—the amount (if any) that would, or that would but for section 82A of the *Income Tax Assessment Act 1936*, and Divisions 28 and 900 of the *Income Tax Assessment Act 1997* have been allowable as a once-only deduction to the recipient under either of those Acts in respect of so much of that

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consideration as was taken into account for the purposes of section 4-15 or 8-1 of the *Income Tax Assessment Act 1997*, if that consideration had been incurred and paid by the recipient at the comparison time;

exceeds nil; and

(c) except where the fringe benefit is:

(i) an exclusive employee residual benefit; or

(ia) covered by a recurring fringe benefit declaration (see section 152A); or

(ii) an extended travel residual benefit; or

(iii) a car residual benefit;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients benefit; and

(d) where the fringe benefit is an extended travel residual benefit (other than an international aircrew residual benefit)—the recipient gives to the employer, before the declaration date, a travel diary in relation to the travel undertaken by the recipient to which the fringe benefit relates; and

(da) where:

(i) the fringe benefit is a car residual benefit in respect of a car held by the recipient during a period (in this section called the *holding period*) in the year of tax; and

(ii) the substantiation rules set out in Division 15 have been complied with in relation to the car in relation to the holding period;

the following conditions are satisfied:

(iii) the recipient gives to the employer, before the declaration date, a car substantiation declaration for the car for the year of tax;

(iv) in a case where the substantiation rules require log book records or odometer records to be maintained by or on behalf of the recipient in relation to the car—the car substantiation declaration is accompanied by a copy of those documents; and

(e) where paragraph (da) does not apply and the fringe benefit is a car residual benefit in respect of a car held by the recipient during a period (in this section also called the *holding period*) in the year of tax—the recipient gives to the employer, before the declaration date:

- (i) a declaration, in a form approved by the Commissioner, that purports to set out:
 - (A) the holding period; and
 - (B) the number of whole business kilometres travelled by the car during the holding period; and
 - (C) the number of whole kilometres travelled by the car during the holding period; or
- (ii) where the average number of business kilometres per week travelled by the car during the holding period exceeded 96:
 - (A) a declaration referred to in subparagraph (i); or
 - (B) a declaration, in a form approved by the Commissioner, that purports to set out the holding period and includes a statement by the recipient that the average number of business kilometres per week travelled by the car during the holding period exceeded 96;

the taxable value, but for Division 14, of the residual fringe benefit in relation to the year of tax is the amount calculated in accordance with the formula:

$$TV - ND$$

where:

TV is the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax; and

ND is:

- (f) if neither paragraph (da) nor paragraph (e) applies and paragraph (k) does not apply—the notional deduction; or
- (g) where paragraph (da) applies and paragraph (k) does not apply—whichever of the following amounts is applicable:
 - (i) if it would be concluded that the amount of the recipients contribution would have been the same even if the residual fringe benefit were not applied or used in producing assessable income of the recipient—the business use percentage of the amount that, but for this subsection and Division 14, would be the taxable value

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- of the residual fringe benefit in relation to the year of tax;
- (ii) if subparagraph (i) does not apply—the business use percentage of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax; or
- (h) where:
- (i) paragraph (e) applies; and
 - (ii) a declaration referred to in subparagraph (e)(i) has been given to the employer; and
- (ia) paragraph (k) does not apply;
- whichever of the following amounts is the least:
- (iii) the notional deduction;
 - (iv) if it would be concluded that the amount of the recipients contribution would have been the same even if the residual fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax;
 - (v) if subparagraph (iv) does not apply— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax; or
- (j) where:
- (i) subparagraph (e)(ii) applies; and
 - (ii) a declaration referred to in subparagraph (e)(i) has not been given to the employer; and
- (ia) paragraph (k) does not apply;
- whichever of the following amounts is applicable:
- (iii) if it would be concluded that the amount of the recipients contribution would have been the same even if the residual fringe benefit were not applied or used in producing assessable income of the recipient— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14, would be the taxable value of the residual fringe benefit in relation to the year of tax;

- (iv) if subparagraph (iii) does not apply— $33\frac{1}{3}\%$ of the amount that, but for this subsection and Division 14 and the recipients contribution, would be the taxable value of the residual fringe benefit in relation to the year of tax; or
 - (k) if, under subsection 138(3), the residual fringe benefit is deemed to have been provided to the recipient only—the amount calculated in accordance with subsection (5).
- (2) For the purposes of the application of this section in relation to a fringe benefit, where the recipient:
- (a) while undertaking travel referred to in paragraph (1)(d), engages in an activity in the course of producing assessable income of the recipient; and
 - (b) does not make, as mentioned in the definition of *travel diary* in subsection 136(1), an entry relating to the activity, being an entry of the kind referred to in that definition;
- the activity shall be deemed not to have been engaged in by the recipient in the course of producing assessable income.
- (3) Where:
- (a) apart from this subsection, paragraph (1)(da) applies in relation to a fringe benefit in relation to an employer in respect of a car held by the recipient during a period in a year of tax; and
 - (b) whichever of the following amounts is the greater exceeds the amount that, apart from this subsection, would be ascertained under paragraph (1)(g) as representing the component ND in the formula in subsection (1):
 - (i) in all cases—the amount that would have been ascertained under paragraph (1)(h) as representing that component if:
 - (A) paragraph (1)(e) had applied in relation to the fringe benefit; and
 - (B) a declaration of the kind referred to in subparagraph (1)(e)(i) had been given to the employer;
 - (ii) in a case where the average number of business kilometres per week travelled by the car during the holding period exceeded 96—the amount that would

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have been ascertained under paragraph (1)(j) as representing that component if:

- (A) subparagraph (1)(e)(ii) had applied in relation to that fringe benefit; and
- (B) a declaration of the kind referred to in subparagraph (1)(e)(i) had not been given to the employer; and
- (C) a declaration of the kind referred to in sub-subparagraph (1)(e)(ii)(B) had been given to the employer;

this Act applies, and shall be deemed always to have applied, as if the amount represented by that component had been calculated as mentioned in whichever of subparagraphs (b)(i) or (ii) of this subsection is applicable.

- (4) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to subsection (3).
- (5) For the purposes of paragraph (1)(k) (which applies to a residual fringe benefit that, under subsection 138(3), is deemed to have been provided to an employee only), the amount is calculated in accordance with the formula:

$\text{Unadjusted ND} \times \text{Employee's percentage of interest}$

where:

employee's percentage of interest:

- (a) is the percentage of the interest held by the employee, during a period (in this subsection called the *holding period*) in the year of tax, in the asset or other thing:
 - (i) to which the residual fringe benefit relates; and
 - (ii) that is applied or used for the purpose of producing assessable income of the employee; and
- (b) does not include the percentage of the interest held in that asset or other thing by the employee's associate or associates during the holding period.

unadjusted ND is the amount that would be ascertained as representing the component ND in the formula in subsection (1) if paragraph (1)(k) did not apply in relation to the residual fringe benefit.

Division 13—Miscellaneous exempt benefits

53 Motor vehicle fringe benefit fuel etc. to be exempt in certain cases

- (1) For the purposes of this Act:
 - (a) a car expense payment benefit;
 - (b) a car property benefit; or
 - (c) a car residual benefit;in respect of a car, being a benefit that is attributable to a period when a car fringe benefit was provided, or would but for subsection 8(2) have been provided, in relation to the car, is an exempt benefit.
- (2) Where the provision or use of a motor vehicle would, but for subsection 47(6), be a residual fringe benefit in relation to a period in a year of tax, subsection (1) applies in relation to the motor vehicle as if:
 - (a) the motor vehicle were a car; and
 - (b) a car fringe benefit were provided during that period in relation to the motor vehicle.
- (3) In this section:

car expense payment benefit means an expense payment benefit where the recipients expenditure is a car expense.

car property benefit means a property benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been a car expense.

car residual benefit means a residual benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been a car expense.

54 Provision of food or drink to be exempt benefit in certain cases

Where:

- (a) a board fringe benefit in relation to an employer is provided on a particular day;

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- (b) on that day, the provider of the fringe benefit also provides food or drink (not being a meal) to the recipient of the fringe benefit; and
- (c) the food or drink:
 - (i) is provided to, and consumed by, the recipient on that day on eligible premises of the employer; and
 - (ii) is not provided at a party, reception or other social function;

the provision of the food or drink is an exempt benefit.

55 Benefits provided by certain international organisations to be exempt

A benefit provided in respect of the employment of an employee of an employer is an exempt benefit if:

- (a) the employer is an organisation that, but for subsections 66(2) and (3), would be exempt from a liability to pay tax in respect of the benefit by virtue of the operation of the *International Organisations (Privileges and Immunities) Act 1963*; or
- (b) the employer is an organisation established by an agreement to which Australia is a party and which obliges Australia to grant the employer an exemption from a liability to pay tax in respect of the benefit.

56 Preservation of diplomatic and consular immunities

A benefit that, but for subsections 66(2) and (3), would be exempt from tax by virtue of the *Consular Privileges and Immunities Act 1972* or the *Diplomatic Privileges and Immunities Act 1967* is an exempt benefit.

57 Exempt benefits—employees of religious institutions

Where:

- (a) the employer of an employee is a religious institution;
- (b) the employee is a religious practitioner;
- (c) a benefit is provided to, or to a spouse or a child of, the employee; and
- (d) the benefit is not provided principally in respect of duties of the employee other than:

- (i) any pastoral duties; or
- (ii) any other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs;

the benefit is an exempt benefit.

57A Exempt benefits—public benevolent institutions, health promotion charities, some hospitals and public ambulance services

- (1) Where the employer of an employee is a public benevolent institution endorsed under subsection 123C(1) or (5), a benefit provided in respect of the employment of the employee is an exempt benefit.
- (2) Where:
 - (a) the employer of an employee is a government body; and
 - (b) the duties of the employment of the employee are exclusively performed in, or in connection with:
 - (i) a public hospital; or
 - (iii) a hospital carried on by a society that is a non-profit society for the purposes of section 65J or by an association that is a non-profit association for the purposes of section 65J;a benefit provided in respect of the employment of the employee is an exempt benefit.
- (3) A benefit provided in respect of the employment of an employee is an exempt benefit if:
 - (a) the employer of the employee is a public hospital; or
 - (b) the employer provides public ambulance services or services that support those services and the employee is predominantly involved in connection with the provision of those services.
- (4) A benefit provided in respect of the employment of an employee is an exempt benefit if the employer of the employee is a hospital carried on by:
 - (a) a society that is a non-profit society for the purposes of section 65J; or

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- (b) an association that is a non-profit association for the purposes of section 65J.

Note: Subsection 65J(5) explains:

- (a) which societies are non-profit societies for the purposes of section 65J; and
 - (b) which associations are non-profit associations for the purposes of section 65J.
- (5) A benefit provided in respect of the employment of an employee is an exempt benefit if:
- (a) the employer of the employee is a health promotion charity; and
 - (b) the health promotion charity is endorsed under subsection 123D(1).

58 Exempt benefits—live-in residential care workers

- (1) Where, during a period:
 - (a) the employer of an employee is:
 - (i) a government body; or
 - (ii) a religious institution or a non-profit company; whose activities consist of, or include, caring for elderly persons or disadvantaged persons;
 - (b) the duties of the employment of the employee consist of, or consist principally of:
 - (i) caring for elderly persons and any children of those elderly persons who reside with those elderly persons; or
 - (ii) caring for disadvantaged persons and any children of those disadvantaged persons who reside with those disadvantaged persons;
 - (c) in the performance of those duties, the employee lives, together with elderly persons or disadvantaged persons, in residential premises of the employer; and
 - (d) the fact that the person lives in those premises is directly related to the provision, in the course of the performance of the duties of the employment of the employee, of care to the elderly persons or disadvantaged persons living in those premises;
- any benefit arising from the provision, during that period, of:

- (e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in those premises with the employee;
 - (f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee; or
 - (g) meals provided on those premises to the employee or to a spouse or child of the employee who resides in those premises with the employee;
 - (h) food or drink (other than meals) for consumption during that period by the employee or by a spouse or child of the employee who resides in those premises with the employee;
- is an exempt benefit.

(2) In this section:

residential premises means a house or hostel used exclusively for the provision of residential accommodation to:

- (a) elderly persons or disadvantaged persons and children of elderly persons or disadvantaged persons;
- (b) persons the duties of whose employment consist of, or consist principally of, caring for persons referred to in paragraph (a); and
- (c) spouses and children of persons referred to in paragraph (b).

58A Exempt benefits—employment interviews and selection tests

Where:

- (a) a car benefit, an expense payment benefit, a property benefit or a residual benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer;
- (b) the benefit is in respect of an employment interview or selection test; and
- (c) in the case of an expense payment benefit:
 - (i) the benefit is not constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and

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- (ii) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

58AA Exempt benefits—engagement of relocation consultant

- (1) A benefit is an exempt benefit in relation to a year of tax if:
 - (a) the benefit is an expense payment benefit, or a residual benefit, provided in, or in respect of, the year of tax in respect of the employment of an employee; and
 - (b) the benefit is in respect of, or consists of, the engagement of a relocation consultant; and
 - (c) the engagement of the relocation consultant is required solely for one or more of the following reasons:
 - (i) the employee is required to live away from his or her usual place of residence to perform the duties of the employment mentioned in paragraph (a) (the *new employment duties*);
 - (ii) having lived away from his or her usual place of residence to perform the new employment duties, the employee is required to return there to perform them, or because the employee has ceased to perform them;
 - (iii) the employee is required to change his or her usual place of residence to perform those duties; and
 - (d) the relocation consultant is engaged to help a family member:
 - (i) if subparagraph (c)(i) applies—to settle, or to remain, at or near the location where the employee performs the new employment duties while living away from his or her usual place of residence; or
 - (ii) if subparagraph (c)(ii) applies—to settle at the location of the employee’s usual place of residence; or
 - (iii) if subparagraph (c)(iii) applies—to settle, or to remain, at the location of the employee’s new usual place of residence; and
 - (e) the benefit is not provided under a non-arm’s length arrangement; and
 - (f) if the benefit is an expense payment benefit—documentary evidence of the recipients expenditure is obtained by the

recipient and that documentary evidence, or a copy, is given to the employer before the declaration date.

- (2) Without limiting subsection (1), a reference in that subsection to helping a family member to settle, or to remain, at a location includes:
- (a) a relocation consultant finding, or providing information to the family member about, accommodation for the family member at the location; or
 - (b) a relocation consultant providing information to the family member about education facilities or other community amenities and services at the location;
- but does not include a reference to a relocation consultant paying expenses on behalf of a family member.

58B Exempt benefits—removals and storage of household effects as a result of relocation

- (1) Where:
- (a) either of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee:
 - (i) an expense payment benefit where the recipients expenditure is in respect of the removal or storage of household effects of the employee;
 - (ii) a residual benefit where the recipients benefit consists of the removal or storage of household effects of the employee;
 - (b) the removal or storage is required solely because:
 - (i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment;
 - (ii) the employee, having lived away from his or her usual place of residence in order to perform the duties of that employment, is required to return to his or her usual place of residence:
 - (A) in order to perform those duties; or
 - (B) because the employee has ceased to perform those duties; or

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- (iii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;
 - (c) the removal or storage is required to enable a family member to:
 - (i) if subparagraph (b)(i) applies—take up residence, or to continue to reside, at or near the place where the employee performs the duties of that employment while living away from his or her usual place of residence;
 - (ii) if subparagraph (b)(ii) applies—take up residence at the employee’s usual place of residence; or
 - (iii) if subparagraph (b)(iii) applies—take up residence, or to continue to reside, at the employee’s new usual place of residence;
 - (d) if subparagraph (b)(iii) applies:
 - (i) the removal takes place, or the storage commences to be provided, within 12 months after the day on which the employee commenced to perform the duties of that employment at the employee’s new place of employment; and
 - (ii) the benefit is not provided under a non-arm’s length arrangement;
 - (e) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
 - (f) the removal or storage was not provided in connection with travel undertaken by the employee in the course of performing the duties of that employment;
- the benefit is an exempt benefit in relation to the year of tax.

- (2) For the purposes of this section:
- (a) a reference to the household effects of an employee is a reference to tangible property (whether or not owned by a family member) kept primarily for the personal use of family members; and
 - (b) without limiting the generality of an expression used in subsection (1), the recipients expenditure shall be taken to be in respect of, and the recipients benefit shall be taken to consist of, the removal or storage of household effects if the

expenditure or benefit is in respect of, or consists of, the transport, packing, unpacking or insurance of the household effects in connection with the removal or storage of the household effects.

58C Exempt benefits—sale or acquisition of dwelling as a result of relocation

(1) Where:

- (a) during a particular period (in this subsection called the *former home holding period*), an employee of an employer, or an associate of an employee of an employer, holds:
 - (i) a prescribed interest in land on which:
 - (A) there is a building constituting or containing a dwelling;
 - (B) the employee or associate proposes to construct, or complete the construction of, a building constituting or containing a dwelling;
 - (ii) a prescribed interest in a stratum unit in relation to a dwelling; or
 - (iii) a proprietary right in respect of a dwelling, being a flat or home unit;
- (b) the employee or associate sells or proposes to sell, the interest or right solely because the employee is required to change his or her usual place of residence in order to perform the duties of his or her employment;
- (c) the employer first notifies the employee at a time (in this subsection called the *notice time*) during the former home holding period that the employee is required to perform the duties of that employment at the employee's new place of employment; and
- (d) at the notice time, the employee occupied, or proposed to occupy, the dwelling, or proposed to occupy the proposed dwelling, as his or her usual place of residence;

the following subsections have effect.

(2) Where:

- (a) either of the following benefits is provided in respect of that employment of the employee in, or in respect of, a year of tax:

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- (i) an expense payment benefit where the recipients expenditure is incidental to the sale of that interest or right;
 - (ii) a residual benefit where the recipients benefit is incidental to the sale of that interest or right;
 - (aa) the employee or associate entered into a contract for the sale of the interest or right within 2 years after the day (the *new employment day*) on which the employee commenced to perform the duties of that employment at the employee's new place of employment;
 - (b) if, apart from this paragraph, this subsection would apply in relation to 2 or more dwellings or proposed dwellings in relation to the change in the employee's usual place of residence—the employer of the employee elects that this subsection apply in relation to only one of those dwellings or proposed dwellings;
 - (c) if paragraph (b) applies—the benefit relates to the dwelling or proposed dwelling in respect of which the election is made;
 - (d) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
 - (e) the benefit is not provided under a non-arm's length arrangement;
- the benefit is an exempt benefit in relation to the year of tax.

(3) Where:

- (a) at a particular time, the employee or an associate of the employee acquires:
 - (i) a prescribed interest in land on which:
 - (A) there is a building constituting or containing another dwelling;
 - (B) the employee or associate proposes to construct, or complete the construction of, a building constituting or containing another dwelling;
 - (ii) a prescribed interest in a stratum unit in relation to another dwelling; or
 - (iii) a proprietary right in respect of another dwelling, being a flat or home unit;

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- (b) the employee or associate acquires the interest or right solely because the employee is required to change his or her usual place of residence in order to perform the duties of that employment at the employee's new place of employment;
- (c) the employee or associate entered into a contract for the acquisition of the interest or right on a day (the *contract day*) within 4 years after the new employment day;
- (ca) if, on the contract day, the employee or associate holds an interest or right in another dwelling in a situation where:
 - (i) if that interest or right were sold within 2 years after the new employment day; and
 - (ii) if a benefit of a kind referred to in subsection (2) were provided in relation to that interest or right;
the benefit would be an exempt benefit under subsection (2)—not more than 2 years have elapsed since the new employment day;
- (d) immediately after the completion of the acquisition, the employee occupied the other dwelling, or proposed to occupy the other proposed dwelling, as his or her usual place of residence;
- (e) any of the following benefits is provided in respect of that employment of the employee in, or in respect of, a year of tax:
 - (i) an expense payment benefit where the recipients expenditure is incidental to the acquisition of that interest or right;
 - (ii) a residual benefit where the recipients benefit is incidental to the acquisition of that interest or right;
 - (iii) an expense payment benefit where the recipients expenditure is in respect of the act of connecting or re-connecting a telephone service to the other dwelling or proposed dwelling;
 - (iv) a residual benefit where the recipients benefit is constituted by the act of connecting or re-connecting a telephone service to the other dwelling or proposed dwelling;
 - (v) an expense payment benefit where the recipients expenditure is in respect of the act of re-connecting gas or electricity to the other dwelling or proposed dwelling;

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- (vi) a residual benefit where the recipients benefit is constituted by the act of re-connecting gas or electricity to the other dwelling or proposed dwelling;
 - (f) if subparagraph (e)(iii) or (iv) applies—immediately before the change, a telephone service was provided to the unit of accommodation that was the employee’s usual place of residence before the change;
 - (g) if subparagraph (e)(i), (iii) or (v) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
 - (h) the benefit is not provided under a non-arm’s length arrangement;
- the benefit is an exempt benefit in relation to the year of tax.
- (4) An election by an employer under subsection (2) in relation to a year of tax:
- (a) shall be made by notice in writing to the Commissioner; and
 - (b) shall be lodged with the Commissioner on or before the declaration date.
- (5) If:
- (a) a benefit is an exempt benefit in relation to a year of tax under subsection (3); and
 - (b) paragraph (3)(ca) applied to the employee; and
 - (c) the employee or associate does not enter into a contract for the sale of the interest or right in the other dwelling referred to in that paragraph within 2 years after the new employment day;
- this Act has effect as if:
- (d) a benefit equivalent to the exempt benefit were provided in respect of the employment of the employee in, or in respect of, the year of tax in which that period of 2 years expired; and
 - (e) that equivalent benefit were not an exempt benefit.

58D Exempt benefits—connection or re-connection of certain utilities as a result of relocation

- (1) Where:
- (a) either of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:
 - (i) an expense payment benefit where the recipients expenditure is in respect of the act of connecting or re-connecting a telephone service to a unit of accommodation;
 - (ii) a residual benefit where the recipients benefit is constituted by the act of connecting or re-connecting a telephone service to a unit of accommodation;
 - (b) the unit of accommodation is for the accommodation of family members;
 - (c) the accommodation is required solely because:
 - (i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment; or
 - (ii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;
 - (d) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
 - (e) if subparagraph (c)(ii) applies:
 - (i) the telephone service is connected or re-connected not later than 12 months after the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment;
 - (ii) immediately before the change, a telephone service was provided to the unit of accommodation that was the employee's usual place of residence before the change; and
 - (iii) the benefit was not provided under a non-arm's length arrangement;
- the benefit is an exempt benefit in relation to the year of tax.

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(2) Where:

- (a) either of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:
 - (i) an expense payment benefit where the recipients expenditure is in respect of the act of re-connecting gas or electricity to a unit of accommodation;
 - (ii) a residual benefit where the recipients benefit is constituted by the act of re-connecting gas or electricity to a unit of accommodation;
- (b) the unit of accommodation is for the accommodation of family members;
- (c) the accommodation is required solely because:
 - (i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment; or
 - (ii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;
- (d) if subparagraph (a)(i) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; and
- (e) if subparagraph (c)(ii) applies:
 - (i) the gas or electricity is re-connected not later than 12 months after the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment; and
 - (ii) the benefit was not provided under a non-arm's length arrangement;

the benefit is an exempt benefit in relation to the year of tax.

58E Exempt benefits—leasing of household goods while living away from home

Where:

- (a) either of the following benefits (in this section called a ***household goods leasing benefit***) is provided in, or in respect of, a year of tax in respect of the employment of an employee:

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- (i) an expense payment benefit where the recipients expenditure is in respect of a lease or licence in respect of goods;
 - (ii) a residual benefit where the recipients benefit consists of the subsistence of a lease or licence in respect of goods;
 - (b) the goods are primarily for domestic use by, and in connection with accommodation for, family members;
 - (c) either of the following benefits is provided in, or in respect of, the year of tax to the employee in respect of that employment:
 - (i) an expense payment benefit where the recipients expenditure is in respect of a lease or licence in respect of that accommodation;
 - (ii) a residual benefit where the recipients benefit is constituted by the subsistence of a lease or licence in respect of that accommodation; and
 - (d) by virtue of section 21 or subsection 47(5), the benefit referred to in paragraph (c) is an exempt benefit in relation to the year of tax;
- the household goods leasing benefit is an exempt benefit in relation to the year of tax.

58F Exempt benefits—relocation transport

Where:

- (a) a car benefit, an expense payment benefit, a property benefit or a residual benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer;
- (b) the benefit is in respect of relocation transport; and
- (c) in the case of an expense payment benefit:
 - (i) the benefit is not constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
 - (ii) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary

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evidence, or a copy, is given to the employer before the declaration date;

the benefit is an exempt benefit in relation to the year of tax.

58G Exempt benefits—motor vehicle parking

(1) Each of the following benefits is an exempt benefit:

(a) an expense payment benefit, where:

(i) the recipients expenditure is in respect of the provision of motor vehicle parking facilities; and

(ii) the benefit is not an eligible car parking expense payment benefit;

(b) a residual benefit where the recipients benefit consists of motor vehicle parking facilities.

(2) If the employer of an employee is:

(a) a scientific institution (other than an institution carried on by a company, society or association for the purposes of profit or gain to its individual shareholders or members); or

(b) a religious institution; or

(c) a charitable institution; or

(d) a public educational institution;

the following benefits provided in respect of the employment of the employee are exempt benefits:

(e) an eligible car parking expense payment benefit;

(f) a car parking benefit.

(3) If:

(a) the employer of an employee is a government body; and

(b) the employee is exclusively employed in, or in connection with, a public educational institution;

the following benefits provided in respect of the employment of the employee are exempt benefits:

(c) an eligible car parking expense payment benefit;

(d) a car parking benefit.

58GA Exempt benefits—small business car parking

Exemption

- (1) A car parking benefit provided in an FBT year in respect of the employment of an employee is an exempt benefit if:
 - (a) the car is not parked at a commercial parking station; and
 - (b) the employer of the employee is not a public company (see subsection (3)), or a subsidiary of a public company (see subsection (3)), in relation to the day on which the benefit is provided; and
 - (c) the employer is not a government body; and
 - (d) either:
 - (i) the sum of the employer's ordinary income and statutory income for the year of income ending most recently before the start of the FBT year is less than \$10 million; or
 - (ii) the employer is a small business entity for the year of income ending most recently before the start of the FBT year.

New employers

- (2) However, if an employer to which subparagraph (1)(d)(i) applies:
 - (a) in the case of a tax-exempt employer (see subsection (3))—did not start to carry out operations or activities; or
 - (b) in any other case—did not start to carry out business operations;until after the start of the year of income mentioned in subparagraph (1)(d)(i), then:
 - (c) that subparagraph does not apply; and
 - (d) the employer must make a reasonable estimate of the amount that would be the sum of the employer's ordinary income and statutory income for the year of income (the **business start-up year**) in which the employer did start those operations or activities, or those business operations; and
 - (e) that estimate is to be made on the assumption that the employer had started the operations or activities, or the business operations, at the start of the business start-up year; and

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- (f) the benefit is an exempt benefit only if that estimate is less than \$10 million.

Definitions

- (3) In this section:

ordinary income has the same meaning as in the *Income Tax Assessment Act 1997*.

public company means a company covered by paragraph 103A(2)(a) of the *Income Tax Assessment Act 1936*, but reading the reference in that paragraph to the last day of the year of income as a reference to the day on which the benefit is provided.

small business entity has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

statutory income has the same meaning as in the *Income Tax Assessment Act 1997*.

subsidiary of a public company means a subsidiary of a public company within the meaning of subsection 103A(4) of the *Income Tax Assessment Act 1936*, but reading:

- (a) a reference in section 103A of that Act to a year of income as a reference to the day on which the benefit is provided; and
- (b) a reference in that section to a public company as a reference to a public company within the meaning of this section.

tax-exempt employer means an employer all of whose income is wholly exempt from income tax.

58H Exempt benefits—newspapers and periodicals used for business purposes

- (1) Where:

- (a) any of the following benefits is provided to an employee in respect of his or her employment:
 - (i) an expense payment benefit where the recipients expenditure is in respect of a newspaper or periodical;
 - (ii) a property benefit where the recipients property is a newspaper or periodical;

- (iii) a residual benefit where the recipients benefit consists of the making available of a newspaper or periodical; and
 - (b) the newspaper or periodical was for use by the employee for the purpose, or for purposes that included the purpose, of gaining or producing salary or wages of the employee in respect of that employment;
- the benefit is an exempt benefit.
- (2) In determining for the purposes of paragraph (1)(b) whether a newspaper or periodical was for use for the purpose of gaining or producing salary or wages, no regard shall be had to a purpose that is a merely incidental purpose.

58J Exempt benefits—compensable work-related trauma

- (1) Where:
- (a) a benefit is provided in respect of the employment of an employee for or in respect of compensable work-related trauma suffered by the employee; and
 - (b) either of the following subparagraphs applies:
 - (i) the benefit is provided under a workers' compensation law that applies to that employment;
 - (ii) the benefit is not provided under a workers' compensation law but the provision of the benefit is reasonable having regard to all relevant matters including, but without limiting the generality of the foregoing, the value of the benefit and the nature and effects of the trauma;
- the benefit is an exempt benefit.
- (2) Where:
- (a) a residual benefit provided in, or in respect of, a year of tax in respect of the employment of an employee is constituted by the subsistence, during the year of tax, of a contingent right (whether arising under a contract of insurance or otherwise) to a benefit for or in respect of compensable work-related trauma suffered by the employee; and
 - (b) in the case of a contingent right arising under a contract of insurance—the contract of insurance does not provide for a

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benefit that is not for or in respect of compensable work-related trauma suffered by any employee;
the benefit is an exempt benefit in relation to the year of tax.

58K Exempt benefits—in-house health care facilities

Where:

- (a) a benefit consisting of the provision of health care is provided in respect of the employment of an employee of an employer; and
- (b) the health care is provided:
 - (i) in an in-house health care facility of the employer; or
 - (ii) by a member of the staff of an in-house health care facility of the employer in the performance of his or her duties as such a member;

the benefit is an exempt benefit.

58L Exempt benefits—certain travel to obtain medical treatment

(1) Where:

- (a) a person (in this subsection called the *traveller*):
 - (i) is provided with transport by another person; or
 - (ii) provides transport for himself or herself;
- (b) any of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:
 - (i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of the transport;
 - (ii) an expense payment benefit where the recipients expenditure is in respect of the provision of:
 - (A) the transport; or
 - (B) meals or accommodation for the traveller;
 - (iii) a property benefit where the recipients property consists of meals for the traveller;
 - (iv) a residual benefit where the recipients benefit consists of the provision of:
 - (A) the transport; or
 - (B) accommodation for the traveller;

- (c) the transport is required solely because a person (in this subsection called the *patient*) requires medical treatment;
- (d) the medical treatment is provided in a particular place (in this subsection called the *treatment place*) at a time during a period when the employee is, or would but for that requirement to obtain treatment or any other temporary absence be, performing the duties of that employment in another place (in this subsection called the *overseas employment place*), being a place in:
 - (i) a foreign country;
 - (ii) a part of a foreign country; or
 - (iii) a territory, dependency or colony (however described) of a foreign country;
- (e) the transport is between:
 - (i) a place at or near the overseas employment place; and
 - (ii) a place at or near the treatment place;
- (f) if the patient is not the employee—the patient is a family member and lives with the employee at or near the overseas employment place;
- (g) if the traveller is not the patient—either of the following conditions is satisfied:
 - (i) the traveller accompanies the patient because:
 - (A) the patient has not attained the age of 18 years and requires the traveller as an escort; or
 - (B) the patient requires the traveller as an escort for medical reasons;
 - (ii) the traveller is a family member and accompanies or visits the patient where it is customary for family members to accompany or visit patients receiving medical treatment of the same nature and duration as the medical treatment required by the patient;
- (h) the meals or accommodation:
 - (i) are:
 - (A) in connection with the transport; or
 - (B) required solely in connection with the presence of the traveller at the treatment place for purposes related to the medical treatment of the patient; and

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- (ii) where sub-subparagraph (i)(B) applies and the traveller is the patient—are not provided to the patient in a hospital, clinic or similar place in connection with the medical treatment of the patient;
 - (j) either of the following conditions is satisfied:
 - (i) the treatment place was the place nearest to the overseas employment place at which medical treatment suitable for the patient could be provided;
 - (ii) the total cost associated with obtaining medical treatment at the treatment place was equal to, or less than, the lowest total cost associated with obtaining medical treatment at any of the places at which medical treatment suitable for the patient could have been provided; and
 - (k) if subparagraph (b)(ii) applies—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;
- the benefit is an exempt benefit in relation to the year of tax.
- (2) A reference in this section to medical treatment is a reference to an act or thing where a payment in respect of the act or thing is a medical expense within the meaning of section 159P of the *Income Tax Assessment Act 1936*.

58LA Exempt benefits—compassionate travel

Where:

- (a) any of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer, being benefits in relation to the transport of a person (in this section called the *traveller*) who is the employee or a close relative of the employee:
 - (i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of the transport;
 - (ii) an expense payment benefit where the recipients expenditure is in respect of the provision of:
 - (A) the transport; or
 - (B) meals or accommodation for the traveller in connection with the transport;

- (iii) a property benefit where the recipients property consists of meals for the traveller in connection with the transport;
- (iv) a residual benefit where the recipients benefit consists of the provision of:
 - (A) the transport; or
 - (B) accommodation for the traveller in connection with the transport;
- (b) the sole reason that the transport is required is:
 - (i) if the traveller is the employee:
 - (A) to enable the traveller to attend the funeral of a close relative of the traveller; or
 - (B) to enable the traveller to visit a close relative of the traveller in connection with a serious illness of the close relative or of the traveller; or
 - (ii) if the traveller is a close relative of the employee:
 - (A) to enable the traveller to attend the funeral of the employee;
 - (B) to enable the traveller to visit the employee in connection with a serious illness of the employee or of the traveller;
 - (C) to enable the traveller to attend the funeral of another close relative of the employee; or
 - (D) to enable the traveller to visit another close relative of the employee in connection with a serious illness of the other close relative or of the traveller;
- (c) the travel to which the transport relates commences during a period in respect of which any of the following conditions is satisfied (or, in a case to which sub-subparagraph (b)(ii)(A) applies, would have been satisfied but for the employee's death):
 - (i) during that period, the employee is undertaking travel in the course of performing the duties of that employment;
 - (ii) in a case to which subparagraph (i) does not apply—the employee is required, during that period, to live away from his or her usual place of residence in order to perform the duties of that employment;

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- (iii) in a case to which neither subparagraph (i) nor (ii) applies—during that period, the usual place of residence of the employee is at, or the employee is performing duties of that employment at, a place that:
 - (A) is in a State or internal Territory; and
 - (B) is not at a location in, or adjacent to, an eligible urban area;
 - (d) in a case to which sub-subparagraph (b)(ii)(C) or (D) applies—the travel to which the transport relates commences during a period during which the traveller ordinarily resides with the employee; and
 - (e) if subparagraph (a)(ii) applies and the recipients expenditure is incurred after 25 May 1988—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;
- the benefit is an exempt benefit in relation to the year of tax.

58M Exempt benefits—work-related medical examinations, work-related medical screening, work-related preventative health care, work-related counselling, migrant language training

- (1) Where any of the following benefits is provided in respect of the employment of an employee:
 - (a) an expense payment benefit where the recipients expenditure is in respect of:
 - (i) a work-related medical examination of the employee;
 - (ii) work-related medical screening of the employee;
 - (iii) work-related preventative health care of the employee;
 - (iv) work-related counselling of the employee or of an associate of the employee; or
 - (v) migrant language training of the employee or of an associate of the employee;
 - (b) a property benefit where the recipients property is required solely for the purposes of:
 - (i) a work-related medical examination of the employee;
 - (ii) work-related medical screening of the employee;
 - (iii) work-related preventative health care of the employee;

- (iv) work-related counselling of the employee or of an associate of the employee; or
- (v) migrant language training of the employee or of an associate of the employee;
- (c) a residual benefit where the recipients benefit consists of the provision of:
 - (i) a work-related medical examination of the employee;
 - (ii) work-related medical screening of the employee;
 - (iii) work-related preventative health care of the employee;
 - (iv) work-related counselling of the employee or of an associate of the employee; or
 - (v) migrant language training of the employee or of an associate of the employee;the benefit is an exempt benefit.

(2) Where:

- (a) a car benefit, an expense payment benefit, a property benefit or a residual benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer;
- (b) the benefit is associated with:
 - (i) a work-related medical examination of the employee;
 - (ii) work-related medical screening of the employee;
 - (iii) work-related preventative health care of the employee;
 - (iv) work-related counselling of the employee or of an associate of the employee; or
 - (v) migrant language training of the employee or of an associate of the employee; and
- (c) in the case of an expense payment benefit:
 - (i) the benefit is not constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
 - (ii) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date;

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the benefit is an exempt benefit in relation to the year of tax.

58N Exempt benefits—emergency assistance

Where:

- (a) a benefit is provided in respect of the employment of an employee of an employer;
- (b) the benefit is provided solely by way of the grant of emergency assistance to the recipient; and
- (c) if the benefit is:
 - (i) an expense payment benefit where the recipients expenditure is wholly or partly in respect of health care;
 - (ii) a property benefit where the recipients property is supplied in connection with the provision of health care;
 - (iii) a residual benefit where the recipients benefit consists of the provision of health care; or
 - (iv) a loan benefit constituted by the making of a loan where the purpose of the making of the loan is wholly or partly to enable the recipient to meet expenses incurred by the recipient in respect of health care;

the health care is provided:

- (v) by an employee of the employer or, if the employer is a company, of the employer or of a company that is related to the employer;
- (vi) on premises of the employer or, if the employer is a company, of the employer or of a company that is related to the employer; or
- (vii) at or adjacent to a place where employees of the employer or, if the employer is a company, of the employer or of a company that is related to the employer perform the duties of their employment;

the benefit is an exempt benefit.

58P Exempt benefits—minor benefits

(1) Where:

- (a) a benefit (in this section called a *minor benefit*) is provided in, or in respect of, a year of tax (in this section called the *current year of tax*) in respect of the employment of an employee of an employer;

- (b) the benefit is not an airline transport benefit;
- (c) in the case of an expense payment benefit, a property benefit or a residual benefit—if the minor benefit were an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit, as the case may be, in relation to the employer, the expense payment fringe benefit, the property fringe benefit or the residual fringe benefit, as the case requires, would not be an in-house fringe benefit;
- (d) in the case of a tax-exempt body entertainment benefit where the provider incurs non-deductible exempt entertainment expenditure that is wholly or partly in respect of the provision of entertainment to the employee or an associate of the employee:
 - (i) the provision of entertainment to the employee or the associate of the employee, as the case may be:
 - (A) is incidental to the provision of entertainment to outsiders; and
 - (B) neither consists of, nor is provided in connection with, the provision of a meal (other than a meal consisting of light refreshments) to the employee or the associate of the employee, as the case may be; or
 - (ii) the entertainment is provided to the employee or the associate of the employee, as the case may be:
 - (A) on eligible premises of the employer; and
 - (B) solely as a means of recognising the special achievements of the employee in a matter relating to the employment of the employee;
- (e) the notional taxable value of the minor benefit in relation to the current year of tax is less than \$300; and
- (f) having regard to:
 - (i) the infrequency and irregularity with which associated benefits, being benefits that are identical or similar to:
 - (A) the minor benefit; or
 - (B) benefits provided in connection with the provision of the minor benefit;have been or can reasonably be expected to be provided;
 - (ii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of the minor benefit and any associated benefits, being benefits that

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are identical or similar to the minor benefit, in relation to the current year of tax or any other year of tax;

- (iii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of any other associated benefits in relation to the current year of tax or any other year of tax;
- (iv) the practical difficulty for the employer in determining the notional taxable values in relation to the current year of tax of:
 - (A) if the minor benefit is not a car benefit—the minor benefit; and
 - (B) if there are any associated benefits that are not car benefits—those associated benefits; and
- (v) the circumstances surrounding the provision of the minor benefit and any associated benefits including, but without limiting the generality of the foregoing:
 - (A) whether the benefit concerned was provided to assist the employee to deal with an unexpected event; and
 - (B) whether the benefit concerned was provided otherwise than wholly or principally by way of a reward for services rendered, or to be rendered, by the employee;

it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit in relation to the employer in relation to the current year of tax;

the minor benefit is an exempt benefit in relation to the current year of tax.

- (2) For the purposes of this section, a benefit is an associated benefit in relation to a minor benefit if, and only if:
 - (a) any of the following subparagraphs applies:
 - (i) the benefit is identical or similar to the minor benefit;
 - (ii) the benefit is provided in connection with the provision of the minor benefit;
 - (iii) the benefit is identical or similar to a benefit provided in connection with the provision of the minor benefit;
 - (b) the benefit and the minor benefit both relate to the same employment of a particular employee; and

- (c) the benefit is not an exempt benefit by virtue of a provision of this Act other than this section.

58PA Exempt benefits—worker entitlement contributions

If:

- (a) a person makes a contribution to an approved worker entitlement fund; and
 - (b) the contribution is made under an industrial instrument; and
 - (c) the contribution is either:
 - (i) made for the purposes of ensuring that an obligation under the industrial instrument to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met; or
 - (ii) for the reasonable administrative costs of the fund;
- the contribution is an exempt benefit.

58PB Meaning of *approved worker entitlement funds*

- (1) A fund is an *approved worker entitlement fund* if the fund:
 - (a) is established by or under a law of the Commonwealth, a State or a Territory for the purpose of ensuring that long service leave is paid; and
 - (b) is operating under that law.
- (2) A fund is also an *approved worker entitlement fund* if:
 - (a) the fund is prescribed for the purposes of this paragraph; and
 - (b) a declaration under subsection (3) is not in force in relation to the fund.
- (3) The Treasurer may declare, by legislative instrument, that a fund is not an approved worker entitlement fund.
- (4) Before the Governor-General makes a regulation under paragraph (2)(a) prescribing a fund for the purposes of that paragraph, the Commissioner must be satisfied that:
 - (a) the management of the fund (including the management of the investments of the fund) is carried out at arm's length from the contributors to the fund and their associates; and
 - (b) under the fund's constituting documents:

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- (i) no more than 5% of the total assets of the fund are to be invested in an entity controlled by a contributor or an associate of a contributor; and
- (ii) the assets of the fund are not to be used to provide or facilitate any form of financial assistance, including a loan, to a contributor, a person in respect of whom contributions are made or an associate of a contributor or an associate of a person in respect of whom contributions are made; and
- (c) under the fund's constituting documents, payments from contributions to the fund are to be made only for the following purposes:
 - (i) to pay worker entitlements to persons in respect of whom contributions are made;
 - (ii) to make investments to generate income from the assets of the fund;
 - (iii) to reimburse contributors who have paid entitlements directly to persons in respect of whom contributions are made;
 - (iv) to return contributions to contributors;
 - (v) to pay, for the benefit of a person in respect of whom contributions are made, an employment termination payment (within the meaning of the *Income Tax Assessment Act 1997*) into a complying superannuation fund (within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*), a complying approved deposit fund (within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*) or a retirement savings account (within the meaning of the *Retirement Savings Accounts Act 1997*);
 - (vi) to transfer contributions to another approved worker entitlement fund;
 - (vii) to pay the reasonable administrative expenses of the fund;
 - (viii) to pay amounts to a contributor's external administrator that would otherwise be payable as mentioned in subparagraph (iii) or (iv) to the contributor;
 - (ix) to pay interest on, or to repay, money lent to the fund; and

- (d) under the fund's constituting documents, payments from the income of the fund are to be made only for the following purposes:
 - (i) a purpose mentioned in subparagraphs (c)(ii) to (ix);
 - (ii) to make payments to contributors to the fund;
 - (iii) to make payments to other persons where the payment is specified in subsection (5); and
 - (e) under the fund's constituting documents:
 - (i) an account must be kept for each person in respect of whom contributions to the fund are made; and
 - (ii) the account must be kept in a manner that enables entitlements in respect of the person to be calculated.
- (5) A payment made by a fund to a person in the following circumstances is specified for the purposes of subparagraph (4)(d)(iii):
- (a) a contribution has been made to the fund in respect of the person; and
 - (b) the contribution would be an exempt benefit under section 58PA if the fund were an approved worker entitlement fund; and
 - (c) either:
 - (i) the payment is of a worker entitlement the contribution for which would be an exempt benefit under section 58PA if the fund were an approved worker entitlement fund; or
 - (ii) the payment is of some kind other than a worker entitlement.

58PC Exempt benefits—existing worker entitlement funds

- (1) If:
 - (a) a person makes a contribution to an existing worker entitlement fund or an approved worker entitlement fund; and
 - (b) the contribution is made in accordance with existing industrial practice; and
 - (c) the contribution is either:
 - (i) made for the purposes of ensuring that an obligation to make leave payments (including payments in lieu of

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- leave) or payments when an employee ceases employment is met; or
- (ii) for the reasonable administrative costs of the fund; and
- (d) the contribution is made during the FBT year beginning on 1 April 2003, 1 April 2004 or 1 April 2005;
- the contribution is an exempt benefit.
- (2) A fund is an *existing worker entitlement fund* if the fund accepted contributions during the FBT year beginning on 1 April 2002 for the purposes of ensuring that obligations to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment are met.
- (3) A contribution is made in accordance with *existing industrial practice* if the taxpayer or another person in the taxpayer's industry:
- (a) made payments in the FBT year beginning on 1 April 2002 to an existing worker entitlement fund; or
- (b) made payments in the FBT year beginning on 1 April 2003 to an approved worker entitlement fund;
- for the purposes of ensuring that an obligation to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met.

58Q Exempt benefits—long service awards

- (1) Where:
- (a) a long service award benefit (in this section called the *current long service award benefit*) is provided in, or in respect of, a year of tax in respect of the employment of an employee;
- (b) the current long service award benefit is in recognition of a particular recognised long service period (in this section called the *current recognised long service period*) of the employee;
- (c) if there is no other long service award benefit provided in, or in respect of, any year of tax in respect of that employment in recognition of a different recognised long service period of the employee that is shorter than the current recognised long service period—the sum of the notional taxable values of the current long service award benefit and any other long service

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award benefits provided in, or in respect of, any year of tax in respect of the employment of the employee in recognition of the current recognised long service period does not exceed the amount calculated in accordance with the formula:

$$\$1,000 + \left(\$100 \times \left(\text{RLS} - 15 \right) \right)$$

where RLS is the number of whole years in the recognised long service period of the employee that was recognised by the provision of the current long service award benefit; and

- (d) if paragraph (c) does not apply—the sum of the notional taxable values of the current long service award benefit and any other long service award benefits provided in, or in respect of, any year of tax in respect of the employment of the employee in recognition of the current recognised long service period does not exceed the amount calculated in accordance with the formula:

$$\$100 \times \left(\text{RLS} - \text{ERLS} \right)$$

where:

RLS is the number of whole years in the recognised long service period of the employee that was recognised by the provision of the current long service award benefit; and

ERLS is the number of whole years in the longest recognised long service period of the employee that:

- (i) is shorter than the current recognised long service period; and
- (ii) was recognised by the provision of one or more long service award benefits in, or in respect of, any year of tax, in respect of the employment of the employee;

the current long service award benefit is an exempt benefit in relation to the year of tax.

- (2) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this section.

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58R Exempt benefits—safety awards

Where:

- (a) one or more safety award benefits are provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer; and
 - (b) the notional taxable value of that safety award benefit, or the sum of the notional taxable values of those safety award benefits, in relation to that year of tax, does not exceed \$200;
- the safety award benefit, or the safety award benefits, as the case may be, are exempt benefits in relation to that year of tax.

58S Exempt benefits—trainees engaged under Australian Traineeship System

Where:

- (a) an employee is a trainee employed under a training agreement as part of the scheme known as the Australian Traineeship System;
- (b) any of the following benefits is provided in, or in respect of, a year of tax in respect of that employment of the employee:
 - (i) an expense payment benefit where the recipients expenditure is in respect of accommodation, or food or drink, for the employee;
 - (ii) a housing benefit where the housing right is in respect of accommodation for the employee;
 - (iii) a board benefit in respect of a meal for the employee;
 - (iv) a property benefit where the recipients property consists of food or drink for the employee;
 - (v) a residual benefit where the recipients benefit consists of the subsistence of a lease or licence in respect of a unit of accommodation for the accommodation of the employee;
- (c) in a case where the benefit relates to food or drink—the food or drink is not provided at a party, reception or other social function; and
- (d) either of the following conditions are satisfied:
 - (i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;

- (ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient;

the benefit is an exempt benefit in relation to the year of tax.

58T Exempt benefits—live-in domestic workers employed by religious institutions or by religious practitioners

Where, during a particular period:

- (a) the employer of an employee is:
 - (i) a religious institution; or
 - (ii) a religious practitioner;
 - (b) the duties of the employment of the employee consist of, or consist principally of, rendering domestic services or personal services, or both, for:
 - (i) one or more religious practitioners who reside in one or more units of accommodation located on a particular parcel of land; and
 - (ii) any relatives of that religious practitioner, or of those religious practitioners, who reside in the unit of accommodation with the religious practitioner concerned;
 - (c) the employee resides in a unit of accommodation located on the same parcel of land; and
 - (d) the fact that the employee resides in the unit of accommodation is directly related to the rendering, in the course of the performance of the duties of the employment of the employee, of those domestic services or of those personal services;
- any benefit arising from the provision, during that period, of:
- (e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in that unit of accommodation with the employee;
 - (f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee;

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- (g) meals provided on the parcel of land to the employee or to a spouse or child of the employee who resides in that unit of accommodation with the employee; or
 - (h) food or drink (other than meals) for consumption, during that period, by the employee or by a spouse or child of the employee who resides in that unit of accommodation with the employee;
- is an exempt benefit.

58U Exempt benefits—live-in help for elderly and disadvantaged persons

Where, during a particular period:

- (a) the employer of an employee is a natural person;
 - (b) the duties of the employment of the employee consist of, or consist principally of:
 - (i) caring for one or more elderly persons and any child or children of that elderly person, or those elderly persons, who reside with the elderly person concerned; or
 - (ii) caring for one or more disadvantaged persons and any child or children of that disadvantaged person, or those disadvantaged persons, who reside with the disadvantaged person concerned;
 - (c) in the performance of those duties, the employee resides in the same unit of accommodation as the person or persons being cared for; and
 - (d) the fact that the employee resides in that unit of accommodation is directly related to the provision, in the course of the performance of the duties of the employment of the employee, of care to the elderly person or elderly persons or to the disadvantaged person or disadvantaged persons;
- any benefit arising from the provision, during that period, of:
- (e) that accommodation to the employee or to the employee and a spouse or child of the employee who resides in that unit of accommodation with the employee;
 - (f) residential fuel in connection with that accommodation for use by the employee or by the employee and a spouse or child of the employee;

- (g) meals provided in that unit of accommodation to the employee or to a spouse or child of the employee who resides in that unit of accommodation with the employee; or
 - (h) food or drink (other than meals) for consumption, during that period, by the employee or by a spouse or child of the employee who resides in that unit of accommodation with the employee;
- is an exempt benefit.

58V Exempt benefits—food and drink for non-live-in domestic employees

Where:

- (a) the employer of an employee is:
 - (i) a natural person; or
 - (ii) a religious institution;
- (b) if the employer is a natural person—the duties of the employment of the employee consist of, or consist principally of, rendering domestic services for the employer or one or more relatives of the employer at a place of residence of the employer;
- (c) if the employer is a religious institution—the duties of the employment of the employee consist of, or consist principally of, rendering domestic services for one or more religious practitioners or one or more relatives of religious practitioners at a place of residence of the religious practitioner concerned; and
- (d) the employee is not provided with residential accommodation in respect of that employment;

any benefit arising from the provision of food or drink consumed by the employee at that place of residence at or about the time the employee was engaged in the performance of the duties of that employment is an exempt benefit.

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining who a person's relatives are for the purposes of paragraphs (b) and (c).

Section 58W

58W Exempt benefits—deposits under the *Small Superannuation Accounts Act 1995*

When section applies

- (1) This section applies if:
 - (a) a benefit is provided in respect of the employment of an employee; and
 - (b) the benefit consists of the making of a deposit, or purported deposit, under the *Small Superannuation Accounts Act 1995*.

Exempt benefit

- (2) The benefit is an exempt benefit.

Definition

- (3) In this section:

deposit has the same meaning as in the *Small Superannuation Accounts Act 1995*.

58X Exempt benefits—provision of certain work related items

- (1) Any of the following benefits provided by an employer to an employee of the employer in respect of the employee's employment is an exempt benefit:
 - (a) an expense payment benefit where the recipients expenditure is in respect of an eligible work related item;
 - (b) a property benefit where the recipients property is an eligible work related item;
 - (c) a residual benefit where the recipients benefit consists of the making available of an eligible work related item.
- (2) Subject to subsection (3), each of the following is an ***eligible work related item*** if it is primarily for use in the employee's employment:
 - (a) a portable electronic device;
 - (b) an item of computer software;
 - (c) an item of protective clothing;
 - (d) a briefcase;
 - (e) a tool of trade.

(3) An item (the *later item*) listed in subsection (2) is not an *eligible work related item* if, earlier in the FBT year, an expense payment benefit or a property benefit of the employee has arisen in relation to another item that has substantially identical functions to the later item.

(4) However, the rule in subsection (3) does not apply if the later item is a replacement for the other item.

Example: The later item would be a replacement for the other item if the other item were lost or destroyed, or needed replacing because of developments in technology.

58Y Exempt benefits—membership fees and subscriptions

- (1) Either of the following benefits provided by an employer to an employee of the employer in respect of the employee's employment is an exempt benefit:
- (a) an expense payment benefit where the recipients expenditure is in respect of an eligible membership or subscription;
 - (b) a property benefit where the recipients property is an eligible membership or subscription.
- (2) Each of the following is an *eligible membership or subscription*:
- (a) a subscription to a trade or professional journal;
 - (b) an entitlement to use a corporate credit card;
 - (c) an entitlement to use an airport lounge membership.

58Z Exempt benefits—taxi travel

- (1) Any benefit arising from taxi travel by an employee is an exempt benefit if the travel is a single taxi trip beginning or ending at the employee's place of work.
- (2) Any benefit arising from taxi travel by an employee is an exempt benefit if the travel:
- (a) is as a result of sickness of, or injury to, the employee; and
 - (b) is the whole or a part of the journey directly between any of the following:
 - (i) the employee's place of work; or
 - (ii) the employee's place of residence; or
 - (iii) any other place that it is necessary, or appropriate, for the employee to go as a result of the sickness or injury.

Section 58ZB

58ZB Exempt benefits—approved student exchange programs

(1) Where:

- (a) a benefit is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer; and
- (b) the benefit is in respect of participation in an approved student exchange program by the employee or an associate of the employee; and
- (c) the employer or an associate of the employer did not select, or take part in the selection of, the employee or associate as a participant in the program;

the benefit is an exempt benefit in relation to the year of tax.

(2) An *approved student exchange program* is a student exchange program run by a body that is registered as a student exchange body with the relevant State or Territory body in accordance with the National Guidelines for Student Exchange that are published by the National Co-ordinating Committee for International Secondary Student Exchange.

58ZC Exempt benefits—remote area housing benefits

Remote area housing benefit to be exempt

(1) A housing benefit that is a remote area housing benefit is an exempt benefit.

What constitutes remote area housing benefit

- (2) A housing benefit in relation to an employer for a year of tax and for a unit of accommodation, being a benefit provided to an employee of the employer in respect of the employee's employment, is a *remote area housing benefit* if:
- (a) during the whole of the tenancy period, the unit of accommodation was located in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and
 - (b) during the whole of the tenancy period, the recipient was a current employee of the employer and the usual place of employment of the recipient was not at a location in, or adjacent to, an eligible urban area; and

- (d) it would be concluded that it was necessary for the employer, during the year of tax, to provide, or to arrange for the provision of, residential accommodation for employees of the employer because:
 - (i) the nature of the employer's business was such that employees of the employer were liable to be frequently required to change their places of residence; or
 - (ii) there was not, at or near the place or places at which the employees of the employer were employed, sufficient suitable residential accommodation for those employees (other than residential accommodation provided by or on behalf of the employer); or
 - (iii) it is customary for employers in the industry in which the recipient was employed during the tenancy period to provide residential accommodation for their employees free of charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned; and
- (e) the recipients overall housing right was not granted to the recipient under:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section.

Discretion to treat accommodation or place of employment as being remote

- (3) For the purposes of subsection (2):
 - (a) if a unit of accommodation:
 - (i) is at a location in, or adjacent to, an eligible urban area; and
 - (ii) is adjacent to, or in close proximity to, another unit of accommodation that is occupied or used and is not at a location in, or adjacent to, an eligible urban area;
- the Commissioner may, if the Commissioner considers that it is appropriate to do so having regard to all the circumstances, treat the first-mentioned unit of accommodation as not being at a location in, or adjacent to, an eligible urban area; and

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- (b) if the usual place of employment of a person:
 - (i) is at a location in, or adjacent to, an eligible urban area; and
 - (ii) is adjacent to, or in close proximity to, another location at which people are employed, being another location that is not in, or adjacent to, an eligible urban area;the Commissioner may, if the Commissioner considers that it is appropriate to do so having regard to all the circumstances, treat that place of employment of the first-mentioned person as not being at a location in, or adjacent to, an eligible urban area.

58ZD Exempt benefits—meals on working days

If:

- (a) an employer is carrying on a business of primary production for the purposes of the *Income Tax Assessment Act 1997*; and
 - (b) the business is carried on at a location in a State or internal Territory that is not in, or adjacent to, an eligible urban area; and
 - (c) a benefit consisting of a meal that is ready for consumption is provided on a working day to a person; and
 - (d) the benefit is not, or does not include, the provision of meal entertainment as defined in section 37AD; and
 - (e) the benefit is:
 - (i) a board benefit; or
 - (ii) a property benefit; or
 - (iii) an expense payment benefit; or
 - (iv) a residual benefit; and
 - (f) the person to whom the benefit is provided is:
 - (i) an employee of the employer, being an employee who is employed in the business and is primarily so employed at a location referred to in paragraph (b); or
 - (ii) if the benefit is a board benefit—an associate of an employee referred to in subparagraph (i); and
 - (g) the benefit is provided in respect of the employment of an employee referred to in subparagraph (f)(i);
- the benefit is an exempt benefit.

Division 14—Reduction of taxable value of miscellaneous fringe benefits

59 Reduction of taxable value—remote area residential fuel

(1) If:

(a) residential fuel is for use:

(i) in connection with the recipients unit of accommodation; and

(ii) during the subsistence of the recipients overall housing right;

in relation to a remote area housing benefit, in relation to an employer in relation to a year of tax; and

(b) any of the following conditions are satisfied:

(i) the recipients expenditure in relation to an expense payment fringe benefit in relation to the employer in relation to the year of tax or a subsequent year of tax is in respect of the supply of that residential fuel;

(ii) the recipients property in relation to a property fringe benefit in relation to the employer in relation to the year of tax is that residential fuel;

(iii) the recipients benefit in relation to a residual fringe benefit in relation to the employer in relation to the year of tax is the benefit of the consumption of that residential fuel;

the amount that, apart from this subsection and section 62, would be the taxable value of the fringe benefit referred to in paragraph (b) in relation to the year of tax is reduced by 50%.

(2) Where:

(a) any of the following conditions are satisfied:

(i) the recipients expenditure in relation to an expense payment fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is in respect of the supply of residential fuel;

(ii) the recipients property in relation to a property fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is residential fuel;

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- (iii) the recipients benefit in relation to a residual fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is the benefit of the consumption of residential fuel;
- (b) the residential fuel is for use in connection with a dwelling during a period in the year of tax or, in a case to which subparagraph (a)(i) applies, a preceding year of tax, when the recipient of the fringe benefit occupied or used the dwelling as his or her usual place of residence and was under an obligation to repay the whole or a part of a remote area housing loan connected with the dwelling; and
- (c) the fringe benefit was not provided under:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

- (3) Where:
 - (a) any of the following conditions are satisfied:
 - (i) the recipients expenditure in relation to an expense payment fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is in respect of the supply of residential fuel;
 - (ii) the recipients property in relation to a property fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is residential fuel;
 - (iii) the recipients benefit in relation to a residual fringe benefit in relation to an employer in relation to an employee in relation to a year of tax is the benefit of the consumption of residential fuel;
 - (b) the residential fuel is for use in connection with a unit of accommodation during a period in the year of tax or, in a case to which subparagraph (a)(i) applies, in a preceding year of tax, during which:

- (i) the recipient of the fringe benefit occupied or used the unit of accommodation as his or her usual place of residence; and
- (ii) remote area housing rent connected with the unit of accommodation accrued; and
- (c) the fringe benefit was not provided under:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.

60 Reduction of taxable value—remote area housing

- (1) Where:
 - (a) the recipient of a loan fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
 - (b) the loan is a remote area housing loan connected with a dwelling; and
 - (c) the recipient occupied or used the dwelling as his or her usual place of residence during a period in the year of tax (in this section referred to as the *occupation period*) during which the recipient was under an obligation to repay the whole or a part of the loan;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50% of so much of that amount as relates to the occupation period.

- (2) Where:
 - (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
 - (b) the recipients expenditure is in respect of interest in respect of a remote area housing loan connected with a dwelling;

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- (c) the recipient occupied or used the dwelling as his or her usual place of residence during a period (in this section referred to as the *occupation period*) during which the interest accrued; and
- (d) the fringe benefit was not provided under:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50% of so much of that amount as relates to the occupation period.

(2A) Where:

- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) the recipients expenditure is in respect of remote area housing rent connected with a unit of accommodation;
- (c) the recipient occupied or used the unit of accommodation as his or her usual place of residence during a period (in this subsection called the *occupation period*) during which the rent accrued; and
- (d) the fringe benefit was not provided under:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50% of so much of the recipients expenditure as relates to the occupation period.

- (3) Where:
- (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
 - (b) the recipients property is remote area residential property; the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.
- (4) Where:
- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
 - (b) the recipients expenditure is in respect of remote area residential property; the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.
- (5) Where:
- (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
 - (b) the recipients property is a remote area residential property option fee; the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.
- (6) Where:
- (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
 - (b) the recipients property is remote area residential property repurchase consideration; the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.
- (7) Where:
- (a) subsection (6) applies to a property fringe benefit; and
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- (b) the amount paid by the provider of the fringe benefit by way of consideration for the purchase of the estate or interest concerned exceeds both:
 - (i) the market value of the estate or interest at the time of the purchase; and
 - (ii) the guideline price of the estate or interest at the time of the purchase;

a reference in subsection (6) to the taxable value of the fringe benefit is a reference to so much of the taxable value as is attributable to the amount of the guideline price.

60AA Guideline price for repurchase of remote area residential property

- (1) In this section:

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

- (2) Subject to subsection (3), if at any time, whether before or after the commencement of this section, the Australian Statistician has published or publishes an index number in respect of a quarter in substitution for an index number previously published by the Australian Statistician in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this section.
- (3) If at any time, whether before or after the commencement of this section, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took place or takes place, regard shall be had only to index numbers published in terms of the new reference base.
- (4) A reference in subsection 60(7) to the guideline price of an estate or interest in land is a reference to:
 - (a) if the factor ascertained in accordance with subsections (5) and (6) in relation to the market value of the estate or interest as at the time the estate or interest was acquired by the

- employee is greater than 1—the market value as at that time multiplied by that factor; or
- (b) in any other case—the market value as at that time.
- (5) The factor to be ascertained for the purposes of subsection (4) in relation to the market value of the estate or interest in land as at the time of the acquisition of the estate or interest by the employee is the number (calculated to 3 decimal places) ascertained by dividing the index number in respect of the quarter of the year in which the employee sold the estate or interest to the provider by the index number in respect of the quarter of the year in which the estate or interest was acquired by the employee.
- (6) Where the factor ascertained in accordance with subsection (5) would, if it were calculated to 4 decimal places, end with a number greater than 4, that factor shall be taken to be the factor calculated to 3 decimal places in accordance with that subsection and increased by 0.001.

60A Reduction of taxable value—remote area holiday transport fringe benefits subject to ceiling

- (1) Where one or more remote area holiday transport fringe benefits in relation to an employer in relation to a year of tax relate to a particular employee of the employer and to a particular holiday for a particular family member, the amount (in this subsection called the *gross taxable value*) that, but for this subsection and section 62, would be:
- (a) so much of the taxable value of that fringe benefit as is attributable to transport, meals or accommodation in relation to the holiday for the family member; or
- (b) so much of the sum of the taxable values of those fringe benefits as is attributable to transport, meals or accommodation in relation to the holiday for the family member;
- as the case requires, in relation to that year of tax, shall be reduced by:
- (c) 50% of the gross taxable value; or
- (d) 50% of the benchmark travel amount in relation to that fringe benefit, or in relation to those fringe benefits, in relation to the holiday for the family member;

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whichever is the less.

- (2) Subsection (1) does not apply in relation to a remote area holiday transport fringe benefit unless:
- (a) subsection 143(3) applies to the fringe benefit; and
 - (b) if the fringe benefit is an expense payment fringe benefit:
 - (i) in the case of an expense payment fringe benefit where:
 - (A) the expense payment fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient; and
 - (B) the reimbursement is calculated by reference to the distance travelled by the car; the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; or
 - (ii) in the case of an expense payment fringe benefit where subparagraph (i) does not apply:
 - (A) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or
 - (B) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure.
- (3) Where subsection (1) applies, in relation to 2 or more years of tax, in relation to 2 or more fringe benefits relating to a particular holiday for a particular family member, subsection (1) has effect, in relation to each of those years of tax, as if the reference in paragraph (1)(d) to the benchmark travel amount in relation to that fringe benefit, or those fringe benefits, in relation to the holiday for the family member were a reference to the amount calculated in accordance with the formula:

$$\text{BTA} \times \frac{\text{TV}}{\text{TTV}}$$

where:

BTA is the amount that, but for this subsection, would be the benchmark travel amount in relation to that fringe benefit, or in relation to those fringe benefits, in relation to the holiday for the family member;

TV is the amount that, but for this section and section 62, would be:

- (a) so much of the taxable value, in relation to the year of tax concerned, of that fringe benefit as is attributable to transport, meals or accommodation in relation to the holiday for the family member; or
- (b) so much of the sum of the taxable values, in relation to the year of tax concerned, of those fringe benefits as is attributable to transport, meals or accommodation in relation to the holiday for the family member; and

TTV is the amount that, but for this section and section 62, would be so much of the sum of the taxable values, in relation to all of those years of tax, of all of those fringe benefits as is attributable to transport, meals or accommodation in relation to the holiday for the family member.

(4) Where:

- (a) subparagraph (2)(b)(i) applies to an expense payment fringe benefit; and
- (b) the amount of the reimbursement concerned exceeds the reimbursement (in this subsection called the **statutory reimbursement**) that would have been paid if it had been calculated on the basis of the sum of the following rates:
 - (i) the basic car rate;
 - (ii) where 2 or more family members travelled in the car when it provided the transport by virtue of which the expense payment fringe benefit is a remote area holiday transport fringe benefit—the supplementary car rate;

a reference in subsection (1) or (3) of this section to the taxable value of the fringe benefit is a reference to so much of the taxable value as is attributable to the amount of the statutory reimbursement.

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(5) Where:

- (a) a remote area holiday transport fringe benefit in relation to an employee consists of the provision of an allowance to the spouse or a child of the employee; and
- (b) the whole or a part of the allowance has been expended by the recipient in obtaining the transport, meals or accommodation in respect of which the allowance was paid;

this section applies in relation to the fringe benefit as follows:

- (c) the fringe benefit shall be treated as if it were an expense payment fringe benefit;
- (d) the amount expended as mentioned in paragraph (b) shall be treated as if it were the recipients expenditure;
- (e) so much of the allowance as does not exceed the recipients expenditure shall be treated as if it were a reimbursement of the recipients expenditure.

61 Reduction of taxable value—remote area holiday transport fringe benefits not subject to ceiling

(1A) This section does not apply in relation to a fringe benefit in respect of remote area holiday transport if subsection 143(3) applies in relation to the fringe benefit.

(1) Where:

- (a) the recipients expenditure in relation to an expense payment fringe benefit in relation to a year of tax is in respect of remote area holiday transport;
- (c) in a case where:
 - (i) the expense payment fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient; and
 - (ii) the reimbursement is calculated by reference to the distance travelled by the car;

the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure; and

- (d) if paragraph (c) does not apply:
 - (i) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date; or
 - (ii) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, in respect of the recipients expenditure;

the amount that, but for this subsection, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by:

- (e) where paragraph (c) does not apply—50%; and
 - (f) where paragraph (c) applies—50% of so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the sum of the following rates:
 - (i) the basic car rate;
 - (ii) where 2 or more family members travelled in the car when it provided the transport by virtue of which the recipients expenditure is in respect of remote area holiday transport—the supplementary car rate.
- (1AA) Where the recipients property in relation to a property fringe benefit in relation to a year of tax is in respect of remote area holiday transport, the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by 50%.
- (2) Where the recipients benefit in relation to a residual fringe benefit in relation to a year of tax is in respect of remote area holiday transport, the amount that, but for this subsection and section 62, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by 50%.
- (3) Where:
- (a) a remote area holiday transport fringe benefit in relation to an employee consists of the provision of an allowance to the spouse or a child of the employee; and

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- (b) the whole or a part of the allowance has been expended by the recipient in obtaining the transport, meals or accommodation in respect of which the allowance was paid;
- this section applies in relation to the fringe benefit as follows:
- (c) the fringe benefit shall be treated as if it were an expense payment fringe benefit;
 - (d) the amount expended as mentioned in paragraph (b) shall be treated as if it were the recipients expenditure;
 - (e) so much of the allowance as does not exceed the recipients expenditure shall be treated as if it were a reimbursement of the recipients expenditure.

61A Reduction of taxable value—overseas employment holiday transport

- (1) Where one or more fringe benefits, being fringe benefits in respect of overseas employment holiday transport, in relation to an employer in relation to a year of tax relate to a particular employee of the employer, the amount (in this subsection called the **gross taxable value**) that, but for this subsection and section 62, would be:
 - (a) so much of the taxable value of that fringe benefit as is attributable to transport, meals or accommodation for a particular family member; or
 - (b) so much of the sum of the taxable values of those fringe benefits as is attributable to transport, meals or accommodation for a particular family member;as the case requires, in relation to that year of tax, shall be reduced by:
 - (c) 50% of the gross taxable value; or
 - (d) 50% of the benchmark travel amount in relation to that fringe benefit in relation to the family member or 50% of the greatest benchmark travel amount in relation to those fringe benefits in relation to the family member, as the case requires;whichever is the less.
- (2) Subsection (1) does not apply in relation to a fringe benefit in respect of overseas employment holiday transport, being an expense payment fringe benefit, unless:
 - (a) in the case of an expense payment fringe benefit where:

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- (i) the expense payment fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient; and
 - (ii) the reimbursement is calculated by reference to the distance travelled by the car;
the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
 - (iii) particulars of the car; and
 - (iv) the number of whole kilometres travelled by the car in providing transport by virtue of which the recipients expenditure is in respect of overseas employment holiday transport; or
 - (b) in the case of an expense payment fringe benefit where paragraph (a) does not apply—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date.
- (3) Where:
- (a) subsection (1) applies in relation to one or more fringe benefits (in this subsection called the ***overseas holiday transport fringe benefits***) in relation to an employer in relation to a year of tax, being fringe benefits that relate to a particular employee of the employer;
 - (b) one or more of the overseas holiday transport fringe benefits are home country fringe benefits in relation to a particular holiday or holidays for a particular family member;
 - (c) if the home country fringe benefit, or home country fringe benefits, referred to in paragraph (b) relate to only one holiday for the family member—the home country holiday amount in relation to the holiday in relation to the family member exceeds the benchmark travel amount, or the greatest benchmark travel amount, as the case requires, that, apart from this subsection, would be applicable under paragraph (1)(d) in relation to the overseas holiday transport fringe benefits in relation to the family member; and
 - (d) if the home country fringe benefit, or home country fringe benefits, referred to in paragraph (b) relate to 2 or more

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holidays for the family member—the greatest of the home country holiday amounts in relation to the holidays in relation to the family member exceeds the benchmark travel amount, or the greatest benchmark travel amount, as the case requires, that, apart from this subsection, would be applicable under paragraph (1)(d) in relation to the overseas holiday transport fringe benefits in relation to the family member; the benchmark travel amount, or the greatest benchmark travel amount, as the case requires, that, apart from this subsection, would be applicable under paragraph (1)(d) in relation to the overseas holiday transport fringe benefits in relation to the family member shall be increased by the amount of the excess referred to in whichever of paragraph (c) or (d) of this subsection is applicable.

- (4) For the purposes of subsection (3), where the whole or a part (which whole or part is in this subsection called the *attributable portion*) of the amount that, but for subsection (1) and section 62, would be the taxable value, or of the sum of the taxable values, in relation to the year of tax, of one or more home country fringe benefits in relation to a particular holiday for a particular family member is attributable to transport, meals or accommodation in relation to the holiday for the family member, the home country holiday amount, in relation to the holiday, in relation to the family member, is an amount equal to the attributable portion.
- (5) Where:
- (a) paragraph (2)(a) applies to an expense payment fringe benefit; and
 - (b) the amount of the reimbursement concerned exceeds the reimbursement (in this subsection called the *statutory reimbursement*) that would have been paid if it had been calculated on the basis of the sum of the following rates:
 - (i) the basic car rate;
 - (ii) where 2 or more family members travelled in the car when it provided the transport by virtue of which the expense payment fringe benefit is in respect of overseas employment holiday transport—the supplementary car rate;

a reference in subsection (1) or (4) of this section to the taxable value of the fringe benefit is a reference to so much of the taxable

value as is attributable to the amount of the statutory reimbursement.

61B Reduction of taxable value of certain expense payment fringe benefits in respect of relocation transport

Where:

- (a) an expense payment fringe benefit in respect of relocation transport is provided in a year of tax to an employee of an employer, or to an associate of the employee, in respect of the employment of the employee;
- (b) the fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
- (c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
 - (i) particulars of the car; and
 - (ii) the number of whole kilometres travelled by the car in providing transport by virtue of which the benefit is in respect of relocation transport;

the amount that, but for this section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the sum of the following rates:

- (d) the basic car rate;
- (e) where 2 or more family members travelled in the car when it provided the transport by virtue of which the benefit is in respect of relocation transport—the supplementary car rate.

61C Reduction of taxable value—temporary accommodation relating to relocation

(1) Where:

- (a) any of the following fringe benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:

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- (i) an expense payment fringe benefit where the recipients expenditure is in respect of:
 - (A) a lease or licence in respect of a unit of accommodation occupied or used for the temporary accommodation of family members;
or
 - (B) a lease or licence in respect of goods primarily for domestic use by family members, being domestic use in connection with a unit of accommodation occupied or used for the temporary accommodation of family members;
- (ii) a housing fringe benefit where the housing right is in respect of a unit of accommodation occupied or used for the temporary accommodation of family members;
- (iii) a residual fringe benefit where the recipients benefit:
 - (A) is constituted by the subsistence of a lease or licence in respect of a unit of accommodation occupied or used for the temporary accommodation of family members; or
 - (B) is constituted by the subsistence of a lease or licence in respect of goods primarily for domestic use by family members, being domestic use in connection with a unit of accommodation occupied or used for the temporary accommodation of family members;
- (b) the temporary accommodation is required solely because the employee is required to change his or her usual place of residence in order to perform the duties of that employment;
- (c) if the unit of accommodation is located at or near the employee's former usual place of residence—the temporary accommodation was required because the unit of accommodation that was the employee's former usual place of residence became unavailable, or unsuitable, for residential use by family members due to removal, storage or other arrangements relating to the change in the usual place of residence of the employee;
- (d) if the unit of accommodation is located at or near the employee's new place of employment—the employee, or an associate of the employee, either before, on, or as soon as reasonably practicable after, the day (in this section called the **relocation day**) on which the employee commenced to

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perform the duties of that employment at the employee's new place of employment, commenced sustained reasonable efforts to acquire, or to acquire the right to occupy or use, a unit of accommodation intended by the employee or associate, as the case may be, to provide a long-term place of residence for the employee; and

- (e) the fringe benefit is not provided under a non-arm's length arrangement;

the following provisions have effect.

- (2) Where:

- (a) paragraph (1)(c) applies; and
- (b) a percentage (in this subsection called the *attributable percentage*) of the taxable value of the fringe benefit in relation to the year of tax is attributable to the subsistence of the lease, licence or housing right referred to in paragraph (1)(a) during the whole or a part of the period of 21 days that ended on the day on which the employee commenced to perform the duties of that employment at the employee's new place of employment;

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by the attributable percentage.

- (3) Where:

- (a) paragraph (1)(d) applies;
- (b) any of the following subparagraphs applies:
 - (ii) the employee, not later than 4 months after the relocation day, pursuant to a contract entered into by the employee or an associate of the employee, commences or commenced to occupy or use a unit of accommodation intended by the employee or associate, as the case may be, to provide a long-term place of residence for the employee;
 - (iii) the employee gives to the employer, before the declaration date, a declaration in a form approved by the Commissioner, in respect of the application of this section in relation to the employee; and
- (c) a percentage (in this subsection called the *attributable percentage*) of the taxable value of the fringe benefit in relation to the year of tax is attributable to the subsistence of

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the lease, licence or housing right referred to in paragraph (1)(a) during the whole or a part of the period commencing 7 days before the relocation day and ending on the earlier or earliest of whichever of the following days is applicable:

- (i) if, during the initial accommodation search period, a contract is or was entered into by the employee or an associate of the employee for the acquisition of, or of the right to occupy or use, a unit of accommodation intended by the employee or associate to provide a long-term place of residence for the employee—the day on which the employee could reasonably be or have been expected to commence, or to have commenced, to occupy or use that unit of accommodation pursuant to that contract;
- (ii) if the initial accommodation search period ends or ended before any contract of a kind referred to in subparagraph (i) of this paragraph is or was entered into by the employee or an associate—the day on which that period ends or ended;
- (iii) if:
 - (A) the unit of accommodation that was the employee's former usual place of residence was a dwelling in which the employee, or an associate of the employee, held a relevant proprietary interest;
 - (B) within 6 months after the relocation day, a contract for the sale of that relevant proprietary interest is or was entered into; and
 - (C) the efforts referred to in paragraph (1)(d), and the efforts of that kind that continue or continued to be made during the initial accommodation search period are, or were, efforts to acquire a relevant proprietary interest in a unit of accommodation, being a dwelling; the day occurring 12 months after the relocation day;
- (iv) except in a case where subparagraph (iii) applies—the day occurring 6 months after the relocation day;

the amount that, but for this subsection and section 62, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by the attributable percentage.

(4) A reference in this section to the acquisition of a unit of accommodation includes a reference to the acquisition of a relevant proprietary interest in a unit of accommodation, being a dwelling.

(5) In this section:

initial accommodation search period, in relation to a case to which paragraph (1)(d) applies, means the period commencing on the commencement, or the first commencement, as the case requires, of the efforts referred to in that paragraph and ending when efforts of that kind first cease or ceased to be made.

relevant proprietary interest, in relation to a unit of accommodation, being a dwelling, means:

- (a) in any case—a prescribed interest in land on which a building constituting, or containing, the dwelling is located;
- (b) in any case—a prescribed interest in a stratum unit in relation to the dwelling; or
- (c) if the dwelling is a flat or home unit—a proprietary right in respect of the dwelling.

61D Reduction of taxable value of temporary accommodation meal fringe benefits

(1) Where:

- (a) either of the following fringe benefits (in this section called a *temporary accommodation meal fringe benefit*) is provided in a year of tax to an employee of an employer, or to an associate of the employee, in respect of the employment of the employee:
 - (i) an expense payment fringe benefit where the recipients expenditure is in respect of a meal;
 - (ii) a property fringe benefit where the recipients property is a meal; and
- (b) the meal was for consumption by a family member at a time when the family member was accommodated in a hotel, motel, hostel or guest-house;
- (c) any of the following fringe benefits is provided in, or in respect of, the year of tax in respect of that employment:
 - (i) an expense payment benefit where the recipients expenditure is in respect of that accommodation;

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- (ii) a housing benefit where the housing right is in respect of that accommodation;
 - (iii) a residual benefit where the recipients benefit is constituted by the subsistence of a lease or licence in respect of that accommodation;
 - (d) both of the following conditions are satisfied:
 - (i) under section 61C, the taxable value of the fringe benefit referred to in paragraph (c) in relation to the year of tax is reduced by the extent to which that taxable value is attributable to the subsistence of a lease or licence, or a housing right, in respect of the accommodation during a particular period in the year of tax;
 - (ii) the meal was for consumption by a family member at a time during that period; and
 - (e) the amount that, but for this section and section 62 and the recipients contribution, would be the taxable value of the temporary accommodation meal fringe benefit exceeds:
 - (i) in a case where the recipient had attained the age of 12 years before the beginning of the year of tax—\$2.00; or
 - (ii) in any other case—\$1.00;the amount that, but for this section and section 62 and the recipients contribution, would be the taxable value of that temporary accommodation meal fringe benefit shall be reduced by the amount of the excess referred to in paragraph (e).
- (2) For the purposes of the application of this section to an in-house property expense payment fringe benefit, a reference in this section to the recipients contribution in relation to the fringe benefit is a reference to the amount ascertained under paragraph 22A(1)(b).

61E Reduction of taxable value of certain expense payment fringe benefits in respect of employment interviews or selection tests

Where:

- (a) an expense payment fringe benefit in respect of an employment interview or selection test is provided in a year of tax to an employee of an employer in respect of the employment of the employee;

- (b) the fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
- (c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
 - (i) particulars of the car; and
 - (ii) the number of whole kilometres travelled by the car in providing transport by virtue of which the benefit is in respect of an employment interview or selection test;

the amount that, but for this section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the basic car rate.

61F Reduction of taxable value of certain expense payment fringe benefits associated with work-related medical examinations, work-related medical screenings, work-related preventative health care, work-related counselling or migrant language training

Where:

- (a) an expense payment fringe benefit associated with:
 - (i) a work-related medical examination of an employee of an employer;
 - (ii) work-related medical screening of an employee of an employer;
 - (iii) work-related preventative health care of an employee of an employer;
 - (iv) work-related counselling of an employee of an employer or of an associate of an employee of an employer; or
 - (v) migrant language training of an employee of an employer or of an associate of an employee of an employer;

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is provided in a year of tax to the employee, or to an associate of the employee, in respect of the employment of the employee;

- (b) the fringe benefit is constituted by the reimbursement of the recipient, in whole or in part, in respect of an amount of a Division 28 car expense incurred by the recipient in relation to a car owned by, or leased to, the recipient, being a reimbursement calculated by reference to the distance travelled by the car; and
- (c) the recipient gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out:
 - (i) particulars of the car; and
 - (ii) the number of whole kilometres travelled by the car in providing transport by virtue of which the benefit is associated with:
 - (A) a work-related medical examination of the employee;
 - (B) work-related medical screening of the employee;
 - (C) work-related preventative health care of the employee;
 - (D) work-related counselling of the employee or of an associate of the employee; or
 - (E) migrant language training of the employee or of an associate of the employee;

the amount that, but for this section, would be the taxable value of the fringe benefit in relation to the year of tax shall be reduced by so much of the amount of the reimbursement as does not exceed the reimbursement that would have been paid if it had been calculated on the basis of the sum of the following rates:

- (d) the basic car rate;
- (e) where:
 - (i) the benefit is associated with work-related counselling of the employee or of an associate of the employee or with migrant language training of the employee or of an associate of the employee; and
 - (ii) 2 or more family members travelled in the car when it provided the transport by virtue of which the benefit is associated with work-related counselling of the

employee or of an associate of the employee or with migrant language training of the employee or of an associate of the employee;
the supplementary car rate.

61G Reduction of taxable value of fringe benefits if certain deductions relating to payments to associates are not allowed

If:

- (a) a fringe benefit is provided in the year of tax in respect of the employment of a current employee; and
- (b) the person providing the benefit cannot deduct an amount under the *Income Tax Assessment Act 1997* for providing the benefit because of section 85-15, 85-20 or 86-60 of that Act; the amount that, but for this section, would be the taxable value of the fringe benefit in relation to the year of tax is reduced by the amount mentioned in paragraph (b).

Note: Sections 85-15, 85-20 and 86-60 of the *Income Tax Assessment Act 1997* limit the extent to which a person can deduct payments to associates that relate to personal services income.

62 Reduction of aggregate taxable value of certain fringe benefits

- (1) Where one or more eligible fringe benefits in relation to an employer in relation to a year of tax relate to a particular employee of the employer, the taxable value of that fringe benefit, or the sum of the taxable values of those fringe benefits, as the case may be, in relation to that year shall be reduced by:
 - (a) if the taxable value or the sum of the taxable values does not exceed \$1,000—an amount equal to the taxable value or the sum of the taxable values; or
 - (b) in any other case—\$1,000.
- (2) In this section, *eligible fringe benefit* means:
 - (a) an in-house fringe benefit; or
 - (b) an airline transport fringe benefit.

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63 Reduction of taxable value of living-away-from-home food fringe benefits

(1) Where:

- (a) a living-away-from-home food fringe benefit, or 2 or more living-away-from-home food fringe benefits, in relation to an employer in relation to a year of tax relates or relate to a particular employee;
- (b) the fringe benefit or fringe benefits are equivalent to the food component of a living-away-from-home allowance fringe benefit in respect of a particular period in the year of tax;
- (c) that food component exceeds the sum of the statutory food amounts in respect of eligible family members in respect of that period; and
- (d) the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out particulars of:
 - (i) the employee's usual place of residence during that period; and
 - (ii) the place at which the employee actually resided during that period;

the following provisions apply:

- (e) if there is only one living-away-from-home food fringe benefit—the amount that, but for this section and section 62, and the recipients contribution, would be the taxable value of that fringe benefit, shall be reduced by the amount of the excess referred to in paragraph (c);
 - (f) if there are 2 or more living-away-from-home food fringe benefits—the amounts that, but for this section and section 62, and the recipients contribution, would be the taxable values of those fringe benefits shall be reduced by amounts proportionate to those taxable values and equal in total to the amount of the excess referred to in paragraph (c).
- (2) For the purposes of the application of this section to an in-house property expense payment fringe benefit, a reference in this section to the recipients contribution in relation to the fringe benefit is a reference to the amount ascertained under paragraph 22A(1)(b).

63A Reduction of taxable value in respect of entertainment component of certain fringe benefits

Taxable value reduced by entertainment percentage

- (1) If:
- (a) the recipient of an expense payment fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer; and
 - (b) a percentage of the recipients expenditure is in respect of the provision of entertainment other than to the recipient or an associate of the recipient;
- the amount that, apart from this subsection, would be the taxable value of the expense payment fringe benefit in relation to the year of tax is reduced by that percentage.

Avoidance of double reduction

- (2) If the taxable value of the expense payment fringe benefit has been reduced under Division 5 by reason of a particular matter or thing, the taxable value of the fringe benefit is not reduced under this section in respect of the same matter or thing.

65A Reduction of taxable value—education of children of overseas employees

Where:

- (a) any of the following fringe benefits in relation to a year of tax is provided in respect of the employment of an employee:
 - (i) a car fringe benefit where the application or availability of the car is in respect of the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the day on which the benefit was provided;
 - (ii) an expense payment fringe benefit where the recipients expenditure is in respect of the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the day on which the benefit was provided;
 - (iii) a property fringe benefit where the recipients property is required solely for the purposes of the full-time

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- education of a child of the employee, not being a child who had attained the age of 25 years before the provision time;
- (iv) a residual fringe benefit where the recipients benefit consists of, or is required solely for the purposes of, the full-time education of a child of the employee, not being a child who had attained the age of 25 years before the comparison time;
- (b) the full-time education is:
 - (i) at an educational institution; or
 - (ii) by a tutor;
 - (c) the whole or any part of the full-time education is undertaken by the child when the employee is an overseas employee;
 - (d) either of the following conditions is satisfied:
 - (i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;
 - (ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient;
 - (e) in the case of an expense payment fringe benefit—documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer of the employee before the declaration date; and
 - (f) a percentage (in this section called the *attributable percentage*) of the taxable value, in relation to the year of tax, of the fringe benefit is attributable to the full-time education of the child in the period commencing on whichever of the following days is applicable:
 - (i) if:
 - (A) the full-time education is at an educational institution;
 - (B) the overseas posting period is a period of not less than 28 days; and

- (C) the overseas posting period commenced during an academic period of the educational institution;
the day on which that academic period commenced; or
 - (ii) in any other case—the day on which the overseas posting period commenced;
- and ending on whichever of the following days is applicable:
- (iii) if:
 - (A) the full-time education is at an educational institution;
 - (B) the overseas posting period is a period of not less than 28 days; and
 - (C) the overseas posting period ended during an academic period of the educational institution;
the day on which that academic period ended;
 - (iv) in any other case—the day on which the overseas posting period ended;
- the amount that, but for this section and section 62, would be the taxable value of that fringe benefit in relation to the year of tax shall be reduced by the attributable percentage.

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Division 14A Amortisation of taxable value of fringe benefits relating to remote area home ownership schemes

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Division 14A—Amortisation of taxable value of fringe benefits relating to remote area home ownership schemes

65CA Amortisation of taxable value of fringe benefits relating to remote area home ownership schemes

(1) Where:

- (a) the recipient of any of the following fringe benefits in relation to an employer in relation to a year of tax (in this section called the *benefit year of tax*) is an employee of the employer:
 - (i) a property fringe benefit where the recipients property is remote area residential property;
 - (ii) a property fringe benefit where the recipients property is a remote area residential property option fee;
 - (iii) an expense payment fringe benefit where the recipients expenditure is in respect of remote area residential property;
- (b) in the case of a property fringe benefit where the recipients property is remote area residential property—at or before the provision time, the employee entered into a recognised remote area housing obligation restricting the disposal of the estate or interest concerned;
- (c) in the case of an expense payment fringe benefit—at or before the time when the employee acquired the estate or interest concerned, the employee entered into a recognised remote area housing obligation restricting the disposal of the estate or interest concerned; and
- (d) in all cases—the period (in this section called the *overall amortisation period*) commencing at whichever of the following times is applicable:
 - (i) if subparagraph (a)(i) or (ii) applies—the provision time;
 - (ii) if subparagraph (a)(iii) applies—the time when the recipients expenditure was incurred;(which time is in this section called the *benefit time*) and ending at the earliest of the following later times:

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- (iii) the time when the employee ceases or first ceases to be subject to the recognised remote area housing obligation referred to in paragraph (b) or (c) of this subsection or in paragraph 142(2A)(e), as the case requires;
 - (iv) the time when the employee ceases or first ceases to be employed by the employer;
 - (v) the time when the employee ceases or first ceases to occupy or use the dwelling concerned as his or her usual place of residence;
 - (vi) the time of the death of the employee;
 - (vii) the end of the period of 7 years after the benefit time; commences and ends in different years of tax;
- the fringe benefit is an amortised fringe benefit.
- (2) The notional amortisation period in relation to the amortised fringe benefit is the period commencing at the benefit time and ending at the earlier of the following times:
- (a) the end of the period specified in the contract to which the recognised remote area housing obligation concerned relates, being the period during which the employee is to be subject to that obligation;
 - (b) the end of the period of 7 years after the benefit time.
- (3) If the overall amortisation period has not come to an end before the end of a particular year of tax (in this subsection called the **current year of tax**), the amortised amount, in relation to the current year of tax, of the amortised fringe benefit is the amount calculated in accordance with the formula:

$$\text{Taxable value} \times \frac{\text{Current amortisation period}}{\text{Notional amortisation period}}$$

where:

Taxable value is the taxable value, in relation to the benefit year of tax, of the fringe benefit.

Current amortisation period is the whole number of months (or part months) in the current year of tax that are included in the notional amortisation period.

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Division 14A Amortisation of taxable value of fringe benefits relating to remote area home ownership schemes

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Notional amortisation period is the whole number of months (or part months) that are included in the notional amortisation period.

- (4) If the overall amortisation period comes to an end during a particular year of tax (in this subsection called the **current year of tax**), the amortised amount, in relation to the current year of tax, of the amortised fringe benefit is the amount calculated in accordance with the formula:

Taxable value – Previously amortised amounts

where:

Taxable value is the taxable value, in relation to the benefit year of tax, of the fringe benefit.

Previously amortised amounts is the sum of the amortised amounts, in relation to each year of tax preceding the current year of tax, of the fringe benefit.

- (5) Where the recipients expenditure in relation to an expense payment fringe benefit was incurred before 1 July 1986, paragraph (1)(d) applies in relation to the fringe benefit as if the recipients expenditure had been incurred on 1 July 1986.
- (6) Where the following paragraphs apply in relation to a fringe benefit in relation to an employer in relation to a year of tax:
- (a) the fringe benefit would have been an amortised fringe benefit if the reference in subsection 142(2D) to 5 years were a reference to 7 years;
 - (b) the benefit time occurred before 31 August 1988;
- the employer is eligible for extended amortisation treatment.
- (7) Where:
- (a) an employer is eligible for extended amortisation treatment; and
 - (b) a fringe benefit in relation to the employer in relation to a year of tax would have been an amortised fringe benefit if the reference in subsection 142(2D) to a contractual obligation were a reference to a contractual obligation entered into before the end of the period of 6 months after the commencement of this subsection;
- the following provisions have effect:
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- (c) a reference in subsection (3) or (4) of this section to the overall amortisation period in relation to the fringe benefit is to be read as a reference to the period that would have been the overall amortisation period in relation to the fringe benefit if the reference in subparagraph (1)(d)(vii) of this section to 7 years were a reference to 15 years;
- (d) for the purpose of determining the notional amortisation period in relation to the fringe benefit, the reference in paragraph (2)(b) of this section to 7 years is to be read as a reference to 15 years.

65CB Amendment of assessments

Nothing in section 74 prevents the amendment at any time of an assessment for the purposes of giving effect to this Division.

Part III Fringe benefits

Division 14B Reducible fringe benefits relating to remote area home repurchase schemes

Section 65CC

Division 14B—Reducible fringe benefits relating to remote area home repurchase schemes

65CC Reducible fringe benefits relating to remote area home repurchase schemes

(1) Where:

- (a) the recipient of a property fringe benefit in relation to an employer in relation to a year of tax is an employee of the employer;
- (b) the recipients property is remote area residential property repurchase consideration;
- (c) the taxable value of the fringe benefit in relation to the year of tax is nil; and
- (d) the market value of the estate or interest purchased by the provider of the fringe benefit exceeds the amount paid by the provider by way of consideration for the purchase of the estate or interest;

the fringe benefit is a reducible fringe benefit.

- (2) The reduction amount, in relation to the year of tax, of the reducible fringe benefit is 50% of the amount of the excess referred to in paragraph (1)(d).

Division 15—Car substantiation rules for otherwise deductible provisions

65D Car substantiation rules

The object of this Division is to set out the substantiation rules that apply for the purposes of sections 19, 24, 44 and 52 in relation to cars held by recipients of fringe benefits.

65E No compliance with substantiation rules in log book year of tax unless log book records and odometer records are maintained

Where a car is held by the recipient of a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit in relation to an employer during a period (in this section called the *holding period*) in a year of tax that is a log book year of tax of the recipient in relation to the car, the substantiation rules shall be taken to have been complied with in relation to the car in relation to the holding period if, and only if:

- (a) log book records and odometer records have been maintained by or on behalf of the recipient for an applicable log book period in relation to the car; and
- (b) odometer records are maintained by or on behalf of the provider for the holding period; and
- (c) the employer specifies the employer's estimate of the number of business kilometres travelled by the car during the holding period; and
- (d) the employer specifies a percentage as the business use percentage applicable to the car in relation to the recipient for the holding period.

65F No compliance with substantiation rules in non-log book year of tax unless log book records kept in previous log book year of tax

Where a car is held by the recipient of a loan fringe benefit, an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit during a period (in this section called the

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Division 15 Car substantiation rules for otherwise deductible provisions

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holding period) in a year of tax that is not a log book year of tax of the recipient in relation to the car, the substantiation rules shall be taken to be complied with in relation to the car if, and only if:

- (a) odometer records are maintained by or on behalf of the recipient in relation to the car for the holding period; and
- (b) the employer specifies the employer's estimate of the number of business kilometres travelled by the car in the holding period; and
- (c) the employer specifies a percentage as the business use percentage applicable to the car in relation to the recipient for the holding period.

Part IIIA—Rebates of tax**65J Rebate for certain non-profit employers etc.**

[Rebatable employer]

- (1) For the purposes of this section, an employer is a rebatable employer for a year of tax if the employer is not a public benevolent institution, is not a health promotion charity, and is covered by any of the following paragraphs at any time during the year of tax:
- (a) a religious institution;
 - (aa) a non-profit scientific institution that:
 - (i) is engaged solely in research into the causes, prevention or cure of diseases in humans; and
 - (ii) is established by a law of the Commonwealth, a State or a Territory; and
 - (iii) is not conducted by or on behalf of the Commonwealth, a State or a Territory;
 - (b) a scientific or public educational institution (other than an institution of the Commonwealth, a State or a Territory);
 - (baa) a charitable institution (other than an institution of the Commonwealth, a State or a Territory) that is endorsed under subsection 123E(1);
 - (ba) a school (including a pre-school but not including a tertiary institution) that:
 - (i) although established by or under a law of the Commonwealth, a State or a Territory, is not conducted for or on behalf of the Commonwealth, a State or a Territory; and
 - (ii) is not conducted for the purpose of profit or gain to the persons or body of persons conducting it;
 - (e) a trade union;
 - (f) an association of employers or employees registered under the *Workplace Relations Act 1996* or a law of the Commonwealth, a State or a Territory relating to the settlement of industrial disputes;

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- (g) a non-profit society, non-profit association, or non-profit club, established for musical purposes, or for the encouragement of music, art, science or literature;
 - (h) a non-profit society, non-profit association, or non-profit club, established for the encouragement or promotion of a game or sport;
 - (i) a non-profit society, non-profit association, or non-profit club, established for the encouragement or promotion of animal races;
 - (j) a non-profit society, non-profit association, or non-profit club, established for community service purposes (not being political purposes or lobbying purposes);
 - (k) a non-profit society, or non-profit association, established for the purpose of promoting the development of aviation or tourism;
 - (ka) a non-profit society, or non-profit association, established for the purpose of promoting the development of Australian information and communications technology resources;
 - (l) a non-profit society, or non-profit association, established for the purpose of promoting the development of the agricultural, pastoral, horticultural, viticultural, aquacultural, fishing, manufacturing or industrial resources of Australia.
- (1A) Despite subsection (1), if the employer is a charitable institution at any time during the year of tax, the employer is not a rebatable employer for the year of tax unless the employer is endorsed under subsection 123E(1) at that time.

[Entitlement to rebate]

- (2) If an employer is a rebatable employer for a year of tax earlier than the year of tax beginning on 1 April 2000, the employer is entitled to a rebate of tax in the employer's assessment for the year of tax equal to the amount worked out using the formula:

$$0.48 \times \frac{\text{Gross tax}}{\text{tax}} \times \frac{\text{Rebatable days in year}}{\text{Total days in year}}$$

where:

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Gross tax means the amount of tax payable on the fringe benefits taxable amount of the employer of the year of tax (assuming that this section had not been enacted).

Rebatable days in year means the number of whole days in the year of tax when the employer was covered by any of paragraphs (1)(a) to (l) (inclusive).

Total days in year means the number of days in the year of tax.

Rebate for year of tax 2000-2001 and later years

- (2A) If an employer is a rebatable employer for the year of tax beginning on 1 April 2000 or a later year of tax, the employer is entitled to a rebate of tax in the employer's assessment for the year of tax concerned equal to the amount worked out using the formula:

$$0.48 \times \left(\text{Gross tax} - \frac{\text{Aggregate non-rebatable amount}}{\text{Total days in year}} \right) \times \frac{\text{Rebatable days in year}}{\text{Total days in year}}$$

where:

gross tax means the amount of tax payable on the fringe benefits taxable amount of the employer of the year of tax (assuming that this section had not been enacted).

rebatable days in year means the number of whole days in the year of tax when the employer engaged in activities as an employer covered by any of paragraphs (1)(a) to (l) (inclusive).

total days in year means the number of days in the year of tax excluding the days on which the employer did not engage in activities as an employer.

How to work out aggregate non-rebatable amount

- (2B) An employer's **aggregate non-rebatable amount** for the year of tax is the amount worked out as follows.

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Method statement

Step 1. For each employee, add:

- (a) the individual grossed-up type 1 non-rebatable amount (see subsection (2C)) in relation to the employer for the year of tax; and
- (b) the individual grossed-up type 2 non-rebatable amount (see subsection (2D)) in relation to the employer for the year of tax.

The result is the ***individual grossed-up non-rebatable amount*** for the employee.

Step 2. Reduce the individual grossed-up non-rebatable amount for each employee of the employer:

- (a) to zero for the year of tax beginning on 1 April 2000; and
- (b) by \$30,000, but not below zero, for a later year of tax.

Note: Paragraph (a) means the employer's aggregate non-rebatable amount for the year of tax beginning on 1 April 2000 will be nil.

Step 3. Add up the results of step 2 for all the employer's employees.

Step 4. Multiply the sum from step 3 by the FBT rate. The result is the employer's ***aggregate non-rebatable amount*** for the year of tax.

Individual grossed-up type 1 non-rebatable amount

- (2C) For the purposes of step 1 in the method statement in subsection (2B), the ***individual grossed-up type 1 non-rebatable amount*** of an employee in relation to the employer for the year of tax is:

$$\text{Type 1 individual base non-rebatable amount} \times \frac{\text{FBT rate} + \text{GST rate}}{\left(1 - \text{FBT rate}\right) \times \left(1 + \text{GST rate}\right)} \times \text{FBT rate}$$

Individual grossed-up type 2 non-rebatable amount

- (2D) For the purposes of step 1 in the method statement in subsection (2B), the **individual grossed-up type 2 non-rebatable amount** of an employee in relation to the employer for the year of tax is:

$$\text{Type 2 individual base non-rebatable amount} \times \frac{1}{\left(1 - \text{FBT rate}\right)}$$

Working out the type 1 individual base non-rebatable amount

- (2E) An employee's **type 1 individual base non-rebatable amount** in relation to the employer for the year of tax is worked out by adding the amounts worked out under step 3 of the method statement in subsection (2G) and step 3 of the method statement in subsection (2H).

Working out the type 2 individual base non-rebatable amount

- (2F) An employee's **type 2 individual base non-rebatable amount** in relation to the employer for the year of tax is worked out by adding the amounts worked out under step 4 of the method statement in subsection (2G) and step 4 of the method statement in subsection (2H).

Working out the subsection (2G) amounts

- (2G) An employee's subsection (2G) amounts for the year of tax are worked out as follows.

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Method statement

- Step 1. Work out under section 5E for each of the employer's employees the employee's individual fringe benefits amount (if any) for the year of tax in respect of the employee's employment by the employer.
- Step 2. Identify the benefits taken into account in step 1 that are GST-creditable benefits (see section 149A).
- Step 3. So much of the amount worked out under step 1 that relates to the benefits identified under step 2 is the ***step 3 of subsection (2G) amount*** for the individual.
- Step 4. The remainder of the amount is the ***step 4 of subsection (2G) amount*** for the individual.

Working out the subsection (2H) amounts

- (2H) An employee's subsection (2H) amounts for the year of tax are worked out as follows.

Method statement

- Step 1. Work out for each employee his or her share (if any) of the taxable values of the excluded fringe benefits for the year of tax in respect of the employee's employment by the employer, but disregarding benefits:
 - (a) that constitute the provision of meal entertainment as defined in section 37AD (whether or not the employer made an election under section 37AA); or
 - (b) that are car parking fringe benefits; or

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<p>(c) whose taxable values are wholly or partly attributable to entertainment facility leasing expenses.</p> <p>Step 2. Identify the benefits taken into account in step 1 that are GST-creditable benefits (see section 149A).</p> <p>Step 3. So much of the amount worked out under step 1 that relates to the benefits identified under step 2 is the <i>step 3 of subsection (2H) amount</i> for the individual.</p> <p>Step 4. The remainder of the amount is the <i>step 4 of subsection (2H) amount</i> for the individual.</p>

- (3) For the purposes of this section, an institution established by a law of the Commonwealth, a State or a Territory is taken to be an institution of the Commonwealth, the State or the Territory, as the case requires.
- (5) For the purposes of this section, a society, association or club is a non-profit society, non-profit association or non-profit club, as the case may be, if, and only if:
- (a) the society, association or club is carried on otherwise than for the purposes of profit or gain to its individual members; and
 - (b) the society, association or club is neither:
 - (i) an incorporated company where all the stock or shares in the capital of the company is or are beneficially owned by:
 - (A) the Commonwealth, a State or a Territory; or
 - (B) an authority or institution of the Commonwealth, a State or a Territory; nor
 - (ii) an incorporated company where the company is limited by guarantee and the interests and rights of the members in or in relation to the company are beneficially owned by:
 - (A) the Commonwealth, a State or a Territory; or
 - (B) an authority or institution of the Commonwealth, a State or a Territory.

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Definitions

(6) In this section:

FBT rate means the rate of fringe benefits tax for the year of tax.

GST rate means the rate of goods and services tax payable under the *A New Tax System (Goods and Services Tax) Act 1999* for the year of tax.

Part IV—Liability to tax

66 Liability to pay tax

- (1) Subject to this Act, tax imposed in respect of the fringe benefits taxable amount of an employer of a year of tax is payable by the employer.
- (2) A law, or a provision of a law, passed before the commencement of this Act that purports to exempt a person from liability to pay fringe benefits tax or to pay taxes that include that tax does not exempt that person from liability to pay that tax.
- (3) A law, or a provision of a law, passed after the commencement of this Act that purports to exempt a person from liability to pay taxes under the laws of the Commonwealth or to pay certain taxes under those laws that include fringe benefits tax, other than a law or a provision that expressly exempts a person from liability to pay that tax, shall not be construed as exempting the person from liability to pay that tax.

67 Arrangements to avoid or reduce fringe benefits tax

- (1) Where:
 - (a) an employer (in this subsection referred to as the *eligible employer*) has obtained or, but for this section, would obtain, a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is or was provided to a person, being an arrangement that was entered into, or commenced to be carried out, on or after 19 September 1985; and
 - (b) it would be concluded that the person, or one of the persons, who entered into or carried out the arrangement or any part of the arrangement did so for the sole or dominant purpose of enabling the eligible employer to obtain a tax benefit in connection with the arrangement or of enabling the eligible employer and another employer or other employers each to obtain a tax benefit in connection with the arrangement (whether or not that person who entered into or carried out the arrangement or any part of the arrangement is the eligible

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employer or is the other employer or one of the other employers);

the Commissioner:

- (c) may determine that the aggregate fringe benefits amount (if any) of the eligible employer of the year of tax be increased by the amount of the tax benefit; and
- (d) may determine that appropriate adjustments (if any) be made to the aggregate fringe benefits amount of the eligible employer in respect of another year of tax or of another employer in respect of any year of tax;

and any such determination has effect accordingly.

- (2) A reference in this section to the obtaining by an employer of a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is provided to a person is a reference to an amount not being included in the aggregate fringe benefits amount of the employer of the year of tax in respect of that benefit where the amount would have been included, or could reasonably be expected to have been included, in that aggregate fringe benefits amount if the arrangement had not been entered into or carried out.
- (3) A reference in this section to the obtaining by an employer of a tax benefit in respect of a year of tax in connection with an arrangement under which a benefit is provided to a person does not include a reference to an amount not being included in the aggregate fringe benefits amount of the employer of the year of tax in respect of that benefit, being an amount that would have been included, or could reasonably be expected to have been included, in that aggregate fringe benefits amount if the arrangement had not been entered into or carried out, where the non-inclusion of the amount in that aggregate fringe benefits amount is attributable to the payment or provision by a person of consideration in respect of the provision of the benefit.
- (4) Where, at any time, an employer considers that the Commissioner ought to make a determination under paragraph (1)(d) in relation to the employer in relation to a year of tax, the employer may post to or lodge with the Commissioner a request in writing for the making by the Commissioner of a determination under that paragraph.

- (5) The Commissioner shall consider the request and serve on the employer a written notice of the Commissioner's decision on the request.
- (6) If the employer is dissatisfied with the Commissioner's decision on the request, the employer may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (8) Nothing in section 74 prevents the amendment of an assessment at any time before the end of 6 years after the original assessment date if the amendment is for the purposes of giving effect to subsection (1) of this section as it applies by virtue of paragraph (1)(c).
- (9) Nothing in section 74 prevents the amendment of an assessment at any time if the amendment is for the purpose of giving effect to subsection (1) of this section as it applies by virtue of paragraph (1)(d).
- (10) In this section, a reference to an employer, in relation to an arrangement, includes a reference to a person who would be, or might reasonably be expected to be, an employer but for the arrangement.
- (11) A reference in this section to the carrying out of an arrangement by a person shall be read as including a reference to the carrying out of an arrangement by a person together with another person or other persons.
- (12) Nothing in the provisions of this Act other than this section or in the *International Tax Agreements Act 1953* or in the *Petroleum (Timor Sea Treaty) Act 2003* shall be taken to limit the operation of this section.

Part V—Returns and assessments

Division 1—Returns

68 Annual returns

Where there is a fringe benefits taxable amount of an employer of a year of tax, the employer shall, unless the employer has furnished a return or returns under section 69 in relation to the fringe benefits taxable amount of the year of tax, furnish to the Commissioner a return not later than 21 May in the next year of tax or such later date as the Commissioner allows.

69 Further returns

Where the Commissioner, by notice in writing served on a person, requires the person, whether an employer or not, to furnish to the Commissioner a return in relation to a year of tax, the person shall furnish the return in the manner and within the time specified in the notice, whether or not the person has furnished, or is or was required to furnish, a return under section 68 or this section in respect of that year of tax.

70 Keeping records of indirect tax transactions

A return under section 68 or 69 must:

- (a) be in the approved form; and
- (b) specify:
 - (i) the fringe benefits taxable amount of the employer of the year of tax concerned; and
 - (ii) the amount of tax payable on that amount.

70D Tax agent to give taxpayer copy of notice of assessment

- (1) Where a taxpayer has given the address of a registered tax agent as the taxpayer's address for service, the registered tax agent must give the taxpayer the original of, or a copy of, any notice of assessment in respect of that taxpayer that is delivered to that address.

Penalty: 30 penalty units.

(2) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Division 2—Assessments

72 First return deemed to be an assessment

Where:

- (a) at a particular time, a return under this Act in relation to an employer in relation to a year of tax is furnished; and
- (b) before that time, no return has been furnished, and no assessment has been made, in relation to the employer in relation to the year of tax;

the following provisions have effect:

- (c) the Commissioner shall be deemed at that time to have made an assessment (in this section referred to as the *deemed assessment*) of:
 - (i) the fringe benefits taxable amount (including a nil amount) of the employer of the year of tax; and
 - (ii) the amount (including a nil amount) of tax payable on that fringe benefits taxable amount;

being those respective amounts as specified in the return referred to in paragraph (a);

- (d) the return referred to in paragraph (a) shall be deemed to be a notice of the deemed assessment and to be under the hand of the Commissioner;
- (e) the notice referred to in paragraph (d) shall be deemed to have been served at that time on the person liable to pay the tax.

73 Default assessments

Where:

- (a) an employer has not furnished a return in respect of a year of tax; and
- (b) the Commissioner is of the opinion that the employer is liable to pay tax in respect of that year;

the Commissioner may, whether during that year or after the end of that year, make an assessment of:

- (c) the fringe benefits taxable amount of the employer of the year of tax; and

- (d) the amount of tax payable on that fringe benefits taxable amount.

74 Amendment of assessments

- (1) The Commissioner may, at any time within a period of 3 years after the original assessment date in relation to an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.
- (2) Subject to this section, the Commissioner may, after the end of 3 years after the original assessment date in relation to an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.
- (3) Where:
 - (a) an employer does not make a full and true disclosure of all the material facts necessary for an assessment of the tax payable by the employer;
 - (b) the Commissioner makes an assessment; and
 - (c) there is an avoidance of tax;the Commissioner may:
 - (d) where the Commissioner is of the opinion that the avoidance of tax is due to fraud or evasion—at any time; and
 - (e) in any other case—within 6 years after the original assessment date in relation to the assessment;amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.
- (4) No amendment effecting a reduction in the liability of an employer under an assessment shall be made after the end of 3 years after the original assessment date.
- (5) Where an assessment has been amended under this section in any particular, the Commissioner may, within 3 years after the date on which the amended assessment is made, make, in or in respect of that particular, such further amendment of the assessment as, in the Commissioner's opinion, is necessary to effect such reduction in the liability of the employer liable to pay tax under the assessment as is just.

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- (6) Where an employer:
 - (a) applies, within 3 years after the original assessment date in relation to an assessment, for an amendment of an assessment; and
 - (b) supplies to the Commissioner within that period all information needed by the Commissioner for the purposes of determining the application made by the employer;the Commissioner may amend the assessment, notwithstanding that that period has expired.
- (6A) An application for amendment must be in the approved form.
- (7) Nothing in this section prevents the amendment of an assessment:
 - (a) in order to give effect to a decision on a review or appeal; or
 - (b) by way of reduction in any particular pursuant to an objection made under this Act or pending an appeal or review.
- (8) The Commissioner may, at any time, amend an assessment of additional tax under Part VIII.

75 Refund of amounts overpaid

- (1) Where, by reason of an amendment of an assessment, a person's liability to tax is reduced:
 - (a) the amount by which the tax is so reduced shall be taken, for the purposes of section 93, never to have been payable; and
 - (b) the Commissioner shall:
 - (i) refund the amount of any tax overpaid; or
 - (ii) apply the amount of any tax overpaid against any liability of the person to the Commonwealth and refund any part of the amount that is not so applied.
- (2) In subsection (1), unless the contrary intention appears, *tax* includes additional tax under section 93 or Part VIII.

76 Amended assessment to be an assessment

Except as otherwise provided, an amended assessment is an assessment for all the purposes of this Act.

77 Notice of assessment

As soon as practicable after an assessment is made, the Commissioner shall serve notice of the assessment in writing on the person liable to pay the tax.

78 Validity of assessment

The validity of any assessment is not affected by reason that any provision of this Act has not been complied with.

78A Objections

An employer who is dissatisfied with an assessment may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Fringe Benefits Tax Assessment Act 1986

Act No. 39 of 1986 as amended

This compilation was prepared on 18 December 2008
taking into account amendments up to Act No. 145 of 2008

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Part VII—Collection and recovery of tax

Division 1—General

90 When tax payable

- (1) Subject to this Part, tax assessed in respect of a year of tax becomes due and payable, or shall be deemed to have become due and payable, as the case requires, on 21 May in the next year of tax.
- (2) Subject to this Part, additional tax under Part VIII is due and payable on the date specified in the notice of assessment of the additional tax as the date on which the additional tax is due and payable.

Note: For provisions about collection and recovery of tax and additional tax, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

93 Unpaid tax

- (1) If any of the tax, or the additional tax under Part VIII, which a person is liable to pay remains unpaid after the time by which the tax or the additional tax is due to be paid, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:
 - (a) started at the beginning of the day by which the tax or the additional tax was due to be paid; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the tax or the additional tax;
 - (ii) general interest charge on any of the tax or the additional tax.
- (2) The amount of the general interest charge is taken to be **additional tax** payable under this section.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

Section 100

100 Person in receipt or control of money of non-resident

- (1) A person who has authority to receive, control or dispose of money belonging to a non-resident who is liable to an amount of tax shall, when required by the Commissioner by notice in writing served on the person, pay the amount of tax and, by force of this section, is, when so required:
 - (a) authorised and required to retain from time to time any money that comes to the person on behalf of the non-resident or so much of it as is sufficient to pay the amount of tax payable by the non-resident;
 - (b) made personally liable for the amount of tax after it becomes payable to the extent of any amount so retained, or which should have been so retained, under paragraph (a); and
 - (c) indemnified for all payments that the person makes pursuant to this section.
- (2) For the purposes of subsection (1), a person who is liable to pay money to a non-resident shall be deemed to be a person who has the control of money belonging to the non-resident, and all money due by the person to the non-resident shall be deemed to be money that comes to the person on behalf of the non-resident.
- (3) Where the Commonwealth, a State or Territory, or an authority of the Commonwealth, a State or Territory has the receipt, control or disposal of money belonging to a non-resident, this section (other than paragraph (1)(b)) applies to and in relation to the Commonwealth, the State or the Territory, or the authority of the Commonwealth, of the State or of the Territory, as the case may be, in the same manner as it applies to and in relation to any other person.
- (4) In this section, *tax* includes additional tax under section 93 or Part VIII.

Division 2—Collection by instalments

Subdivision A—General

101 Interpretation

- (1) In sections 93, 100 and 129, but not in any other section of this Act, *tax* includes an instalment of tax payable under this Division.
- (2) In sections 100 and 129, but not in any other section of this Act, *tax* includes additional tax payable under subsection 112(4).
- (3) The ascertainment of the notional tax amount, or the amount of any instalment of tax, in accordance with this Division shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

102 Liability to pay instalments of tax

For the purpose of securing generally the more expeditious collection of tax, an employer is liable to pay, in accordance with this Division, 4 instalments of tax in respect of each year of tax.

103 When instalment of tax payable

- (1) Subject to this Division, the 4 instalments of tax payable in respect of a year of tax are due and payable as follows:

When instalments of tax are due and payable		
Item	This instalment ...	is due and payable on:
1	first instalment	21 July in that year of tax
2	second instalment	21 October in that year of tax
3	third instalment	21 January in that year of tax
4	fourth instalment	21 April in the next year of tax

- (2) Despite subsection (1), and subject to this Division, if an employer is a deferred BAS payer on the day specified as the day on which an instalment is due and payable under subsection (1), that instalment is instead due and payable as specified in the following table:

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When instalments of tax are due and payable		
Item	If subsection (2) applies to this instalment:	the instalment is due and payable on:
1	first instalment	28 July in that year of tax
2	second instalment	28 October in that year of tax
3	third instalment	28 February in that year of tax
4	fourth instalment	28 April in the next year of tax

Note: For provisions about collection and recovery of instalments of fringe benefits tax, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

104 Notice of the amount of an instalment

An employer must notify the Commissioner, in the approved form, of the amount of an instalment on or before the day on which the instalment is due and payable.

105 Credit for instalments payable

- (1) An employer is entitled to a credit when the Commissioner:
- (a) makes an assessment of the tax payable by the employer for a year of tax; or
 - (b) determines that no tax is payable.

Note: The employer's first return for the year of tax is treated as an assessment: see section 72.

- (2) The credit is equal to:
- the total of each instalment (if any) payable by the employer for the year of tax;
- reduced by:
- the total of any credits the employer has claimed under section 112A because of one or more instalments of tax for the year of tax.

Note: An employer can claim a credit under section 112A in some cases where the amount by reference to which an instalment is worked out reduces during the year of tax.

- (3) The making of the assessment or determination, and the resulting credit entitlement, do not affect the liability to pay an instalment.

Note: How the credit is applied is set out in Division 3 of Part IIB of the *Taxation Administration Act 1953*.

Subdivision C—Working out the amount of instalments

109 Interpretation

In this Subdivision:

employer's estimate, in relation to an employer, in relation to an instalment of tax in relation to a year of tax, means the amount shown in a statement by the employer under subsection 112(1) in relation to the instalment as the employer's estimate of the tax that will be payable by the employer in respect of the year of tax.

estimated tax, in relation to an employer in relation to a year of tax, means the amount determined, or last determined, as the case requires, under subsection 112(2) or (3) as the estimated tax of the employer in respect of the year of tax.

GIC period, in relation to an instalment in relation to a year of tax, has the meaning given by the following table:

GIC period			
Item	For this instalment in that year of tax:	GIC period is this period if this instalment is due and payable under subsection 103(1):	GIC period is this period if this instalment is due and payable under subsection 103(2):
1	first instalment	the period starting at the beginning of 21 July, and finishing at the end of 20 October, in the year of tax	the period starting at the beginning of 28 July, and finishing at the end of 27 October, in the year of tax
2	second instalment	the period starting at the beginning of 21 October, and finishing at the end of 20 January, in the year of tax	the period starting at the beginning of 28 October, and finishing at the end of 27 February, in the year of tax

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GIC period			
Item	For this instalment in that year of tax:	GIC period is this period if this instalment is due and payable under subsection 103(1):	GIC period is this period if this instalment is due and payable under subsection 103(2):
3	third instalment	the period starting at the beginning of 21 January in the year of tax and finishing at the end of 20 April in the next year of tax	the period starting at the beginning of 28 February in the year of tax and finishing at the end of 27 April in the next year of tax
4	fourth instalment	the period starting at the beginning of 21 April, and finishing at the end of 20 May, in the next year of tax	the period starting at the beginning of 28 April, and finishing at the end of 20 May, in the next year of tax

relevant fraction, in relation to an instalment, means:

- (a) 0.25 for a first instalment; or
- (b) 0.50 for a second instalment; or
- (c) 0.75 for a third instalment; or
- (d) 1.00 for a fourth instalment.

110 Notional tax amount

- (1) An employer's *notional tax amount* for a year of tax (the *current year*) as at a particular time (the *test time*) is worked out using the table, except as provided in subsections (3), (4) and (5).

Working out an employer's notional tax amount		
Item	In this case:	The notional tax amount is:
1	No other item applies	the amount of the employer's tax for the most recent year of tax (the <i>base year</i>) for which the Commissioner has made an assessment before the test time.

Working out an employer's notional tax amount

Item	In this case:	The <i>notional tax amount</i> is:
2	Before the test time, the Commissioner has determined that no tax is payable by the employer for a year of tax, and there is no later year of tax for which the Commissioner has made an assessment of the employer's tax before the test time	nil
3	There is no year of tax for which the Commissioner has, before the test time, made an assessment of the employer's tax or determined that no tax is payable by the employer	nil
4	The notional tax amount would otherwise be worked out under item 1 and: (a) the rate of tax declared by the Parliament for the current year is different from the rate declared for the base year; and (b) the regulations provide for varying the notional tax amount of employers for the current year	if the test time is before the prescribed day—the notional tax amount worked out under item 1; or if the test time is on and after the prescribed day—that amount as varied in accordance with the regulations.

Note: The employer's first return for the year of tax is treated as an assessment: see section 72.

- (3) The Commissioner may determine that the employer's ***notional tax amount*** for the current year is such amount as the Commissioner estimates will be the tax payable by the employer for that year, if the Commissioner has reason to believe that that tax will exceed:
- if the notional tax amount would otherwise be worked out under item 1 or 4 of the table in subsection (1)—the amount of the employer's tax for the base year; or
 - if the notional tax amount would otherwise be worked out under item 2 or 3 of the table in subsection (1)—nil.

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- (4) Where the Commissioner makes a determination under subsection (3):
- (a) the Commissioner shall cause a notice in writing to be served on the employer specifying:
 - (i) the notional tax amount determined by the Commissioner; and
 - (ii) the date on which the determination takes effect, being a date not less than 30 days after the date of service of the notice; and
 - (b) subject to subsection (5), the notional tax amount of the employer in respect of the year of tax is, on and after the date specified in the notice, the amount determined by the Commissioner.
- (5) Where, in relation to an instalment of tax in respect of a year of tax, being an instalment that becomes due and payable after the end of a quarter, an employer has estimated pursuant to subsection 112(1) the amount of tax that will be payable in respect of that year of tax and has furnished to the Commissioner a statement in accordance with that subsection, then, on and after the last day of the quarter and until such time as there is a further application of this subsection in relation to a subsequent instalment of tax payable by the employer, the notional tax amount of the employer in respect of the year of tax is, or shall be deemed to have been, as the case requires, an amount equal to the estimated tax.

111 Amount of instalment of tax

- (1) The amount of an instalment of tax of an employer for a year of tax that becomes due and payable after the end of a quarter is the amount worked out using this formula, if the amount is positive:

$$\left[\begin{array}{c} \text{Notional} \\ \text{tax amount} \end{array} \times \begin{array}{c} \text{Relevant} \\ \text{fraction} \end{array} \right] - \left[\begin{array}{c} \text{Previous} \\ \text{instalments} \end{array} - \begin{array}{c} \text{Previous} \\ \text{credits} \end{array} \right]$$

Otherwise, the amount of the instalment is nil.

Note: If the notional tax amount is too small, the instalment may not be payable: see subsection (2).

- (1A) For the purposes of the formula in subsection (1):

notional tax amount means the employer's notional tax amount for the year of tax, as at the end of the last day of that quarter.

previous credits means the total of any credits the employer has claimed under section 112A because of one or more instalments of tax for the same year of tax that became due and payable before that day.

previous instalments means the total of any instalments of tax for the same year of tax that became due and payable by the employer before that day.

- (2) An instalment of tax in respect of a year of tax that would otherwise become due and payable by an employer after the end of a quarter is not payable if:
 - (a) the instalment is calculated by reference to a notional tax amount ascertained under subsection 110(1); and
 - (b) the notional tax amount by reference to which the instalment was calculated is less than:
 - (i) if a determination of an amount is in force under subsection (3) in respect of the year of tax—that amount; or
 - (ii) in any other case—\$1,000; and
 - (c) unless that quarter is the first quarter in the year of tax—because of one or more previous applications of this subsection, the instalment that would otherwise have become due and payable by the employer after the end of the previous quarter is not payable.
- (3) The Commissioner may, by notice in writing in the *Gazette*, determine an amount other than \$1,000 as the amount applicable for the purposes of subsection (2) in respect of a year or years of tax specified in the determination.

112 Estimated tax

- (1) An employer may, not later than the date on which an instalment of tax in respect of a year of tax is due and payable or within such further period as the Commissioner allows:
 - (a) make an estimate of the amount of the tax (if any) that will be payable by the employer in respect of that year of tax; and
 - (b) furnish to the Commissioner a written statement, in the approved form, showing:
 - (i) the amount so estimated; and

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- (ii) the basis on which the estimate has been made;
unless the employer has previously furnished a statement under this subsection in relation to the instalment of tax.
- (2) Where an employer furnishes to the Commissioner, in relation to an instalment of tax, a statement under subsection (1), the estimated tax is, subject to subsection (3), an amount equal to the employer's estimate.
- (3) Where, having regard to information in returns furnished by the employer and any other information in the Commissioner's possession, the Commissioner has reason to believe that the amount of tax that will be payable by the employer in respect of the year of tax is greater than the employer's estimate:
- (a) the Commissioner may estimate the amount that, in the Commissioner's opinion, should have been the amount estimated by the employer pursuant to subsection (1) in respect of that year of tax; and
- (b) the estimated tax is:
- (i) an amount equal to the amount of tax so estimated by the Commissioner; or
- (ii) the amount that would be the notional tax amount of the employer in respect of the year of tax if the employer had not furnished a statement under subsection (1);
whichever is the less.

112A Credit in certain cases where amount of instalment is nil

- (1) If an amount worked out using the formula in subsection 111(1) is negative, the employer is entitled to claim a credit equal to that amount, expressed as a positive amount.

Note: This will happen if the notional tax amount has reduced since the end of an earlier quarter because, for example:

- the employer has made an estimate under section 112 of its tax for the current year; or
- an assessment has been made for a more recent year of tax before the current year.

- (2) A claim for a credit must be made in the approved form after the end of the quarter.

Note: How the credit is applied is set out in Division 3 of Part IIB of the *Taxation Administration Act 1953*.

112B Liability to GIC on shortfall in quarterly instalment worked out on the basis of estimated tax

- (1) An employer is liable to pay the general interest charge under this section if:
- (a) in order to determine the amount of an instalment of tax (the *underpaid instalment*) of the employer for a year of tax, an amount (whether positive, negative or nil) (the *actual amount*) was worked out using the formula in subsection 111(1); and
 - (b) because of subsection 110(5), the notional tax amount used in working out the actual amount was an estimate by the employer under subsection 112(1); and
 - (c) that notional tax amount is less than 90% of the employer's tax assessed for the year of tax; and
 - (d) that assessed tax has become due and payable.

Note: Paragraph (1)(b) is not satisfied if the notional tax amount used in working out the actual amount was estimated tax worked out under subsection 112(3) because the Commissioner disagrees with the employer's estimate.

- (2) The employer is liable to pay the charge, for each day in the GIC period, on the amount (if any) by which the actual amount is *less than* the amount (whether positive, negative or nil) worked out using the formula:

$$\left[\begin{array}{l} \text{Minimum} \\ \text{tax amount} \end{array} \times \begin{array}{l} \text{Relevant} \\ \text{fraction} \end{array} \right] - \left[\begin{array}{l} \text{Previous} \\ \text{instalments} \end{array} - \begin{array}{l} \text{Previous} \\ \text{credits} \end{array} \right]$$

- (3) For the purposes of the formula in subsection (2):

minimum tax amount means the lesser of:

- (a) the amount that, apart from subsection 110(5), would have been the notional tax amount used in working out the actual amount; and
- (b) the employer's tax assessed for the year of tax.

previous credits means the total of any credits the employer has claimed under section 112A because of one or more instalments of tax for the same year of tax that became due and payable before that day.

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previous instalments means the total of any instalments of tax for the same year of tax that became due and payable by the employer before the day on which the underpaid instalment became due and payable (or would have become due and payable if the actual amount had been positive).

- (4) The amount of the general interest charge is taken to be *additional tax* payable under this section.

113 Notice of alteration of amount of instalment

Where, by reason of the operation of subsection 112(3), the amount payable by an employer as an instalment of tax is greater than the instalment that would have been payable if it had been ascertained by reference to the employer's estimate, the Commissioner shall cause to be served on the employer a notice in writing specifying:

- (a) the amount of the increase in the instalment of tax that became payable by reason of subsection 112(3); and
- (b) a date as the due date for payment of that amount, being a date not less than 14 days after the date of service of the notice;

and the amount of the increase in the instalment of tax so specified is, notwithstanding section 103, due and payable on the date so specified.

Part VIII—Penalty tax

113A Part to stop applying

This Part does not apply to a return or information relating to the year of tax starting on 1 April 2001 or a later year of tax.

Note: See instead Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953*.

114 Penalty for failure to furnish return

- (1) Where an employer other than a government body refuses or fails to furnish, when and as required under or pursuant to this Act to do so, a return, or any information, relating to a year of tax, being a return relevant to or information relevant to ascertaining the employer's liability under this Act, the employer is liable to pay, by way of penalty, additional tax equal to double the amount of tax payable by the employer in respect of the year of tax.
- (2) Where, but for this subsection, an amount of additional tax, being an amount less than \$20, is payable by an employer under this section in respect of an act or omission, then, by force of this subsection, the amount of additional tax shall be taken to be \$20.

115 Penalty for false or misleading statements

- (1) Where:
 - (a) an employer other than a government body:
 - (i) makes a statement to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the operation of this Act, that is false or misleading in a material particular; or
 - (ii) omits from a statement made to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the operation of this Act, any matter or thing without which the statement is misleading in a material particular; and
 - (b) the tax properly payable by the employer exceeds the tax that would have been payable by the employer if it were assessed

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on the basis that the statement were not false or misleading, as the case may be;

the employer is liable to pay, by way of penalty, additional tax equal to double the amount of the excess.

- (2) Where, but for this subsection, an amount of additional tax, being an amount less than \$20, is payable by an employer under this section in respect of an act or omission, then, by force of this subsection, the amount of the additional tax shall be taken to be \$20.
- (3) A reference in subsection (1) to a statement made to a taxation officer is a reference to a statement made to a taxation officer orally, in writing, in a data processing device or in any other form (including by way of electronic transmission) and, without limiting the generality of the foregoing, includes a statement:
- (a) made in an application, certificate, notification, declaration, objection, return or other document made, given or furnished, under or pursuant to this Act;
 - (b) made in answer to a question asked of a person under or pursuant to this Act;
 - (c) made in any information furnished, or purporting to be furnished, under or pursuant to this Act; or
 - (d) made in a document furnished to a taxation officer otherwise than under or pursuant to this Act;
- but does not include a statement made in a document produced pursuant to paragraph 128(1)(c).
- (4) A reference in subsection (1) to a statement made to a person other than a taxation officer for a purpose in connection with the operation of this Act is a reference to such a statement made orally, in writing, in a data processing device or in any other form (including by way of electronic transmission) and, without limiting the generality of the foregoing, includes such a statement:
- (a) made in an application, certificate, declaration, notification or other document made, given or furnished to the person;
 - (b) made in answer to a question asked by the person; or
 - (c) made in any information furnished to the person.

(5) In this section:

data processing device means any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

taxation officer means a person exercising powers, or performing functions under, pursuant to or in relation to this Act.

(6) If a document is given on a data processing device, or by way of electronic transmission, by a registered tax agent on behalf of a taxpayer, then, for the purposes of this Part, each statement in the document is taken to have been made by the taxpayer unless the taxpayer can show that the taxpayer did not authorise the statement.

115A Penalty tax for making unreasonable estimate of business kilometres

If:

- (a) the number of kilometres specified by an employer as the employer's estimate of the number of business kilometres travelled by a car during a period in an FBT year is not a reasonable estimate of the number of business kilometres travelled in that period; and
- (b) the tax that would be payable by the employer if a reasonable estimate of the number of business kilometres was substituted for the employer's estimate exceeds the tax that would be payable if the employer's estimate was used;

then:

- (c) the Commissioner may make a reasonable estimate of the number of business kilometres; and
- (d) the Commissioner's estimate is to be used in calculating the business use percentage applicable to the car for the period; and
- (e) the employer is liable to pay, by way of penalty, additional tax equal to double the amount of the excess referred to in paragraph (b).

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115B Penalty tax for making unreasonable estimate of income

If:

- (a) under subsection 58GA(2), an employer makes an estimate of an amount; and
- (b) the amount of the estimate is less than \$10 million; and
- (c) the estimate is not a reasonable estimate;

then:

- (d) the Commissioner may make a reasonable estimate of that amount (taking into account the assumption in paragraph 58GA(2)(e)); and
- (e) if the amount of that reasonable estimate is \$10 million or more—the employer is liable to pay, by way of penalty, additional tax equal to double the amount of the tax payable in respect of the benefit.

116 Penalty tax where arrangement to avoid tax

Where:

- (a) for the purpose of making an assessment or arising out of the consideration of an objection, the Commissioner has calculated the tax that is assessable to an employer in respect of a year of tax;
- (b) in calculating the tax assessable to the employer, a determination or determinations made by the Commissioner under subsection 67(1) was or were taken into account; and
- (c) either of the following subparagraphs applies:
 - (i) no tax would have been assessable to the employer in respect of the year of tax if no determination had been made under subsection 67(1) in relation to the employer in relation to the year of tax;
 - (ii) the amount of tax (in this section referred to as the ***amount of claimed tax***) that would, but for this section, have been assessable to the employer in respect of the year of tax if no determination had been made under subsection 67(1) in relation to the employer in respect of the year of tax is less than the amount of tax referred to in paragraph (a);

the employer is liable to pay, by way of penalty, additional tax equal to:

- (d) in a case to which subparagraph (c)(i) applies—double the amount of the tax referred to in paragraph (a); or
- (e) in a case to which subparagraph (c)(ii) applies—double the amount by which the amount of tax referred to in paragraph (a) exceeds the amount of claimed tax.

117 Assessment of additional tax

- (1) The Commissioner shall make an assessment of the additional tax payable by an employer under a provision of this Part and shall, as soon as practicable after the assessment is made, cause notice in writing of the assessment to be served on the employer.
- (2) Nothing in this Act shall be taken to preclude notice of an assessment made in respect of an employer under subsection (1) from being incorporated in notice of any other assessment made in respect of the employer under this Act.
- (3) The Commissioner may, in the Commissioner's discretion, remit the whole or any part of the additional tax payable by an employer under a provision of this Part, but, for the purposes of the application of subsection 33(1) of the *Acts Interpretation Act 1901* to the power of remission conferred by this subsection, nothing in this Act shall be taken to preclude the exercise of the power at a time before an assessment is made under subsection (1) of the additional tax.

Part IX—Tax agents

118 Interpretation

In this Part, *registered tax agent* means a person or partnership who or which is registered as a tax agent under Part VIIA of the *Income Tax Assessment Act 1936*.

Note: Section 251L of the *Income Tax Assessment Act 1936* prohibits a person from charging a fee for doing things under this Act on behalf of someone else unless the person is a registered tax agent or is excluded by that section.

120 Negligence of registered tax agents

- (1) If, through the negligence of a registered tax agent, an employer becomes liable to pay a fine or other penalty or any additional tax, the registered tax agent is liable to pay to the employer the amount of that fine, penalty or additional tax, and that amount may be sued for and recovered by the employer as a debt in any court of competent jurisdiction.
- (2) Nothing in this section shall exonerate the employer from his or her liability.

121 Preparation of returns etc. on behalf of registered tax agents

- (1) A registered tax agent shall not allow any person, not being his or her employee, a registered tax agent or, in the case of a partnership which is registered as a tax agent, a member of that partnership:
 - (a) to prepare on the registered tax agent's behalf, either directly or indirectly, a fringe benefits tax return or objection; or
 - (b) to conduct on the registered tax agent's behalf, either directly or indirectly, any business relating to any fringe benefits tax return or objection or fringe benefits tax matter.

Penalty: 10 penalty units.

- (2) A partnership or company that is registered as a tax agent shall not allow any person to do anything specified in paragraph (1)(a) or (b).

Penalty: 10 penalty units.

- (2A) Subsection (2) does not apply to the extent that the person does the thing under the supervision and control of a person who is a registered nominee of the partnership or company for the purposes of Part VIIA of the *Income Tax Assessment Act 1936*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2A), see subsection 13.3(3) of the *Criminal Code*.

- (2B) A natural person who is registered as a tax agent must not allow any person to do anything specified in paragraph (1)(a) or (b).

Penalty: 10 penalty units.

- (2C) Subsection (2B) does not apply to the extent that the person does the thing under the supervision and control of:

- (a) the tax agent; or
- (b) a person who is a registered nominee of the tax agent for the purposes of Part VIIA of the *Income Tax Assessment Act 1936*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2C), see subsection 13.3(3) of the *Criminal Code*.

- (3) Nothing in this section shall be construed as prohibiting the employment by a registered tax agent of a solicitor or counsel to act in the course of his or her profession in the preparation of any objection or in any litigation or proceedings before a board, a court or the Tribunal, or in an advisory capacity either in connection with the preparation of any fringe benefits tax return or the conduct of any such business as is referred to in paragraph (1)(b).

122 Advertising etc. by persons other than registered tax agents

- (1) Subject to this section, a person, not being a registered tax agent, shall not, directly or indirectly, advertise in any manner that fringe benefits tax returns will be prepared by the person or that any other matter in connection with fringe benefits tax will be attended to by the person.

Penalty: 10 penalty units.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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- (2) Subsection (1) does not apply in relation to advertising that relates to acts or things done or to be done by a solicitor or counsel acting in the course of his or her profession:
- (a) in the preparation of an objection;
 - (b) in litigation or proceedings before a board, the Tribunal or a court; or
 - (c) in an advisory capacity in connection with the preparation of a fringe benefits tax return or objection or with any fringe benefits tax matter.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

Part X—Statutory evidentiary documents

123 Retention of statutory evidentiary documents

- (1) For the purposes of Part III, where an employer fails to retain, for the retention period, a statutory evidentiary document given to or made by the employer, the statutory evidentiary document shall be deemed never to have been given to or made by the employer.
- (2) For the purposes of sections 10A and 10B, where an employer fails to retain, for the retention period, statutory evidentiary documents, being log book records or odometer records maintained by or on behalf of the employer, those documents shall be deemed never to have been maintained.
- (3) For the purposes of subparagraph 24(1)(c)(ia) or (i), where an employer fails to retain, for the retention period, statutory evidentiary documents, being substitute documentary evidence maintained by or on behalf of the employer, those documents shall be deemed never to have been maintained.
- (4) Where:
 - (a) a statutory evidentiary document (in this subsection referred to as the *original document*) in relation to an employer is lost or destroyed; and
 - (b) the employer has a document (the *substitute document*) that:
 - (i) is a copy of the original document; or
 - (ii) properly records all of the matters as set out in the original document and was in existence when the original document was lost or destroyed;the substitute document shall be deemed, for the purposes of this section, to be, and to have been at all times after the original document was lost or destroyed, the original document.
- (5) Where:
 - (a) a statutory evidentiary document in relation to an employer is lost or destroyed; and
 - (b) the Commissioner is satisfied that:

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- (i) the employer took all reasonable precautions to prevent loss or destruction of the document; and
 - (iii) subsection (4) does not apply in relation to the document; and
- subsection (1), (2) or (3), as the case requires, does not apply, and shall be deemed not to have applied, at any time after the document was lost or destroyed.
- (6) Where:
- (a) a provision of this Act makes provision for a person to give a statutory evidentiary document (in this subsection referred to as the *original document*) to an employer;
 - (b) the original document is lost or destroyed before it is given to the employer; and
 - (c) the Commissioner is satisfied that:
 - (i) the person took all reasonable precautions to prevent loss or destruction of the document; and
 - (iii) the person does not have a document that:
 - (A) is a copy of the original document; or
 - (B) properly records all of the matters set out in the original document and was in existence when the original document was lost or destroyed;
- and
- that provision of this Act has effect as if the original document had been given by the person to the employer and had been retained by the employer for the retention period.
- (7) Nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this section.

123A When business use percentage and estimate of business kilometres must be specified

If a provision requires a business use percentage or an estimate of the number of business kilometres to be specified, it must be specified in writing on or before the declaration date for the FBT year.

123B Substantiation requirements not to apply in special circumstances

- (1) The substantiation rules do not apply in relation to a benefit if the nature and quality of evidence that a person has satisfies the Commissioner that the taxable value of the benefit is not greater than the amount specified in the taxpayer's return for the FBT year as the taxable value of that benefit.
- (3) The Commissioner may only make a decision under subsection (1):
 - (a) in the course of reviewing on the Commissioner's own motion the affairs of the employer; or
 - (b) in considering an objection against the assessment of the employer of the year of tax; or
 - (c) in considering whether to make an amendment of the assessment of the employer of the year of tax in response to a request made by the employer before the commencement of this section.
- (4) This section does not apply to a declaration made for the purposes of this Act.
- (5) If:
 - (a) an employer makes an application under subsection 82(1) or (2), as in force immediately before the commencement of section 113 of the *Taxation Laws Amendment Act (No. 3) 1991*; and
 - (b) the period mentioned in the subsection concerned ended before the commencement of this section;the following provisions have effect:
 - (c) the Commissioner, the Tribunal or the Federal Court of Australia, as the case requires, when making a decision on the application, must disregard subsection (1) of this section;
 - (d) if the Commissioner, the Tribunal or the Federal Court of Australia, as the case requires, grants the application:
 - (i) the employer's objection has no effect to the extent that it relates to grounds based on subsection (1) of this section; and
 - (ii) the Tribunal or the Federal Court of Australia, when making a decision under:

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- (A) paragraph 86A(a) of this Act, as in force immediately before the commencement of section 113 of the *Taxation Laws Amendment Act (No. 3) 1991*; or
 - (B) paragraph 14ZZK(a) or 14ZZO(a) of the *Taxation Administration Act 1953*, as the case requires;
- must disregard subsection (1) of this section.
- (6) This section applies to a benefit provided before, at or after the commencement of this section.

Part XA—Endorsement of charitable institutions etc.

123C Endorsement by Commissioner as public benevolent institution

Endorsement of an entity that is a public benevolent institution

- (1) The Commissioner must endorse an entity as a public benevolent institution if:
 - (a) the entity is entitled to be endorsed as a public benevolent institution (see subsection (2)); and
 - (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) An entity is entitled to be endorsed as a public benevolent institution if the entity:
 - (a) is a public benevolent institution; and
 - (b) has an ABN; and
 - (c) is not an employer in relation to which step 2 of the method statement in subsection 5B(1E) applies.

Endorsement of an entity for the operation of a public benevolent institution

- (3) The Commissioner must endorse an entity for the operation of a public benevolent institution if:
 - (a) the entity is entitled to be endorsed for the operation of a public benevolent institution (see subsection (4)); and
 - (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (4) An entity is entitled to be endorsed for the operation of a public benevolent institution if:
 - (a) the entity:
 - (i) includes the public benevolent institution; and

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- (ii) has an ABN; and
 - (b) the public benevolent institution is an employer; and
 - (c) the public benevolent institution is not an employer in relation to which step 2 of the method statement in subsection 5B(1E) applies.
- (5) If an entity is endorsed under subsection (3) for the operation of a public benevolent institution, the public benevolent institution is taken to be endorsed under this subsection as a public benevolent institution.

123D Endorsement by Commissioner as health promotion charity

- (1) The Commissioner must endorse an entity as a health promotion charity if:
- (a) the entity is entitled to be endorsed as a health promotion charity (see subsection (2)); and
 - (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) An entity is entitled to be endorsed as a health promotion charity if the entity:
- (a) is a health promotion charity; and
 - (b) has an ABN; and
 - (c) is not an employer in relation to which step 2 of the method statement in subsection 5B(1E) applies.

123E Endorsement by Commissioner as charitable institution (other than public benevolent institution or health promotion charity)

- (1) The Commissioner must endorse an entity as a charitable institution covered by paragraph 65J(1)(baa) if:
- (a) the entity is entitled to be endorsed as a charitable institution covered by paragraph 65J(1)(baa) (see subsection (2)); and
 - (b) the entity has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

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- (2) An entity is entitled to be endorsed as a charitable institution covered by paragraph 65J(1)(baa) if the entity:
- (a) is a charitable institution; and
 - (b) has an ABN.

Part XI—Miscellaneous

124 Assessments

- (1) Where the Commissioner does not have sufficient information to make an assessment of the fringe benefits taxable amount of an employer of a year of tax, that fringe benefits taxable amount shall be deemed, for the purposes of making an assessment under this Act, to be such amount as, in the opinion of the Commissioner, might reasonably be expected to be that fringe benefits taxable amount.
- (2) In determining whether an assessment is correct, any determination, opinion or judgment of the Commissioner made, held or formed in connection with the consideration of an objection against the assessment shall be deemed to have been made, held or formed when the assessment was made.

124A Assessment on assumption

- (1) Subject to subsection (4), where:
 - (a) an employee of an employer has derived eligible foreign remuneration or foreign earnings during a year of tax; and
 - (b) at the time of making an assessment of the fringe benefits taxable amount of the employer of the year of tax, it is reasonable to assume that, at a later time, circumstances will exist because of which that eligible foreign remuneration or foreign earnings, as the case may be, will be exempt income by virtue of section 23AF or 23AG of the *Income Tax Assessment Act 1936*;this Act applies as if those circumstances existed at the time of making that assessment.
- (2) Subject to subsection (4), where, at the time of making an assessment of the fringe benefits taxable amount of an employer of a year of tax, it is reasonable to assume that, at a later time, circumstances will exist because of which a benefit provided in respect of the employment of an employee of the employer in, or in respect of, the year of tax will be an exempt benefit by virtue of

section 58B, 58C or 58D, this Act applies as if those circumstances existed at the time of making that assessment.

- (3) Subject to subsection (4), where:
- (a) a fringe benefit (in this subsection called the *temporary accommodation fringe benefit*) of a kind referred to in paragraph 61C(1)(a) is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer; and
 - (b) at the time of making an assessment of the fringe benefits taxable amount of the employer of the year of tax, it is reasonable to assume that, at a later time, circumstances will exist because of which section 61C will apply to reduce the taxable value of the temporary accommodation fringe benefit in relation to the year of tax by a particular amount;
- this Act applies as if those circumstances existed at the time of making that assessment.
- (4) Where this Act has, by virtue of subsection (1), (2) or (3), applied on the basis that a circumstance that did not exist at the time of making an assessment would exist at a later time and the Commissioner, after making the assessment, becomes satisfied that that circumstance will not exist, then, notwithstanding section 74, the Commissioner may amend the assessment at any time for the purposes of ensuring that this Act shall be taken always to have applied on the basis that that circumstance did not exist.

125 Judicial notice of signature

All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, shall take judicial notice of the signature of a person who holds or has held the office of Commissioner, Second Commissioner of Taxation or Deputy Commissioner attached or appended to any official document in connection with this Act.

126 Evidence

- (1) The mere production of:
- (a) a notice of assessment; or

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- (b) a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a notice of assessment;
is conclusive evidence of the due making of the assessment and, except in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the assessment, that the amounts and all of the particulars of the assessment are correct.
- (2) The mere production of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a document issued or given by the Commissioner, a Second Commissioner or a Deputy Commissioner is *prima facie* evidence that the second-mentioned document was so issued or given.
- (3) The mere production of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of, or an extract from, a return or a notice of assessment is evidence of the matter set out in the document to the same extent as the original return or notice, as the case may be, would be if it were produced.
- (3A) To avoid doubt, subsection (3) applies to a copy or an extract of a document that was given to the Commissioner on a data processing device or by way of electronic transmission unless the taxpayer can show that the taxpayer did not authorise the document.
- (4) The mere production of a certificate in writing signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that a sum specified in the certificate was, at the date of the certificate, due and payable by a person in respect of an amount of tax or an amount payable by way of an instalment of tax under Division 2 of Part VII or by way of penalty under section 93 or 112 or Part VIII, is *prima facie* evidence of the matters stated in the certificate.
- (5) The mere production of a *Gazette* containing a notice purporting to be issued by the Commissioner is *prima facie* evidence that the notice was so issued.
- (6) A return under this Act purporting to be made or signed by or on behalf of a person is *prima facie* evidence that the return was made by the person or with the authority of the person.
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127 Access to premises etc.

- (1) For the purposes of this Act, an officer authorised in writing by the Commissioner to exercise powers under this section:
 - (a) may, at all reasonable times, enter and remain on any land or premises;
 - (b) is entitled to full and free access at all reasonable times to all documents; and
 - (c) may inspect, examine, make copies of, or take extracts from, any documents.
- (2) An officer is not entitled to enter or remain on any land or premises under this section if, on being requested by the occupier of the land or premises for proof of authority, the officer does not produce an authority in writing signed by the Commissioner stating that the officer is authorised to exercise powers under this section.
- (3) The occupier of land or premises entered or proposed to be entered by an officer under subsection (1) shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

128 Commissioner to obtain information and evidence

- (1) The Commissioner may, for the purposes of this Act, by notice in writing, require a person (including a person employed in or in connection with a Department of the Government of the Commonwealth, of a State or of a Territory or by any public authority, and whether or not the person is liable to pay an amount of tax):
 - (a) to furnish the Commissioner with such information as the Commissioner requires;
 - (b) to attend before the Commissioner, or before an officer authorised by the Commissioner for the purpose, at a time and place specified in the notice, and then and there answer questions; and
 - (c) to produce to the Commissioner any documents in the custody or under the control of the person.

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- (2) The Commissioner may require the information or answers to questions to be verified or given, as the case may be, on oath or affirmation, and either orally or in writing, and for that purpose the Commissioner, or an officer authorised by the Commissioner in writing for the purpose, may administer an oath or affirmation.
- (3) The oath to be taken or affirmation to be made by a person for the purposes of this section is an oath or affirmation that the information or answers the person will give will be true.
- (4) The regulations may prescribe scales of expenses to be allowed to persons required to attend under this section.

129 Agents and trustees

- (1) The following provisions of this section apply in relation to a person (in this section referred to as the *representative*) being:
 - (a) a person who, as agent for an employer, provides or arranges for the provision of benefits that are fringe benefits in relation to the employer;
 - (b) an employer in the capacity of a trustee, being an employer in relation to whom fringe benefits are provided; or
 - (c) a trustee in respect of the affairs of an employer where the trustee, as trustee, provides or arranges for the provision of benefits that are fringe benefits in relation to the employer.
- (2) The representative:
 - (a) shall furnish returns in relation to the fringe benefits; and
 - (b) is liable to any tax payable in respect of the provision of the fringe benefits;but only in the capacity of agent or trustee, as the case requires, and each such return shall be separate and distinct from any other return furnished or lodged by the representative.
- (3) The representative is, by force of this section:
 - (a) authorised and required to retain from time to time any money that comes to the representative in the capacity as agent for the other person or trustee of the trust estate, or so much of it as is sufficient to pay the amount of tax;
 - (b) made personally liable for the amount of tax after it becomes payable to the extent of any amount that the representative is required to retain under paragraph (a); and

- (c) indemnified for all payments that the representative makes pursuant to this section.
- (4) For the purposes of ensuring payment of the amount of tax, the Commissioner has the same remedies against attachable property of any kind vested in, under the control or management of, or in the possession of, the representative as the Commissioner would have against the property of any other person in respect of an amount of tax payable by the other person.
- (5) In this section, unless the contrary intention appears, *tax* includes additional tax under section 93 or Part VIII.

132 Records to be kept and preserved

- (1) An employer shall:
 - (a) keep records that record and explain all transactions and other acts engaged in by the employer or any other person that are relevant for the purpose of ascertaining the employer's liability under this Act; and
 - (b) retain those records, and any records given to the employer under paragraph (2)(b), for a period of 5 years after the completion of the transactions or acts to which they relate.

Note: There is an exemption from the requirements of this subsection in certain cases: see Part XIA (Record keeping exemption).
- (2) Where an associate of an employer provides, or arranges for the provision of, fringe benefits to, or to associates of, employees of the employer, the associate shall:
 - (a) keep records that record and explain all transactions and other acts engaged in by the associate or any other person in respect of the provision of those fringe benefits, being transactions or acts that are relevant for the purpose of ascertaining the employer's liability under this Act;
 - (b) give to the employer a copy of the records, so far as they relate to a year of tax, not later than 21 days after the end of that year of tax; and
 - (c) retain those records for a period of 5 years after the completion of the transactions or acts to which they relate.

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- (3) A person who is required by this section to keep records shall keep the records:
- (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
 - (b) so as to enable the employer's liability under this Act to be readily ascertained.
- (4) Nothing in this section shall be taken to require a person (in this subsection referred to as the **record keeper**) to keep a record of information relating to a transaction or act engaged in by another person if:
- (a) where the transaction or act was entered into or done under an arrangement to which the record keeper was a party:
 - (i) the record keeper made all reasonable efforts:
 - (A) to ascertain whether the transaction had been entered into or the act had been done; and
 - (B) to obtain the information; and
 - (ii) did not know, and could not reasonably be expected to have known, the information; or
 - (b) in any other case—the record keeper did not know, and could not reasonably be expected to have known, the information.
- (5) Nothing in this section shall be taken to require a person to retain records where:
- (a) the Commissioner has notified the person that retention of the records is not required; or
 - (b) the person is a company that has gone into liquidation and been finally dissolved.

Penalty: 30 penalty units.

Note 1: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

132A Written evidence not available when return lodged

- (1) This section applies if:
 - (a) a provision of this Act requires documentary evidence of an expense to be given to, or obtained by, an employer before the declaration date for an employer for an FBT year; and
 - (b) at the date of lodgment of the employer's return of the fringe benefits taxable amount for the FBT year:
 - (i) the employer has not been given, or has not obtained, the documentary evidence;
but:
 - (ii) the employer has good reason to expect that he or she will be given, or will obtain, that evidence within a reasonable time.
- (2) If this section applies:
 - (a) the employer may complete his or her return as if the documentary evidence had been given to, or obtained by, him or her by the date of lodgment; and
 - (b) if the evidence is given to, or obtained by, the employer within a reasonable time—this Act applies as if the documentary evidence had been given to, or obtained by, the employer before the declaration date; and
 - (c) if the evidence is not given to, or obtained by, the employer within a reasonable time—the employer must notify the Commissioner in writing that the evidence has not been obtained.

134 Service on partnerships and associations

Service, whether by post or otherwise, of a notice or document on a member of a partnership or on a member of the committee of management of an unincorporated association or other body of persons shall be deemed, for the purposes of this Act, to constitute service of the notice or other document on each member of the partnership or each member of the association or other body of persons, as the case may be.

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135 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding a fine of 5 penalty units for offences against the regulations.

Part XIA—Record keeping exemption

Division 1—Overview of Part

135A Overview of Part

- (1) Basically, this Part provides that, if certain conditions are satisfied, an employer need not keep or retain most of the records otherwise required to be kept and retained under subsection 132(1).
- (2) If the conditions are satisfied, the employer's FBT liability is generally worked out using the aggregate fringe benefits amount from a previous FBT year (the *base year*) instead of the current FBT year.

Division 2—Conditions

135B Conditions that must be satisfied

- (1) This section has 2 conditions that must be satisfied for Division 3 to apply to an employer for an FBT year (the *current year*).

First condition: base year established

- (2) Either of the following must be true:
- (a) the FBT year immediately before the current year was a base year (see section 135C) of the employer; or
 - (b) some other FBT year before the current year was a base year of the employer and section 135G applied to the employer for every FBT year after that base year but before the current year.

Second condition: no Commissioner's notice in previous year

- (3) The employer must not have been given a paragraph 135E(2)(c) notice by the Commissioner during the FBT year immediately before the current year.

135C What is a base year?

- (1) An FBT year is a *base year* of an employer if:
- (a) the employer carries on business operations throughout the FBT year; and
 - (b) the employer lodges an FBT return for the FBT year within the time allowed for doing so under section 68; and
 - (c) as at the declaration date for the FBT year, the employer has kept and retained all the records that are (ignoring section 135E) required to be kept and retained under subsection 132(1) in relation to the employer's liability under this Act for the FBT year; and
 - (d) the employer's aggregate fringe benefits amount for the FBT year does not exceed the exemption threshold (see subsections (2) and (3)) for the year; and
 - (e) section 135G does not apply to the employer for the FBT year (that section allows employers to work out their liability

to pay tax using their aggregate fringe benefits amount from a previous base year, instead of the current FBT year).

Exemption threshold for 1996-97 FBT year

- (2) The **exemption threshold** for the FBT year beginning on 1 April 1996 is \$5,000.

Exemption threshold for later FBT years

- (3) The **exemption threshold** for a later FBT year is the amount worked out using the formula:

Exemption threshold × Indexation factor

where:

exemption threshold is the exemption threshold for the previous FBT year.

indexation factor is the number worked out, to 3 decimal places (rounding up if the fourth decimal place is 5 or more), under subsection (4) for the later FBT year.

Indexation factor

- (4) The indexation factor for an FBT year is the greater of:
- (a) 1; and
 - (b) the number worked out using the formula:

$$\frac{\text{Sum of index numbers for quarters in most recent December year}}{\text{Sum of index numbers for quarters in earlier December year}}$$

- (5) In subsection (4):

earlier December year means the period of 12 months immediately before the most recent December year.

index number, for a quarter, means the All Groups Consumer Price Index number for the quarter (being the weighted average of the 8 capital cities) first published by the Australian Statistician for the quarter.

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most recent December year means the period of 12 months ending on 31 December immediately before the FBT year for which the threshold is being worked out.

Disregard new publications

- (6) If the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published for that quarter, disregard the later publication.

Changed reference base

- (7) However, if the Australian Statistician changes the reference base for the Consumer Price Index, take into account only the index numbers published in terms of the new reference base.

Rounding down to whole dollar amount

- (8) Round the subsection (3) result down to the nearest whole dollar (if the result is not already a number of whole dollars).

Division 3—Consequences if conditions in Division 2 are satisfied

135D Consequences

This Division has the consequences that apply if both conditions in section 135B are satisfied in relation to an employer for an FBT year (the *current year*).

135E Exemption from keeping records

- (1) Subsection 132(1) (which requires certain records to be kept and retained) does not apply to the employer in relation to the employer's liability under this Act for the current year.

Records the employer must still keep

- (2) However, subsection 132(1) still applies in relation to the employer's liability under this Act for the current year so far as it relates to the following:
 - (a) copies of records that an associate of the employer gives the employer under paragraph 132(2)(b);
 - (b) benefits provided at a time when the employer was:
 - (i) a government body (see subsection 136(1)); or
 - (ii) a person all of whose income is exempt from income tax;
 - (c) benefits provided after the Commissioner has given the employer a written notice under this paragraph, during the current year, requiring the employer to resume keeping records.

135F Keeping records for 5 years after they are last relied on

The period in paragraph 132(1)(b) for retaining records relating to the employer's liability under this Act in respect of the employer's most recent base year is extended (or further extended) to 5 years after the end of the current year (if the period is not already that long).

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135G Way to work out liability

The employer's liability to pay tax under section 66 is worked out using the employer's aggregate fringe benefits amount for the employer's most recent base year, instead of for the current year.

135H Exception if employer chooses to use current year aggregate fringe benefits amount

Section 135G does not apply if the employer chooses to work out his or her liability using the employer's aggregate fringe benefits amount for the current year.

135J Exception if employer is government body or tax-exempt

Section 135G does not apply if the employer is:

- (a) a government body (see subsection 136(1)); or
- (b) a person all of whose income is exempt from income tax; at any time during the current year.

135K Exception if aggregate fringe benefits amount increases too much

- (1) Section 135G does not apply if the employer's aggregate fringe benefits amount for the current year is more than 20% greater than it was for the employer's most recent base year (unless the difference is \$100 or less).

Example: The aggregate fringe benefits amount was \$100 for the most recent base year and \$180 for the current year. This is 80% greater—well over the 20% limit. But section 135G can still apply because the difference is only \$80.

Special rules for applying this test

- (2) In working out, for the purposes of subsection (1), the employer's aggregate fringe benefits amount for the current year, apply the following rules.

Section 123 disregarded

- (3) Disregard the effect of section 123 (which deals with failing to retain statutory evidentiary documents).

Special rule for car fringe benefits—statutory formula method used in earlier year

- (4) If:
- (a) for the employer's first car benefit year (if any—see subsection (6)), the employer used the method in section 9 (statutory formula) to determine the taxable value of one or more car fringe benefits relating to a particular car; and
 - (b) the employer uses the same method for that car, or for a car provided as a replacement of that car, for the current year; and
 - (c) the annualised number of kilometres the car (or its replacement) travelled in the current year is at least 80% of the annualised number of kilometres the car travelled in the first car benefit year;

the employer may, in using that same method, use the statutory fraction for the car from the first car benefit year, instead of from the current year.

Special rule for car fringe benefits—cost basis method used in earlier year

- (5) If:
- (a) for the employer's first car benefit year (if any—see subsection (6)), the employer used the method in section 10 (cost basis) to determine the taxable value of one or more car fringe benefits relating to a particular car; and
 - (b) the employer uses the same method for that car, or for a car provided as a replacement of that car, for the current year; and
 - (c) the business use percentage (see subsection 136(1)) for the current year is not lower than the business use percentage for the first car benefit year by more than 20 percentage points;

the employer may, in using that same method, use the business use percentage for the car from the first car benefit year, instead of from the current year.

Meaning of first car benefit year

- (6) In subsections (4) and (5), the employer's **first car benefit year** is the first FBT year (if any) in the period:
- (a) beginning with the employer's most recent base year; and

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Division 3 Consequences if conditions in Division 2 are satisfied

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- (b) ending with the FBT year immediately before the current year;
during which one or more car fringe benefits were provided in relation to the employer.

135L Employer not in business throughout current year

- (1) This section applies if the employer does not carry on business operations throughout the current year.

Pro-rata reduction of base year aggregate fringe benefits amount

- (2) For the purposes of sections 135G and 135K, the employer's aggregate fringe benefits amount for the employer's most recent base year is replaced by the amount worked out using the following formula:

$$\text{Aggregate fringe benefits amount} \times \frac{\text{Number of days in the current year during which the employer carried on business operations}}{\text{Number of days in the current year}}$$

Part XIB—Reportable fringe benefits totals

135M Simplified outline of this Part

The following is a simplified outline of this Part:

An employee's reportable fringe benefits total for a year of income is the sum of each of the employee's reportable fringe benefits amounts for the year of income (see section 135N). (The total is taken into account under other Acts; for example in working out some income tax rebates, Medicare levy surcharge and superannuation surcharge and whether the employee must make a repayment of a debt under the *Higher Education Funding Act 1988* or the *Higher Education Support Act 2003*.)

An employee's reportable fringe benefits amount from an employer is generally the grossed-up value of the employee's individual fringe benefits amount from that employer (see section 135P).

Special rules apply for working out the employee's reportable fringe benefits amount in respect of the employee's employment if the benefits provided in respect of the employment include exempt benefits under section 57A or 58 (about employment with public benevolent institutions, certain hospitals, public ambulance services, health promotion charities and bodies providing care for sick, elderly or disadvantaged persons) (see section 135Q).

135N Employee's reportable fringe benefits total

An employee's ***reportable fringe benefits total*** for a year of income is the sum of each of the employee's reportable fringe benefits amounts for the year of income in respect of the employee's employment by an employer.

Example: Sylvia employs Angela, who has a reportable fringe benefits amount of \$3,000 for the 1999-2000 year of income from her employment by Sylvia.

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Angela is also an employee of Geoff, and has a reportable fringe benefits amount of \$4,000 for that year of income from her employment by Geoff.

Angela's reportable fringe benefits total for the 1999-2000 year of income is \$7,000.

135P Employee's reportable fringe benefits amount—general rule

Does an employee have a reportable fringe benefits amount?

- (1) An employee has a **reportable fringe benefits amount** for a year of income in respect of the employee's employment by an employer if the employee's individual fringe benefits amount for the year of tax ending on 31 March in the year of income in respect of the employee's employment by the employer is more than \$2,000.

Example 1: On 31 May 2007, Sylvia waives a debt of \$2,545 that her employee Angela owes her, thus providing Angela with a debt waiver fringe benefit with a taxable value of \$2,545 for the year of tax ending on 31 March 2008. Angela has a reportable fringe benefits amount for the year of income ending on 30 June 2008 in respect of her employment by Sylvia.

Example 2: On 1 March 2008, Angela's employer Neil waives a debt of \$1,900 Angela owes him, providing Angela with a debt waiver fringe benefit with a taxable value of \$1,900 for the year of tax ending on 31 March 2008. However, he does not provide any other fringe benefits for that year of tax in respect of her employment, so Angela does not have a reportable fringe benefits amount for the year of income ending on 30 June 2008 in respect of her employment by Neil.

Size of the reportable fringe benefits amount

- (2) The **reportable fringe benefits amount** is the amount worked out using the formula:

$$\text{Individual fringe benefits amount} \times \frac{1}{1 - \text{Rate of tax for the year of tax}}$$

where:

individual fringe benefits amount is the employee's individual fringe benefits amount for the year of tax in respect of the employee's employment by the employer.

135Q Reportable fringe benefits amount for some employees of certain institutions*Overview*

- (1) This section explains how to work out whether an employee has a reportable fringe benefits amount for a year of income in respect of the employee's employment by an employer described in section 57A or 58, and the size of that amount, if:
- (a) a benefit is provided in respect of the employee's employment by the employer; and
 - (b) the benefit is an exempt benefit because of one of those sections; and
 - (c) apart from those sections, the benefit would be a fringe benefit relating to the employee, the employer and the year of tax ending on 31 March in the employee's year of income.

Note: Section 57A deals with public benevolent institutions, certain charitable institutions, employers of employees connected with certain hospitals and employers of employees connected with public ambulance services. Section 58 deals with persons employed by government bodies, religious institutions and non-profit companies to care for the elderly or disadvantaged.

Does an employee have a reportable fringe benefits amount?

- (2) The employee has a **reportable fringe benefits amount** (worked out under subsection (4)) for the year of income in respect of the employee's employment by the employer if the sum of the following is more than \$2,000:
- (a) the employee's individual fringe benefits amount (if any) for the year of tax ending on 31 March in the year of income in respect of the employee's employment by the employer;
 - (b) the employee's individual quasi-fringe benefits amount for the year of tax ending on 31 March in the year of income in respect of the employee's employment by the employer.

Note: An employee of an employer described in section 57A will not have an individual fringe benefits amount from that employer, because all benefits provided in respect of employment by that employer are exempt benefits.

Section 135Q

What is the employee's individual quasi-fringe benefits amount?

- (3) The employee's **individual quasi-fringe benefits amount** is the amount that would be the employee's individual fringe benefits amount for the year of tax in respect of the employee's employment by the employer if:
- (a) each benefit described in subsection (1) in relation to the employee, employer and year of tax were a fringe benefit; and
 - (b) there were no other fringe benefits relating to the employee, the employer and the year of tax.

Note: Section 5E explains how to work out the employee's individual fringe benefits amount for the year of tax.

Size of the reportable fringe benefits amount

- (4) The **reportable fringe benefits amount** is the amount worked out using the formula:

$$\left[\begin{array}{l} \text{Individual fringe} \\ \text{benefits amount} \end{array} + \begin{array}{l} \text{Individual} \\ \text{quasi-fringe} \\ \text{benefits amount} \end{array} \right] \times \frac{1}{1 - \text{Rate of tax}}$$

where:

individual fringe benefits amount is the employee's individual fringe benefits amount (if any) for the year of tax in respect of the employee's employment by the employer.

individual quasi-fringe benefits amount is the employee's individual quasi-fringe benefits amount for the year of tax in respect of the employee's employment by the employer.

rate of tax is the rate of tax for the year of tax.

Relationship with section 135P

- (5) This section has effect despite section 135P.

Part XIC—Application of the Act to nominated State or Territory bodies

135R Application of this Part

This Part applies in relation to the year of tax starting on 1 April 2001 and later years of tax.

135S Nomination of eligible State or Territory bodies

- (1) The following:
 - (a) a State; or
 - (b) the Australian Capital Territory; or
 - (c) the Northern Territory;may nominate an eligible State or Territory body for the purposes of this Part.

Form and content etc. of nomination

- (2) The nomination:
 - (a) must be in the approved form; and
 - (b) must specify the first year of tax in relation to which the nomination is to have effect; and
 - (c) may specify that a class or classes of employees are to be taken to have a sufficient connection with the body for the purposes of subsection 135U(3); and
 - (d) must be given to the Commissioner on or before 21 May in the year of tax specified under paragraph (b).

When nomination has effect

- (3) Subject to subsection (5), the nomination has effect in relation to the body in relation to the first year of tax as specified in the nomination and in relation to all later years of tax.

Section 135T

Avoidance of doubt

- (4) To avoid doubt:
- (a) the State or Territory may nominate more than one eligible State or Territory body; and
 - (b) the State or Territory may make nominations at different times (including in different years of tax); and
 - (c) if the State or Territory nominates more than one eligible State or Territory body, it need not specify the same first year of tax for them.

Variation or revocation of nomination

- (5) The nomination may be varied or revoked, but a variation or revocation:
- (a) must be in the approved form; and
 - (b) must specify the first year of tax in relation to which the variation or revocation is to have effect; and
 - (c) must be given to the Commissioner on or before 21 May in that first year of tax.

Nominated State or Territory bodies

- (6) For each year of tax during which the nomination has effect in relation to an eligible State or Territory body, the body is a ***nominated State or Territory body***.

135T Eligible State or Territory bodies

- (1) Each of the following is an ***eligible State or Territory body***:
- (a) a ***department*** within the meaning of section 6 of the *Public Sector Employment and Management Act 2002* of New South Wales;
 - (b) an ***agency*** within the meaning of section 4 of the **Public Sector Management and Employment Act 1998** of Victoria;
 - (c) an ***office*** referred to in subsection 16(1) of the **Public Sector Management and Employment Act 1998** of Victoria;
 - (d) a ***department*** within the meaning of section 7 of the *Public Service Act 1996* of Queensland;

- (e) a **department** within the meaning of section 3 of the *Public Sector Management Act 1994* of Western Australia, as extended by subsection 3(2) of the *Financial Administration and Audit Act 1985* of Western Australia;
 - (f) a **subsidiary body** as defined in paragraphs (aa) and (b) of the definition of that term in subsection 3(1) of the *Financial Administration and Audit Act 1985* of Western Australia;
 - (g) an **administrative unit** within the meaning of section 3 of the *Public Sector Management Act 1995* of South Australia;
 - (h) a **government department** within the meaning of subsection 3(1) of the *State Service Act 2000* of Tasmania;
 - (i) a **department** within the meaning of section 3 of the *Financial Management Act 1996* of the Australian Capital Territory;
 - (j) an **agency** within the meaning of section 3 of the *Financial Management Act 1995* of the Northern Territory;
 - (k) a **government business division** within the meaning of section 3 of the *Financial Management Act 1995* of the Northern Territory;
 - (l) a **department** of a Parliament of a State;
 - (m) a **department** of a Legislative Assembly of a Territory.
- (2) However, a government body that pays, or is liable to pay, salary or wages is not an **eligible State or Territory body**.
- (3) The regulations may make modifications to subsection (1).
- (4) In subsection (3), **modifications** includes additions, omissions and substitutions.

135U Consequences of nomination

Change in employer

- (1) Subject to subsection (4), a nominated State or Territory body, instead of the governing body otherwise applicable, is taken, for the purposes of the Act, to be the employer of each employee of the State or Territory that has a sufficient connection with the body.

Section 135U

Meaning of sufficient connection

- (2) An employee of the State or Territory has a **sufficient connection** with the body if the employee performs his or her duties of employment wholly or principally in the body.
- (3) An employee of the State or Territory is taken to have a **sufficient connection** with the body if:
 - (a) the employee does not perform his or her duties of employment wholly or principally in any other nominated State or Territory body; and
 - (b) the employee is of a class of employees that the State or Territory has specified under paragraph 135S(2)(c) is to be taken to have a sufficient connection with the body.

Obligations etc. still fall on State or Territory

- (4) Any right that would be conferred, or obligation that would be imposed, on the nominated State or Territory body as a consequence of subsection (1) is instead conferred or imposed on the State or the Territory.

Other consequences

- (5) Also, for the purposes of this Act:
 - (a) the nominated State or Territory body is taken to be a company; and
 - (b) the following are taken to be companies related to the nominated State or Territory body:
 - (i) each other nominated State or Territory body of the State or Territory concerned; and
 - (ii) the State or Territory concerned; and
 - (iii) each authority of the State or Territory that is not a related company of the nominated State or Territory body under subparagraph (i) or (ii); and
 - (c) the nominated State or Territory body is taken to be a government body.

Where nominated State or Territory body ceases to exist

- (6) If the nominated State or Territory body ceases to exist during a year of tax:

- (a) the State or Territory is taken, from the time the body ceases to exist, to be the employer of all employees who had a sufficient connection with the body immediately before it ceased to exist; and
- (b) the State or Territory is taken to have revoked the nomination of the body, with effect from the start of the next year of tax.

135V Working out the notional tax amount where nominations have been made, varied or revoked

When section applies

- (1) This section applies if a State or Territory does any one or more of the following under section 135S:
 - (a) makes one or more nominations;
 - (b) varies one or more nominations;
 - (c) revokes one or more nominations;with effect from the start of the same year of tax (the ***year of the change***).

State or Territory to apportion prior year's assessed tax for instalment purposes

- (2) If this section applies, the State or Territory must, in accordance with this section, specify the amounts of the tax that are to be taken for the purposes of subsection 110(1) to be assessed in respect of the following in respect of the year of tax (the ***prior year of tax***) immediately preceding the year of the change:
 - (a) each body that is a nominated State or Territory body of the State or Territory for the year of the change (even if that year is not the first year of tax for that body);
 - (b) the State or Territory.
- (3) The sum of the amounts specified under subsection (2) must equal the sum of the tax that was assessed in respect of the following in respect of the prior year of tax:
 - (a) the State or Territory;
 - (b) if there were nominated State or Territory bodies of the State or Territory for the prior year of tax—those bodies.

Section 135W

Form etc. of apportionment

- (4) The State or Territory must:
- (a) specify the amounts after it makes the last of the nominations, variations or revocations; and
 - (b) do so in the approved form; and
 - (c) give the approved form to the Commissioner on or before 21 May in the year of the change.

Effect of apportionment

- (5) For the purposes of subsection 110(1), the amounts specified in the approved form have effect to replace the amounts that would otherwise be the tax assessed for the prior year of tax in respect of the nominated State or Territory bodies and the State or Territory.

Consequences of failure to apportion

- (6) If the requirements of this section are not complied with:
- (a) any making, variation or revocation of a nomination to which this section applies has no effect in relation to any year of tax; and
 - (b) all existing nominations of the State or Territory under section 135S cease to have effect at the start of the year of the change; and
 - (c) the amount of the tax that is taken for the purposes of subsection 110(1) to have been assessed in respect of the State or Territory in respect of the prior year of tax is equal to the sum of the amounts of tax assessed in respect of that year of tax in respect of the following:
 - (i) the State or Territory;
 - (ii) if there were nominated State or Territory bodies for that year of tax—those bodies.

135W Notional tax amount where a nominated State or Territory body ceases to exist

If a nominated State or Territory body ceases to exist during a year of tax (other than because of subsection 135V(6)), then, for the purposes of subsection 110(1), the amount of the tax that was assessed, in respect of the immediately preceding year of tax in

respect of the State or Territory that nominated the body, is taken to be an amount worked out using the following formula:

$$\text{Amount actually assessed} + \text{Notional tax amount of the State or Territory body} - \text{Previous instalments by the State or Territory body} - \text{Previous credits of the State or Territory body}$$

where:

amount actually assessed means the amount of the tax assessed in respect of the State or Territory in respect of the immediately preceding year of tax.

notional tax amount of the State or Territory body means the notional tax amount of the nominated State or Territory body in respect of the year of tax, as at the end of the last day of the last quarter before the body ceased to exist.

previous credits of the State or Territory body means the total of any credits claimed under section 112A in relation to one or more instalments of tax of the nominated State or Territory body for that year of tax.

previous instalments by the State or Territory body means the total of any instalments of tax of the nominated State or Territory body for that year of tax that became due and payable before it ceased to exist.

135X Application of certain provisions by agreement with the Commissioner

Object

- (1) The object of this section is:
 - (a) to ensure that the calculation of the taxable value of certain fringe benefits is not affected where continuity in the fulfilment of certain record-keeping provisions is broken solely because of a transitional event; and
 - (b) to preserve the character of certain benefits where that character would otherwise be lost solely because of a transitional event.

Section 135X

Meaning of transitional event

- (2) A **transitional event** occurs if:
- (a) a State or Territory makes a nomination under section 135S;
or
 - (b) a State or Territory varies a nomination under section 135S;
or
 - (c) a State or Territory revokes a nomination under section 135S;
or
 - (d) a nominated State or Territory body ceases to exist.

Agreement about consequences of transitional events

- (3) The Commissioner may enter into a written agreement with a State or Territory about what is to happen in respect of the following when a transitional event occurs:
- (a) whether a register kept by the State or Territory, or a nominated State or Territory body, is to be treated as a valid register for the purposes of Subdivision D of Division 10A of Part III of the Act (which deals with the 12 week record keeping method for car parking fringe benefits) and the employees and FBT years in relation to which the register is to be treated as valid;
 - (b) whether a benefit that would otherwise lose its character as an exempt benefit under section 58B, 58C, 58D or 58S is to be treated as an exempt benefit;
 - (c) whether a benefit that would otherwise lose its character as an amortised fringe benefit under section 65CA is to be treated as an amortised fringe benefit;
 - (d) whether a benefit that would not otherwise be covered by a recurring fringe benefit declaration under section 152A is to be treated as being covered by the declaration;
 - (e) whether a year of tax is to be treated as a log book year of tax of the State or Territory, or a nominated State or Territory body, for the purposes of the application of section 10 in relation to a car fringe benefit in relation to that State or Territory, or that nominated State or Territory body, in relation to a particular car or class of cars (however described);

- (f) whether a year of tax that is a base year of tax for the purposes of section 26 is to continue to be treated as a base year of tax.
- (4) So far as the agreement is inconsistent with this Act, the agreement prevails.

Part XII—Interpretation

136 Interpretation

- (1) In this Act, unless the contrary intention appears:

ABN has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*.

academic period, in relation to an educational institution, means:

- (a) if the academic years of the educational institution are divided into terms but not semesters—a term of the academic year;
- (b) if the academic years of the educational institution are divided into semesters (whether or not they are also divided into terms)—a semester of the academic year; or
- (c) if the academic years of the educational institution are not divided into terms or semesters—an academic year of the institution.

agent includes:

- (a) a person who, for and on behalf of a person out of Australia, has the management or control in Australia of the whole or a part of a business of the second-mentioned person; and
- (b) a person declared by the Commissioner, by notice in writing served on the person, to be an agent or the sole agent of a person for the purposes of this Act.

agent's certificate means a certificate under subsection 71(1).

aggregate fringe benefits amount has the meaning given by section 5C.

aggregate non-exempt amount has the meaning given by subsection 5B(1E).

aggregate non-rebatable amount has the meaning given by subsection 65J(2B).

airline operator, in relation to transport in a passenger aircraft provided in respect of the employment of an employee, means a

person who, at or about the time when that transport commenced to be provided, carried on a business of providing transport on passenger aircraft principally to outsiders.

airline transport benefit means a benefit referred to in section 32.

airline transport fringe benefit means a fringe benefit that is an airline transport benefit.

all-day parking, in relation to a particular day, means parking of a single car for a continuous period of 6 hours or more during a daylight period on that day.

amortised fringe benefit has the meaning given by section 65CA.

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

approved worker entitlement fund has the meaning given by subsections 58PB(1) and (2).

arm's length loan means a loan where the parties to the loan are dealing with each other at arm's length in relation to the loan.

arm's length transaction means a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

arrangement means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

assessable income has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

assessment means:

- (a) the ascertainment of the fringe benefits taxable amount of an employer of a year of tax and of the tax payable on that amount; or
- (b) the ascertainment of the additional tax payable under a provision of Part VIII.

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associate has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

Note: Section 159 of this Act affects the above definition.

associated premises, in relation to a person, means premises, or a part of premises:

- (a) owned by the person; or
- (b) leased by the person; or
- (c) otherwise under the control of the person;

but does not include:

- (d) business premises of the person; or
- (e) premises, or a part of premises, used as a place of residence of an employee of the person or an employee of an associate of the person.

Australia, when used in a geographical sense, includes the external Territories.

Australian workers' compensation law means a workers' compensation law that is a law of the Commonwealth or of a State or Territory.

basic car rate, in relation to a year of tax ending on 31 March in a year, means the rate prescribed for the purposes of section 28-25 of the *Income Tax Assessment Act 1997* in relation to the year of income ending on 30 June in that year.

benchmark interest rate:

- (a) in relation to a year of tax, means the rate of interest, known as the large bank housing lenders variable interest rate on loans for housing for owner occupation, last published by the Reserve Bank of Australia before the commencement of the year of tax; and
- (b) in relation to a time after 2 April 1986 and before 1 July 1986, means a rate of interest offered anywhere in Australia at that time in respect of a Commonwealth Bank housing loan.

benefit includes any right (including a right in relation to, and an interest in, real or personal property), privilege, service or facility and, without limiting the generality of the foregoing, includes a

right, benefit, privilege, service or facility that is, or is to be, provided under:

- (a) an arrangement for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property;
 - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
- (b) a contract of insurance; or
- (c) an arrangement for or in relation to the lending of money.

board benefit means a benefit referred to in section 35.

board fringe benefit means a fringe benefit that is a board benefit.

board meal means a meal provided, in respect of the employment of an employee of an employer, to a person (in this definition referred to as the *recipient*), being the employee or an associate of the employee, where:

- (a) the meal is provided on a meal entitlement day;
- (b) the meal is provided by the employer or, if the employer is a company, by the employer or by a company that is related to the employer;
- (c) either of the following subparagraphs applies:
 - (i) the meal is cooked or otherwise prepared on eligible premises of the employer and is provided to the recipient on eligible premises of the employer (not being a dining facility that, at any time, is open to the public);
 - (ii) the following conditions are satisfied:
 - (A) the duties of employment of the employee consist principally of duties to be performed in, or in connection with, an eligible dining facility of the employer or a facility for the provision of accommodation, recreation or travel of which the eligible dining facility forms part;
 - (B) the meal is cooked or otherwise prepared in the cooking facility of the eligible dining facility;

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- (C) the meal is provided to the recipient in the eligible dining facility;
- (d) the facility in which the meal is cooked or otherwise prepared is not for use wholly or principally for the cooking or other preparation of meals solely for the employee or associates of the employee or for the employee and associates of the employee; and
- (e) the meal is not provided at a party, reception or other social function.

business day means a day other than a Saturday, a Sunday or a public holiday in the place concerned.

business journey means:

- (a) for the purposes of the application of Division 2 of Part III in relation to a car fringe benefit in relation to an employer in relation to a car—a journey undertaken in a car otherwise than in the application of the car to a private use, being an application that results in the provision of a fringe benefit in relation to the employer; or
- (b) for the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit, as the case requires, in relation to an employee in relation to a car—a journey undertaken in the car in the course of producing assessable income of the employee.

business kilometre, in relation to a car, means a kilometre travelled by the car in the course of a business journey.

business operations, in relation to a government body or a non-profit company, includes any operations or activities carried out by that body or company.

business premises, in relation to a person, means premises, or a part of premises, of the person used, in whole or in part, for the purposes of business operations of the person, but does not include:

- (a) premises, or a part of premises, used as a place of residence of an employee of the person or an employee of an associate of the person; or
- (b) a corporate box; or

- (c) boats or planes used primarily for the purpose of providing entertainment unless the boat or plane is used in the person's business of providing entertainment; or
- (d) other premises used primarily for the purpose of providing entertainment unless the premises are used in the person's business of providing entertainment.

business use percentage, for a car held by a person during a period (the *holding period*) in an FBT year, means the percentage worked out using the formula:

$$\frac{\text{Number of business kilometres travelled by the car during the holding period}}{\text{Total number of kilometres travelled by the car during the holding period}} \times 100\%$$

car has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

car benefit means a benefit referred to in subsection 7(1).

car expense, in relation to a car, means an expense incurred in respect of:

- (a) the registration of, or insurance in respect of, the car;
- (b) repairs to or maintenance of the car; or
- (c) fuel for the car.

car expense payment benefit means an expense payment fringe benefit where the recipients expenditure is a Division 28 car expense.

car fringe benefit means a fringe benefit that is a car benefit.

car loan benefit means a loan fringe benefit where the loan was used by the recipient to:

- (a) purchase a car; or
- (b) pay a Division 28 car expense.

car parking benefit means a benefit referred to in section 39A.

car parking fringe benefit means a fringe benefit that is a car parking benefit.

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car property benefit means a property fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been a Division 28 car expense.

car residual benefit means a residual fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been a Division 28 car expense.

car substantiation declaration, in relation to a car held by a person during a period (in this definition called the **holding period**) in a year of tax, means a declaration, in a form approved by the Commissioner, for the purposes of paragraphs 19(1)(ca), 24(1)(ea), 44(1)(da) and 52(1)(da), in relation to the car in relation to the holding period.

child has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

child care facility means a facility at which a person receives, or is ready to receive, 2 or more children under the age of 6, not being associates of the person, for the purpose of minding, caring for or educating them for a day or part of a day without provision for residential care but does not include a facility at the place of residence of any of those children.

close relative, in relation to a person, means:

- (a) the spouse of the person;
- (b) a child or parent of the person; or
- (c) a parent of the person's spouse.

commercial parking station, in relation to a particular day, means a permanent commercial car parking facility where any or all of the car parking spaces are available in the ordinary course of business to members of the public for all-day parking on that day on payment of a fee, but does not include a parking facility on a public street, road, lane, thoroughfare or footpath paid for by inserting money in a meter or by obtaining a voucher.

Commissioner means the Commissioner of Taxation.

Commonwealth Bank housing loan means an arm's length loan by the Commonwealth Bank of Australia made in the ordinary course of business to a member of the public, being a loan:

- (a) for housing purposes; and
- (b) the terms of which provide for:
 - (i) interest to be calculated on the daily balance of the loan; and
 - (ii) that interest to be added to the balance of the loan at monthly intervals.

company includes any body or association, corporate or unincorporate, but does not include a partnership.

comparison time means:

- (a) in relation to a residual fringe benefit:
 - (i) where the fringe benefit is constituted by a benefit to which subsection 46(2) applies—the commencement of the billing period referred to in that subsection in relation to the benefit; or
 - (ii) in any other case:
 - (A) where the fringe benefit is a period residual fringe benefit—the time when the recipients overall benefit commenced to be provided; or
 - (B) in any other case—the time when the benefit is provided; and
- (b) in relation to an air transport fringe benefit—the time when the benefit is provided.

compensable work-related trauma means work-related trauma suffered by an employee where:

- (a) if there is no Australian workers' compensation law that applies to the employment of the employee—if any Australian workers' compensation law had applied to the employment of the employee, that law would have provided for compensation or other benefits for or in respect of the trauma; or
- (b) in all cases—there is a workers' compensation law that:
 - (i) applies to the employment of the employee; and
 - (ii) provides for compensation or other benefits for or in respect of the trauma.

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contract of investment insurance means a contract of life assurance insuring payment of money in the event that the life insured is alive on a specified date, whether or not the contract also insures the payment of money in any other event.

cost price:

- (a) in relation to a car owned by a person, means:
- (i) where the car was manufactured by the person—the amount for which the car could reasonably have been expected to have been sold by the person by wholesale under an arm’s length transaction at or about the time when the car was applied to the person’s own use; or
 - (ii) where neither subparagraph (i) nor (iii) applies, an amount equal to the sum of:
 - (A) the expenditure incurred by the person (other than expenditure in respect of registration or in respect of a tax on, or on a transfer of, registration) that is directly attributable to the acquisition or delivery of the car or, if subsection 7(6) applies in relation to the car, the leased car value of the car when the person first took the car on hire; and
 - (B) the amount of any additional expenditure incurred by the person for or in relation to the fitting of non-business accessories to the car at or about the time when the car was acquired by the person, reduced by the amount of any reimbursement of the whole or a part of that expenditure paid, at or about the time when the expenditure was incurred, by a recipient of a car benefit in relation to the car; or
 - (iii) where subparagraph (i) does not apply and the person was entitled to privileges or exemptions in relation to customs duty in respect of a transaction by which the person acquired the car or by which the person arranged for the fitting of non-business accessories to the car at or about the time when the car was acquired by the person, the amount that could reasonably have been expected to have been applicable under subparagraph (ii) if the person had not been entitled to those privileges to exemptions;

- (b) in relation to a non-business accessory fitted to a car, means:
- (i) where the accessory was manufactured by the person who held the car at the time of the fitting—the amount for which the accessory could reasonably have been expected to have been sold under an arm’s length transaction by the person by wholesale at or about the time when the accessory was applied to the person’s own use; and
 - (ii) where neither subparagraph (i) nor (iii) applies—the expenditure incurred, by a person other than a recipient of a car benefit in relation to the car, for or in relation to the fitting of the accessory, reduced by the amount of any reimbursement of the whole or a part of that expenditure paid at or about that time by a recipient of a car benefit in relation to the car; and
 - (iii) where subparagraph (i) does not apply and a person was entitled to privileges or exemptions in relation to customs duty in respect of a transaction by which the person acquired the accessory—the amount that could reasonably have been expected to have been applicable under subparagraph (ii) if the person had not been entitled to those privileges or exemptions; and
- (c) in relation to the recipients property in relation to a property fringe benefit—means the expenditure incurred by the provider that is directly attributable to purchasing or obtaining delivery of the property.

counselling includes the giving of advice or information in a seminar.

current employee means a person who receives, or is entitled to receive, salary or wages.

current employer means a person (including a government body) who pays, or is liable to pay, salary or wages, and includes:

- (a) in the case of a partnership—each partner; and
- (b) in the case of any other unincorporated association or body of persons—its manager or other principal officer.

current identical benefit, in relation to an identical overall benefit in relation to a year of tax, means that identical overall benefit insofar as it was provided during the year of tax.

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customs duty means customs duty imposed under a law of the Commonwealth or of a Territory.

daily balance, in relation to a loan, means the balance of the loan at the end of a day.

daylight period, in relation to a day, means so much of a period on that day as occurs:

- (a) after 7 a.m. on that day; and
- (b) before 7 p.m. on that day.

debt waiver benefit means a benefit referred to in section 14.

debt waiver fringe benefit means a fringe benefit that is a debt waiver benefit.

December quarter means a quarter ending on 31 December.

declaration date, in relation to an employer in relation to a year of tax, means the date of lodgment of the return of the fringe benefits taxable amount of the employer of the year of tax, or such later date as the Commissioner allows.

deductible expenses, in relation to an allowance paid to an employee, means expenses incurred by the employee in respect of which a deduction is allowable to the employee under section 8-1 of the *Income Tax Assessment Act 1997* (ignoring Divisions 28, 32 and 900 of that Act).

deferred BAS payer has the same meaning as in subsection 995-1(1) in the *Income Tax Assessment Act 1997*.

Deputy Commissioner means a Deputy Commissioner of Taxation.

disadvantaged person means:

- (a) a person who is intellectually, psychiatrically or physically handicapped; or
- (b) a person who is in necessitous circumstances.

disease has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

Division 28 car expense means a car expense as defined in section 28-13 of the *Income Tax Assessment Act 1997*, but does not include a car expense covered by section 28-165 of that Act.

documentary evidence, in relation to an expense incurred by a person, means a document that would constitute written evidence of the expense obtained in a way described in Subdivision 900-E of the *Income Tax Assessment Act 1997* if the expense were a work expense, and Division 900 of that Act applied to the person.

domestic route means a route where the port of embarkation and the port of disembarkation are both within Australia.

domestic services includes:

- (a) child care;
- (b) gardening;
- (c) home renovations, repairs or maintenance;
- (d) house cleaning;
- (e) nursing care; and
- (f) preparation of meals.

dwelling means a unit of accommodation constituted by, or contained in a building, being a unit that consists, in whole or in substantial part, of residential accommodation.

economy air fare, in relation to a person being carried on a scheduled passenger air service operated by a carrier over a route, means:

- (a) in a case where paragraph (b) does not apply—the standard air fare (other than a preferential air fare) charged by the carrier in respect of the scheduled air service; or
- (b) in a case where the carrier charges children, students or blind persons a concessional air fare in respect of the air fare to which paragraph (a) applies and the person is eligible for such a concessional air fare—the concessional air fare concerned;

being, in either case, an air fare in relation to which no special booking conditions are attached.

educational institution means a school, college or university.

elderly person means a person who has attained the age of 60 years.

electronic signature has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

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eligible car parking expense payment benefit means an expense payment benefit where:

- (a) the recipient is an employee or an associate of an employee; and
- (b) the recipients expenditure is in respect of the provision of car parking facilities for a car on one or more days; and
- (c) the following conditions are satisfied in relation to any of those days:
 - (i) on that day, the employee has a primary place of employment;
 - (ii) on that day, the car was parked for one or more daylight periods exceeding 4 hours in total at, or in the vicinity of, that primary place of employment;
 - (iii) the whole or a part of the recipients expenditure is in respect of the provision of the parking facilities to which that parking relates;
 - (iv) on that day, the car was used in connection with travel by the employee between the place of residence of the employee and that primary place of employment;
 - (v) the provision of parking facilities for the car during the period or periods is not taken, under the regulations, to be excluded from this definition;
 - (vi) the day is on or after 1 July 1993.

eligible dining facility, in relation to an employer, means:

- (a) a canteen, dining room or similar facility; or
- (b) a café, restaurant or similar facility;

that is located on premises of the employer or, if the employer is a company, of the employer or of a company that is related to the employer.

eligible family member means:

- (a) in relation to an employee who is required to live away from his or her usual place of residence during a period in order to perform the duties of his or her employment:
 - (i) the employee; or
 - (ii) the spouse of the employee, or a child of the employee, being a spouse or child, as the case may be:
 - (A) who lived with the employee during that period; and

- (B) whose usual place of residence during that period was the same as the usual place of residence of the employee; and
- (b) in relation to a living-away-from-home allowance fringe benefit in relation to an employee, means:
 - (i) the employee; or
 - (ii) the spouse of the employee, or a child of the employee, being a spouse or child, as the case may be:
 - (A) in respect of whom the recipients allowance is paid;
 - (B) who lived with the employee during the recipients allowance period; and
 - (C) whose usual place of residence during that period was the same as the usual place of residence of the employee.

eligible foreign remuneration has the same meaning as in section 23AF of the *Income Tax Assessment Act 1936*.

eligible incidental travel expense payment benefit means an expense payment fringe benefit where:

- (a) either:
 - (i) the recipients expenditure:
 - (A) is in respect of travel by the recipient away from the recipient's usual place of residence undertaken in the course of performing the duties of his or her employment, being expenditure in respect of accommodation, the purchase of food or drink or otherwise incidental to the travel; and
 - (B) relates solely to travel by the recipient in Australia; or
 - (ii) the recipients expenditure:
 - (A) is in respect of travel by the recipient away from the recipient's usual place of residence undertaken in the course of performing the duties of his or her employment, being expenditure in respect of the purchase of food or drink or otherwise incidental to the travel (except in respect of accommodation); and

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- (B) relates solely or principally to travel by the recipient outside Australia; and
- (b) the payment or reimbursement, as the case may be, that constitutes the fringe benefit is in the nature of compensation to the recipient for the expenses that the recipient might reasonably be expected to have incurred in respect of the matters specified in sub-subparagraph (a)(i)(A) or (a)(ii)(A), as the case requires.

eligible overtime meal expense payment benefit means an expense payment fringe benefit where:

- (a) the recipient's expenditure is incurred in respect of the purchase of food or drink in connection with overtime worked by the recipient; and
- (b) the payment or reimbursement, as the case may be, that constitutes the fringe benefit is in the nature of compensation to the recipient for the expenses that the recipient might reasonably be expected to have incurred in respect of the purchase of food or drink in connection with that overtime.

eligible pre-commencement loan means a loan made before 1 July 1986 at a rate of interest that:

- (a) is specified in a document in existence at the time when the loan was made; and
- (b) cannot be varied.

eligible premises, in relation to entertainment, a meal, or food or drink, provided in respect of the employment of an employee of an employer, means:

- (a) if the employer is a company—premises of the employer or of a company that is related to the employer; or
- (b) in any other case—premises of the employer;
- and includes, in either case, a location at or adjacent to a site at which the employee performs duties of that employment.

emergency means an emergency involving any of the following matters:

- (a) a natural disaster;
- (b) a conflict involving an armed force;
- (c) a civil disturbance;
- (d) an accident;

- (e) a serious illness;
- (f) any similar matter.

emergency assistance, in relation to a person, means assistance granted to the person where:

- (a) the person is, or is at immediate risk of becoming, the victim of an emergency;
- (b) the assistance is granted to the person solely in order to provide immediate relief;
- (c) the assistance is in respect of all or any of the following matters:
 - (i) first aid or other emergency health care;
 - (ii) emergency meals or food supplies;
 - (iii) emergency clothing;
 - (iv) emergency transport;
 - (v) emergency accommodation;
 - (vi) emergency use of household goods;
 - (vii) temporary repairs;
 - (viii) any similar matter.

employee means:

- (a) a current employee;
- (b) a future employee; or
- (c) a former employee.

employee credit loan benefit, in relation to a year of tax, means a loan fringe benefit in relation to an employee in relation to the year of tax where:

- (a) the loan consists of the provision of credit to the employee in respect of:
 - (i) property sold; or
 - (ii) other benefits provided;to the employee by the provider of the fringe benefit; and
- (b) if the employee had, on the last day of the period during the year of tax when the employee was under an obligation to repay the whole or any part of the loan, incurred interest in respect of the loan in respect of that period, that interest would have been exclusively incurred in gaining or producing salary or wages of the employee in respect of the employment to which the fringe benefit relates.

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employee share loan benefit, in relation to a year of tax, means a loan fringe benefit in relation to an employee in relation to an employer in relation to the year of tax where:

- (a) the sole purpose of the making of the loan is to enable the employee to acquire shares, or rights to acquire shares, in a company, being:
 - (i) the employer; or
 - (ii) an associate of the employer; and
- (b) the shares or rights were beneficially owned by the employee at all times during the period during the year of tax when the employee was under an obligation to repay the whole or any part of the loan.

employee's share of the taxable value of a fringe benefit has the meaning given by section 5F.

employer means:

- (a) a current employer;
- (b) a future employer; or
- (c) a former employer;

but does not include:

- (d) the Commonwealth; or
- (e) an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.

employment, in relation to a person, means the holding of any office or appointment, the performance of any functions or duties, the engaging in of any work, or the doing of any acts or things that results, will result or has resulted in the person being treated as an employee.

entertainment has the meaning given by section 32-10 of the *Income Tax Assessment Act 1997*.

entertainment facility leasing expenses, for a person, means expenses incurred by the person in hiring or leasing:

- (a) a corporate box; or
- (b) boats, or planes, for the purpose of the provision of entertainment; or

(c) other premises, or facilities, for the purpose of the provision of entertainment;

but does not include so much of any of such expenses that:

(d) is attributable to the provision of food or drink; or

(e) is attributable to advertising and is an allowable deduction for the person under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

entity has the meaning given by section 960-100 of the *Income Tax Assessment Act 1997*.

excluded fringe benefit, in relation to an employee, employer and year of tax, has the meaning given by subsection 5E(3).

exclusive employee airline transport benefit means an airline transport fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients transport, that expenditure would have been exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates.

exclusive employee expense payment benefit means an expense payment fringe benefit where the recipients expenditure is exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates and is not expenditure in respect of interest.

exclusive employee property benefit means a property fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients property, that expenditure would have been exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates.

exclusive employee residual benefit means a residual fringe benefit where, if the recipient had incurred expenditure in respect of the provision of the recipients benefit, that expenditure would have been exclusively incurred in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates.

exempt accommodation component, in relation to a living-away-from-home allowance fringe benefit in relation to an employee of an employer, in relation to a year of tax, means:

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- (a) where the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out particulars of:
 - (i) the employee's usual place of residence during the recipients allowance period; and
 - (ii) the place at which the employee actually resided during the recipients allowance period;so much (if any) of the recipients allowance as it would be concluded is in the nature of compensation to the employee for additional expenses that might reasonably be expected to be incurred by the employee in respect of the subsistence during the recipients allowance period of a lease or licence in respect of a unit of accommodation for the accommodation of eligible family members; or
- (b) in any other case—nil.

exempt food component, in relation to a living-away-from-home allowance fringe benefit in relation to an employee of an employer, in relation to a year of tax, means:

- (a) where the employee gives to the employer, before the declaration date, a declaration, in a form approved by the Commissioner, purporting to set out particulars of:
 - (i) the employee's usual place of residence during the recipients allowance period; and
 - (ii) the place at which the employee actually resided during the recipients allowance period;whichever of the following is applicable:
 - (iii) where the food component of the recipients allowance has been determined by allowing for the whole or a part of the amount (which whole or part is in this definition referred to as the **deducted home consumption expenditure**) of the expenditure that might reasonably be expected to have been incurred by the employee, in respect of the recipients allowance period, in respect of food or drink for eligible family members if the eligible family members had resided at their usual place of residence during the recipients allowance period:
 - (A) if the deducted home consumption expenditure is not less than the sum of the statutory food amounts in respect of eligible family members in respect of the recipients allowance period—

the food component of the recipients allowance;
or

- (B) in any other case—the amount ascertained in accordance with the formula:

$$A - [B - C]$$

where:

A is the food component of the recipients allowance;

B is the sum of the statutory food amounts in respect of eligible family members in respect of the recipients allowance period; and

C is the deducted home consumption expenditure;

- (iv) where subparagraph (iii) does not apply—the food component of the recipients allowance reduced by the sum of the statutory food amounts in respect of eligible family members in respect of the recipients allowance period; or

- (b) in any other case—nil.

expense payment benefit means a benefit referred to in section 20.

expense payment fringe benefit means a fringe benefit that is an expense payment benefit.

extended travel airline transport benefit means an airline transport fringe benefit where:

- (a) the recipients transport is over an international route and involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights; or
- (b) the following conditions are satisfied:
- (i) the recipients transport is in respect of travel by the recipient within Australia that involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights;

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- (ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates.

extended travel expense payment benefit means an expense payment fringe benefit where:

- (a) the recipient's expenditure is in respect of travel outside Australia and involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights; or
- (b) the following conditions are satisfied:
 - (i) the recipient's expenditure is in respect of travel by the recipient within Australia that involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights;
 - (ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates;

but does not include a car expense payment benefit.

extended travel property benefit means a property fringe benefit where:

- (a) the recipient's property is in respect of travel outside Australia and involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights; or
- (b) the following conditions are satisfied:
 - (i) the recipient's property is provided in respect of travel by the recipient within Australia that involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights;
 - (ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates;

but does not include a car property benefit.

extended travel residual benefit means a residual fringe benefit where:

- (a) the recipient's benefit is in respect of travel outside Australia and involves the recipient being away from the recipient's

usual place of residence for a continuous period including more than 5 nights; or

(b) the following conditions are satisfied:

- (i) the recipients benefit consists of, or is in respect of, travel by the recipient within Australia that involves the recipient being away from the recipient's usual place of residence for a continuous period including more than 5 nights;
- (ii) the travel was not undertaken exclusively in gaining or producing salary or wages of the recipient in respect of the employment to which the fringe benefit relates;

but does not include a car residual benefit.

external administrator has the same meaning as in the *Payment Systems and Netting Act 1998*.

external expense payment fringe benefit means an expense payment fringe benefit other than an in-house expense payment fringe benefit.

external non-period residual fringe benefit means a non-period residual fringe benefit other than an in-house residual fringe benefit.

external period residual fringe benefit means a period residual fringe benefit other than an in-house residual fringe benefit.

external property fringe benefit, in relation to an employer, means a property fringe benefit in relation to the employer other than an in-house property fringe benefit.

family member, in relation to a benefit provided to an employee, or to an associate of an employee, in respect of the employment of the employee, means:

- (a) the employee;
- (b) the spouse of the employee; or
- (c) a child of the employee.

FBT year means a year beginning on 1 April.

fitting, in relation to a non-business accessory, includes the acquisition of the accessory.

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food component, in relation to the recipients allowance in relation to a living-away-from-home allowance fringe benefit in relation to an employee of an employer, means so much (if any) of the recipients allowance as it would be concluded is in the nature of compensation for expenses that the employee might reasonably be expected to incur, in respect of the recipients allowance period, in respect of food or drink for eligible family members.

foreign earnings has the same meaning as in section 23AG of the *Income Tax Assessment Act 1936*.

former employee means a person who has been a current employee.

former employer means a person who has been a current employer.

fringe benefit, in relation to an employee, in relation to the employer of the employee, in relation to a year of tax, means a benefit:

- (a) provided at any time during the year of tax; or
- (b) provided in respect of the year of tax;

being a benefit provided to the employee or to an associate of the employee by:

- (c) the employer; or
- (d) an associate of the employer; or
- (e) a person (in this paragraph referred to as the **arranger**) other than the employer or an associate of the employer under an arrangement covered by paragraph (a) of the definition of **arrangement** between:
 - (i) the employer or an associate of the employer; and
 - (ii) the arranger or another person; or

(ea) a person other than the employer or an associate of the employer, if the employer or an associate of the employer:

- (i) participates in or facilitates the provision or receipt of the benefit; or
- (ii) participates in, facilitates or promotes a scheme or plan involving the provision of the benefit;

and the employer or associate knows, or ought reasonably to know, that the employer or associate is doing so;

in respect of the employment of the employee, but does not include:

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- (f) a payment of salary or wages or a payment that would be salary or wages if salary or wages included exempt income for the purposes of the *Income Tax Assessment Act 1936*; or
 - (g) a benefit that is an exempt benefit in relation to the year of tax; or
 - (h) a benefit constituted by the acquisition by the employee, or by a relative of the employee, of a share in a company, or of a right to acquire a share in a company, under a scheme for the acquisition of shares by employees, where section 26AAC of the *Income Tax Assessment Act 1936* applies in relation to the acquisition; or

Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be relevant to determining who a person's relatives are for the purposes of paragraph (h).

- (ha) a benefit constituted by the acquisition by a person of a share or right to acquire a share under an employee share scheme (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*); or
- (haa) a benefit constituted by the acquisition by a person under an employee share scheme (within the meaning of that Division) of a stapled security or right to acquire a stapled security that is treated as a qualifying share or qualifying right for the purposes of that Division because of Subdivision DB of that Division; or
- (hb) a benefit constituted by the acquisition by a trust of money or other property where the sole activities of the trust are obtaining shares, or rights to acquire shares, in a company, or a holding company (within the meaning of the *Corporations Act 2001*) of the first-mentioned company, and providing those shares or rights:
 - (i) to employees, or associates of employees, of the first-mentioned company; or
 - (ii) to persons who are engaged in foreign service (within the meaning of section 139GBA of the *Income Tax Assessment Act 1936*) for the first-mentioned company, or associates of those persons; or
- (hc) a benefit constituted by the acquisition by a trust of money or other property where the sole activities of the trust are obtaining stapled securities or rights to acquire stapled securities that are treated as qualifying shares or qualifying rights for the purposes of Division 13A of Part III of the

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Income Tax Assessment Act 1936 because of Subdivision DB of that Division, and providing those stapled securities or rights:

- (i) to employees of a stapled entity (within the meaning of that Division) for the stapled securities, or to associates of those employees; or
 - (ii) to persons who are engaged in foreign service (within the meaning of section 139GBA of the *Income Tax Assessment Act 1936*) for a stapled entity for the stapled securities, or associates of those persons; or
 - (iii) for a case where, if all the stapled entities for any of the stapled securities were part of one company, that company would be a holding company (within the meaning of the *Corporations Act 2001*) of another company—to employees, or associates of employees of that other company; or
 - (iv) for a case where, if all the stapled entities for any of the stapled securities were part of one company, that company would be a holding company (within the meaning of the *Corporations Act 2001*) of another company—to persons who are engaged in foreign service (within the meaning of section 139GBA of the *Income Tax Assessment Act 1936*) for that other company, or associates of those persons; or
- (hd) a benefit:
- (i) constituted by the making of a contribution to an FHSA (within the meaning of the *First Home Saver Accounts Act 2008*); or
 - (ii) that is an expense payment benefit in relation to a contribution to an FHSA (within the meaning of the *First Home Saver Accounts Act 2008*); or
- (j) a benefit constituted by:
- (i) the making of a contribution to a superannuation fund (as defined by the *Income Tax Assessment Act 1997*) that the person making the contribution had reasonable grounds for believing was a complying superannuation fund (as defined by that Act) for the purpose of making provision for superannuation benefits for the employee (whether or not the benefits are payable to a dependant of the employee if the employee dies before or after becoming entitled to receive the benefits); or
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- (ii) the making of a contribution to a foreign superannuation fund (within the meaning of the *Income Tax Assessment Act 1997*) where:
 - (A) the contribution is for the purpose of making provision for superannuation benefits for the employee (whether or not the benefits are payable to a dependant of the employee if the employee dies before or after becoming entitled to receive the benefits); and
 - (B) the employee is a temporary resident (within the meaning of the *Income Tax Assessment Act 1997*) when the contribution is made; or
 - (iii) the making of a payment of money to an RSA (within the meaning of the *Retirement Savings Accounts Act 1997*) that is held by the employee; or
 - (k) a superannuation benefit (within the meaning of the *Income Tax Assessment Act 1997*); or
 - (l) a payment covered by section 26AF or 26AFA of the *Income Tax Assessment Act 1936*; or
 - (la) an early retirement scheme payment (within the meaning of the *Income Tax Assessment Act 1997*); or
 - (lb) a genuine redundancy payment (within the meaning of the *Income Tax Assessment Act 1997*); or
 - (lc) an employment termination payment (within the meaning of the *Income Tax Assessment Act 1997*); or
 - (ld) a payment that would be an employment termination payment (within the meaning of the *Income Tax Assessment Act 1997*) apart from paragraph 82-130(1)(b) of that Act; or
 - (le) any of the following payments, if they would be employment termination payments (within the meaning of the *Income Tax Assessment Act 1997*) apart from paragraph 82-130(1)(b) and section 82-135 of that Act:
 - (i) an unused annual leave payment (within the meaning of that Act);
 - (ii) an unused long service leave payment (within the meaning of that Act);
 - (iii) a payment covered by Subdivision 83-D (Foreign termination payments) of that Act;
 - (iv) a payment covered by paragraph 82-135(g) of that Act;
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- (v) a payment of an annuity, or a supplement, covered by section 27H of the *Income Tax Assessment Act 1936*; or
- (m) consideration of a capital nature for, or in respect of:
 - (i) a legally enforceable contract in restraint of trade by a person; or
 - (ii) personal injury to a person; or
- (ma) a payment, within the meaning of subsection 104-255(7) of the *Income Tax Assessment Act 1997*, of a carried interest of a kind referred to in subsection 104-255(1) of that Act; or
- (mb) a grant or acquisition of such a carried interest, or of an entitlement to such a payment; or
- (n) a payment of an amount that, under any provision of the *Income Tax Assessment Act 1936*, is deemed to be a dividend paid to the recipient; or
- (p) a payment made, or liability incurred, to a person to the extent that the payment or liability is, by virtue of subsection 65(1A) of the *Income Tax Assessment Act 1936*, deemed not to be income of the person for the purposes of that Act; or
- (q) a benefit constituted by the conferral of a present entitlement to, or a distribution of, income or capital to the extent that subsection 271-105(1) of Schedule 2F to the *Income Tax Assessment Act 1936* would prevent the inclusion of the amount or value of the income or capital in assessable income, assuming that it would otherwise be so included; or
- (r) anything done in relation to a shareholder in a private company (as those terms are defined in section 6 of the *Income Tax Assessment Act 1936*), or an associate of such a shareholder, that causes (or will cause) the private company to be taken under Division 7A of Part III of that Act to pay the shareholder or associate a dividend; or
- (s) a loan (within the meaning of section 109D of the *Income Tax Assessment Act 1936*), if:
 - (i) a dividend is not taken to be paid under that section in relation to the loan, but would be if section 109N of that Act were disregarded; or
 - (ii) an amount is not included, as if it were a dividend, in the assessable income of an entity under section 109XB of that Act in relation to the loan, but would be if section 109N of that Act were disregarded.

fringe benefits tax or **tax** means tax imposed by the *Fringe Benefits Tax Act 1986*.

fringe benefits taxable amount has the meaning given by section 5B.

future employee means a person who will become a current employee.

future employer means a person who will become a current employer.

general interest charge means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

government body means the Commonwealth, a State, a Territory or an authority of the Commonwealth or of a State or Territory.

GST-creditable benefit has the meaning given by section 149A.

health care means any examination, test or form of care (whether therapeutic, preventative or rehabilitative) that is related to the physiological or psychological health of a person and, without limiting the generality of the foregoing, includes:

- (a) the supply, maintenance or repair of:
 - (i) an artificial limb or other artificial substitute; or
 - (ii) a medical, surgical or similar aid or appliance used by a person; and
- (b) the supply of drugs or other property in connection with such an examination, test or form of care.

health promotion charity means a charitable institution whose principal activity is to promote the prevention or the control of diseases in human beings.

housing benefit means a benefit referred to in section 25.

housing fringe benefit means a fringe benefit that is a housing benefit.

housing right, in relation to a person, means a lease or licence granted to the person to occupy or use a unit of accommodation, insofar as that lease or licence subsists at a time when the unit of accommodation is the person's usual place of residence.

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identical benefit, in relation to the recipients benefit in relation to a residual fringe benefit, means another benefit that is the same in all respects, except for differences (if any) that are minimal or insignificant and do not affect the value of the other benefit.

identical overall benefit, in relation to the recipients overall benefit in relation to a period residual fringe benefit, means a benefit that is the same in all respects as the recipients overall benefit (except for any differences that are minimal or insignificant and do not affect the value of the benefit).

identical property, in relation to the recipients property in relation to a property fringe benefit, means other property that is the same in all respects, including physical characteristics, quality and reputation, except for differences (if any) that are minimal or insignificant and do not affect the value of the property.

incorporated company means a company being a body corporate.

individual fringe benefits amount for a year of tax in respect of the employment of an employee by an employer has the meaning given by section 5E.

individual quasi-fringe benefits amount for a year of tax in respect of the employment of an employee by an employer has the meaning given by subsection 135Q(3).

industrial instrument means a law of the Commonwealth or of a State or Territory or an award, order, determination or industrial agreement in force under any such law.

in-house expense payment fringe benefit means:

- (a) an in-house property expense payment fringe benefit; or
- (b) an in-house residual expense payment fringe benefit.

in-house fringe benefit means:

- (a) an in-house expense payment fringe benefit;
- (b) an in-house property fringe benefit; or
- (c) an in-house residual fringe benefit.

in-house health care facility, in relation to an employer, means a clinic, surgery, first-aid station or similar facility that is:

- (a) operated wholly or principally for providing health care in respect of compensable work-related trauma suffered:

- (i) in any case—by employees of the employer; or
 - (ii) if the employer is a company—by employees of the employer or by employees of a company that is related to the employer; and
- (b) located:
- (i) on premises of the employer or, if the employer is a company, of the employer or of a company that is related to the employer; or
 - (ii) at or adjacent to a place where employees of the employer or, if the employer is a company, of the employer or of a company that is related to the employer (other than members of the staff of the facility) perform the duties of their employment.

in-house non-period residual fringe benefit means an in-house residual fringe benefit that is not provided during a period.

in-house period residual fringe benefit means an in-house residual fringe benefit that is provided during a period.

in-house property expense payment fringe benefit, in relation to an employer, means an expense payment fringe benefit in relation to the employer where:

- (a) the recipient's expenditure was incurred in respect of the provision of tangible property by a person (in this definition called the ***property provider***);
- (b) the provision of the property is a property benefit;
- (c) if the property provider is the employer or an associate of the employer—at or about the provision time, the property provider carried on a business that consisted of or included the provision of identical or similar property principally to outsiders;
- (d) if the property provider is not the employer or an associate of the employer:
 - (i) the property was acquired by the property provider from the employer or an associate of the employer (which employer or associate is in this definition called the ***seller***); and
 - (ii) at or about the provision time, both the property provider and the seller carried on a business that

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consisted of or included the provision of identical or similar property principally to outsiders; and

- (e) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date.

in-house property fringe benefit, in relation to an employer, means a property fringe benefit in relation to the employer in respect of tangible property:

- (a) where both of the following conditions are satisfied:
 - (i) the provider is the employer or an associate of the employer; and
 - (ii) at or about the provision time, the provider carried on a business that consisted of or included the provision of identical or similar property principally to outsiders; or
- (b) where all of the following conditions are satisfied:
 - (i) the provider is not the employer or an associate of the employer;
 - (ii) the property was acquired by the provider from the employer or an associate of the employer (which employer or associate is in this definition called the ***seller***); and
 - (iii) at or about the provision time, both the provider and the seller carried on a business that consisted of or included the provision of identical or similar property principally to outsiders.

in-house residual expense payment fringe benefit, in relation to an employer, means an expense payment fringe benefit in relation to the employer where:

- (a) the recipients expenditure was incurred in respect of the provision of a residual benefit (other than a benefit provided under a contract of investment insurance) by a person (in this definition called the ***residual benefit provider***);
- (b) if the residual benefit provider is the employer or an associate of the employer—at or about the time that, if the residual benefit had been a residual fringe benefit, would have been the comparison time, the residual benefit provider carried on a business that consisted of or included the provision of identical or similar benefits principally to outsiders;

- (c) if the residual benefit provider is not the employer or an associate of the employer:
 - (i) the residual benefit provider purchased the benefit from the employer or an associate of the employer (which employer or associate is in this definition called the *seller*); and
 - (ii) at or about the time that, if the residual benefit had been a residual fringe benefit, would have been the comparison time, both the residual benefit provider and the seller carried on a business that consisted of or included the provision of identical or similar benefits principally to outsiders; and
- (d) documentary evidence of the recipients expenditure is obtained by the recipient and that documentary evidence, or a copy, is given to the employer before the declaration date.

in-house residual fringe benefit, in relation to an employer, means a residual fringe benefit in relation to the employer:

- (a) where both of the following conditions are satisfied:
 - (i) the provider is the employer or an associate of the employer;
 - (ii) at or about the comparison time, the provider carried on a business that consisted of or included the provision of identical or similar benefits principally to outsiders; or
- (b) where all of the following conditions are satisfied:
 - (i) the provider is not the employer or an associate of the employer;
 - (ii) the provider purchased the benefit from the employer or an associate of the employer (which employer or associate is in this definition called the *seller*);
 - (iii) at or about the comparison time, both the provider and the seller carried on a business that consisted of or included the provision of identical or similar property principally to outsiders;

but does not include a benefit provided under a contract of investment insurance.

injury means any physical or mental injury.

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in respect of, in relation to the employment of an employee, includes by reason of, by virtue of, or for or in relation directly or indirectly to, that employment.

intangible property means:

- (a) real property;
- (b) a chose in action; and
- (c) any other kind of property other than tangible property;

but does not include:

- (d) a right arising under a contract of insurance; or
- (e) a lease or licence in respect of real property or tangible property.

interest, in relation to a loan, includes a payment in the nature of interest.

international aircrew expense payment benefit means an expense payment fringe benefit where the recipient's expenditure:

- (a) is in respect of travel by the recipient in the course of performing the duties of the recipient's employment as the pilot, flight engineer, flight attendant, or other member of the crew, of an aircraft, being expenditure in respect of accommodation, the purchase of food or drink or otherwise incidental to the travel; and
- (b) relates to travel by the recipient outside Australia.

international aircrew property benefit means a property fringe benefit where the recipient's property:

- (a) is in respect of travel by the recipient in the course of performing the duties of the recipient's employment as the pilot, flight engineer, flight attendant or other member of the crew, of an aircraft, being property that is:
 - (i) food or drink;
 - (ii) in respect of accommodation; or
 - (iii) otherwise incidental to the travel; and
- (b) relates to travel by the recipient outside Australia.

international aircrew residual benefit means a residual fringe benefit where the recipient's benefit:

- (a) is in respect of travel by the recipient in the course of performing the duties of the recipient's employment as the

pilot, flight engineer, flight attendant or other member of the crew of an aircraft, being a benefit that is in respect of accommodation or a benefit that is otherwise incidental to the travel; and

(b) relates to travel by the recipient outside Australia.

international route means a route that is not a domestic route.

law, in relation to a foreign country, means a law of that country, or of any part of, or place in, that country.

lease includes sub-lease.

leased means let on hire (including a letting on hire that is described in the relevant agreement as a lease) under an agreement other than a hire-purchase agreement.

leased car value, in relation to a car held but not owned by a person at a particular time, means:

- (a) in a case to which paragraph (b) does not apply—the amount that the person could reasonably be expected to have been required to pay to purchase the car from the owner at that time under an arm's length transaction; or
- (b) if the person commenced to lease the car at that time from a lessor who purchased the car at or about that time—the cost price of the car to the lessor.

liability to the Commonwealth means a liability to the Commonwealth arising under, or by virtue of, an Act of which the Commissioner has the general administration.

liquidator, in relation to a company, means a person who, whether or not appointed as liquidator, is required by law to carry out the winding up of the company.

living-away-from-home allowance benefit means a benefit referred to in section 30.

living-away-from-home allowance fringe benefit means a fringe benefit that is living-away-from-home allowance benefit.

living-away-from-home food fringe benefit means:

- (a) an expense payment fringe benefit provided in respect of the employment of an employee where:

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- (i) the recipients expenditure was incurred in respect of food or drink;
 - (ii) the food or drink was not for consumption while the employee was undertaking travel in the course of performing the duties of that employment; and
 - (iii) the food or drink was for consumption by eligible family members at a time when the employee was required to live away from his or her usual place of residence in order to perform the duties of that employment; or
- (b) a property fringe benefit provided in respect of the employment of an employee where:
- (i) the recipients property is food or drink;
 - (ii) the food or drink was not for consumption while the employee was undertaking travel in the course of performing the duties of that employment; and
 - (iii) the food or drink was for consumption by eligible family members at a time when the employee was required to live away from his or her usual place of residence in order to perform the duties of that employment.

loan includes:

- (a) an advance of money;
- (b) the provision of credit or any other form of financial accommodation;
- (c) the payment of an amount for, on account of, on behalf of or at the request of a person where there is an obligation (whether expressed or implied) to repay the amount; and
- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

loan benefit means a benefit referred to in subsection 16(1).

loan fringe benefit means a fringe benefit that is a loan benefit.

log book records, in relation to a car held by a person (in this definition called the **holder**), in relation to a period, means a daily log book or similar document in which, in respect of each business journey:

- (a) that is undertaken in the car during the period; and

(b) that the holder, or a person acting on behalf of the holder, chooses to record in the document for the purpose of demonstrating the pattern of use of the car during the period;

an entry setting out particulars of:

(c) the date on which the journey began and the date on which it ended; and

(d) the respective odometer readings of the car at the beginning and end of the journey; and

(e) the number of kilometres travelled by the car in the course of the journey; and

(f) the purpose or purposes of the journey;

is made in the English language at, or as soon as reasonably practicable after, the end of the journey.

long service award benefit, in relation to an employee of an employer, means a benefit provided to the employee, in respect of the employment of the employee, in, or in respect of, a year of tax solely by way of an award in recognition of the existence of a recognised long service period in relation to the employee that is not less than 15 years, but does not include:

(a) a payment of salary or wages or a payment that would be salary or wages if salary or wages included exempt income for the purposes of the *Income Tax Assessment Act 1936*;

(b) a benefit provided under a non-arm's length arrangement; or

(c) a benefit provided under an arrangement where, having regard to:

(i) the form and substance of the arrangement;

(ii) the matters taken into account in determining the period of recognised long service leave recognised by the award; and

(iii) the eligibility of other employees of the employer to be awarded benefits in recognition of the existence of recognised long service periods;

it would be concluded that the arrangement, or any part of the arrangement, was entered into by any of the parties to the arrangement for the sole or dominant purpose of enabling the employer to obtain the benefit of the application of section 58Q.

long service leave means:

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- (a) long service leave;
- (b) long leave;
- (c) furlough;
- (d) extended leave; or
- (e) leave of a similar kind (however described).

meal entertainment benefit means a benefit that is a meal entertainment benefit because of section 37AC.

meal entertainment fringe benefit means a fringe benefit that is a meal entertainment benefit.

meal entitlement day, in relation to a meal provided in a year of tax, in respect of the employment of an employee, to a person (in this definition referred to as the **recipient**) being the employee or an associate of the employee, means a day in respect of which:

- (a) in respect of the employment of the employee, the recipient was entitled to be provided (whether without charge or otherwise) with residential accommodation; and
- (b) either of the following subparagraphs applies:
 - (i) the recipient was entitled, pursuant to the provisions of an industrial instrument in respect of the employment of the employee, to be provided (whether without charge or otherwise) with not fewer than 2 meals on that day;
 - (ii) the following conditions are satisfied:
 - (A) under an arrangement that was in force during the whole or a part of the year of tax (which whole or part is in this subparagraph referred to as the **arrangement period**) in respect of the employment of the employee, the recipient was entitled to be provided (whether without charge or otherwise) with not fewer than 2 meals on that day;
 - (B) during the arrangement period, the recipient was also entitled under the arrangement to be provided (whether without charge or otherwise) with not fewer than 2 meals on each day during the arrangement period that was a working day in relation to the employee;
 - (C) pursuant to the arrangement, the recipient was ordinarily provided (whether without charge or

otherwise) with not fewer than 2 meals on the days referred to in sub-subparagraph (B).

migrant language training, in relation to a person, means a course attended by the person where:

- (a) at the time of attending the course, the person is, or intends to become, an immigrant to Australia; and
 - (b) the course is designed to:
 - (i) teach the English language; or
 - (ii) impart an understanding of the rights and duties of an Australian citizen and of the way of living of the Australian people;
- to persons whose first language is not English.

motor vehicle has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

natural person does not include a natural person in the capacity of trustee.

non-arm's length arrangement means an arrangement other than an arm's length arrangement.

non-business accessory, in relation to a car, means an accessory fitted to the car, whether at the factory where the car was assembled or at some other place, other than an accessory required to meet the special needs of any business operations in relation to which the car is used.

non-deductible entertainment expenditure means a loss or outgoing to the extent to which:

- (a) section 32-5 of the *Income Tax Assessment Act 1997* applies to it, or would apply if it were incurred in producing assessable income; and
- (b) apart from that section, it would be deductible under section 8-1 of that Act, or would be if it were incurred in producing assessable income;

(on the assumption that section 32-20 of the *Income Tax Assessment Act 1997* had not been enacted).

non-deductible exempt entertainment expenditure means non-deductible entertainment expenditure to the extent to which it is not incurred in producing assessable income.

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non-profit company means a company that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the company's constituent document, prohibited from making any distribution, whether in money, property or otherwise, to its members.

notional amount of interest, in relation to a loan in relation to a year of tax, means the amount of interest that would have accrued on the loan in respect of the year of tax if the interest were calculated on the daily balance of the loan at:

- (a) where the loan is an eligible pre-commencement loan:
 - (i) the statutory interest rate in relation to the time when the loan was made; or
 - (ii) the statutory interest rate in relation to the year of tax; whichever is the less;
- (b) where the loan is not an eligible pre-commencement loan, was made before 3 April 1986 and is a housing loan relating to a dwelling:
 - (i) the statutory interest rate in relation to the year of tax; or
 - (ii) 13.5% per annum; whichever is the less; or
- (c) in any other case—the statutory interest rate in relation to the year of tax.

notional taxable value, in relation to a benefit provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer, means the amount that, if it were assumed that:

- (a) in the case of a car benefit—the car benefit was a residual benefit; and
- (b) in all cases—the benefit was a fringe benefit in relation to the employer in relation to the year of tax;

would be the taxable value of the fringe benefit in relation to the year of tax.

notional tax amount has the meaning given by section 110.

notional value, in relation to the provision of property or another benefit to a person, means the amount that the person could reasonably be expected to have been required to pay to obtain the

property or other benefit from the provider under an arm's length transaction.

obligation, in relation to the payment or repayment of an amount, includes an obligation that is not enforceable by legal proceedings.

odometer records, in relation to a car, in relation to a period, means a document in which particulars of:

- (a) the odometer reading of the car at the commencement of the period; and
- (b) the odometer reading of the car at the end of the period; and
- (c) if paragraph 162K(2)(b) or 162L(2)(b) applies with effect from a particular date—the odometer readings of both the replacement car and of the original car referred to in that paragraph, as at that date;

are entered in the English language, at, or as soon as reasonably practicable after, the respective times to which those odometer readings relate.

offence against this Act includes an offence against:

- (a) the *Crimes Act 1914*; or
- (b) the *Taxation Administration Act 1953*;

relating to this Act.

officer means a person appointed or engaged under the *Public Service Act 1999*.

once-only deduction, in relation to expenditure, means a deduction in a year of income in respect of a percentage of the expenditure where no deduction is allowable in respect of a percentage of the expenditure in any other year of income.

original assessment date means:

- (a) in relation to an assessment other than an amended assessment—the day on which the assessment was made; and
- (b) in relation to an assessment being the first or a subsequent amendment of an assessment to which paragraph (a) applies—the day on which the original assessment was made.

outsider, in relation to the employment of an employee of an employer, means a person not being:

- (a) an employee of the employer;

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- (b) an employee of an associate of the employer;
- (c) an employee of a person (in this definition referred to as the *provider*) other than the employer or an associate of the employer who provides benefits to, or to associates of, employees of the employer or an associate of the employer under an arrangement between:
 - (i) the employer or an associate of the employer; and
 - (ii) the provider or another person; or
- (d) an associate of an employee to whom any of the preceding paragraphs apply.

parent has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

period residual fringe benefit means a residual fringe benefit that is provided during a period.

person includes:

- (a) a body politic;
- (b) a body corporate;
- (c) a partnership;
- (d) any other unincorporated association or body of persons; and
- (e) a person in the capacity of trustee.

personal services includes services as a personal secretary or chauffeur.

place of residence, in relation to a person, means:

- (a) a place at which the person resides; or
- (b) a place at which the person has sleeping accommodation;

whether on a permanent or temporary basis and whether or not on a shared basis.

preferential air fare means an air fare charged by a person in respect of travel over a route, being an air fare the payment of which entitles the person travelling to benefits to which some of the other passengers on the same flight are not entitled.

primary place of employment, in relation to an employee in relation to a day, means business premises, or associated premises, of the employer of the employee, or of an associate of the employer, where:

- (a) if the employee performed duties of his or her employment on that day—on that day; or
- (b) in any other case—on the most recent day before that day on which the employee performed duties of his or her employment;

those premises are or were:

- (c) the sole or primary place of employment of the employee; or
- (d) otherwise the sole or primary place from which or at which the employee performs duties of his or her employment.

private use, in relation to a motor vehicle, in relation to an employee or an associate of an employee, means any use of the motor vehicle by the employee or associate, as the case may be, that is not exclusively in the course of producing assessable income of the employee.

producing assessable income includes:

- (a) gaining assessable income; or
- (b) carrying on a business for the purpose of gaining or producing assessable income.

property means:

- (a) intangible property; and
- (b) tangible property.

property benefit means a benefit referred to in section 40, but does not include a benefit that is a benefit by virtue of a provision of Subdivision A of Divisions 2 to 10 (inclusive) of Part III.

property fringe benefit means a fringe benefit that is a property benefit.

provide:

- (a) in relation to a benefit—includes allow, confer, give, grant or perform; and
- (b) in relation to property—means dispose of (whether by sale, gift, declaration of trust or otherwise):
 - (i) if the property is a beneficial interest in property but does not include legal ownership—the beneficial interest; or
 - (ii) in any other case—the legal ownership of the property.

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provider, in relation to a benefit, means the person who provides the benefit.

providers portion, in relation to an expense payment fringe benefit, means whichever of the following amounts is applicable:

- (a) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution;
- (b) the amount of the reimbursement referred to in paragraph 20(b).

providers published air fare, in relation to an airline transport fringe benefit provided over a route in a year of tax, means:

- (a) where paragraph (b) does not apply:
 - (i) a qualifying air fare charged by the provider in respect of transport over that route; or
 - (ii) one half of a qualifying air fare charged by the provider in respect of return transport over that route;during the period of 12 months ending at the end of the year of tax; or
- (b) in a case where the provider charges children, students or blind persons a concessional air fare in respect of an air fare to which paragraph (a) applies and the recipient is eligible for such a concessional air fare—the concessional air fare concerned.

provision time, in relation to the provision of property, means the time when the property is provided.

qualifying air fare means an air fare charged by the provider of an airline transport fringe benefit in respect of transport over a route, being:

- (a) where the provider has premises in Australia at which air tickets issued by the provider are sold—an air fare that was:
 - (i) offered as being available to all members of the public by the provider at those premises; and
 - (ii) specified in a publication authorised by the provider and available at those premises; or
- (b) where the provider does not have premises as mentioned in paragraph (a) but an agent of the provider has premises in Australia at which air tickets issued by the provider are sold—an air fare that was:

- (i) offered as being available to all members of the public by the agent at those premises; and
- (ii) specified in a tariff manual authorised by the provider and available at those premises;

and being, in either case, an air fare that was not subject to special conditions requiring a booking to be made in respect of more than 1 person.

quarter means a period of 3 calendar months commencing on 1 January, 1 April, 1 July or 1 October.

recipient, in relation to a benefit, means the person to whom the benefit is provided.

recipients allowance, in relation to a living-away-from-home allowance fringe benefit, means the allowance, or the part of the allowance, the payment of which constitutes the fringe benefit.

recipients allowance period, in relation to a living-away-from-home allowance fringe benefit, means the period to which the recipients allowance relates.

recipients benefit, in relation to a residual benefit, means the benefit to which the residual benefit relates.

recipients contribution:

- (a) in relation to an airline transport fringe benefit, a car parking fringe benefit, a property fringe benefit, a residual fringe benefit or a board fringe benefit, being a fringe benefit provided in respect of the employment of an employee of an employer, means the amount of any consideration paid to the provider or to the employer by the recipient or by the employee in respect of the provision of the recipients transport, the recipients parking, the recipients property, the recipients benefit or the recipients meal, as the case may be, reduced by the amount of any reimbursement paid to the recipient in respect of that consideration; and
- (b) in relation to an expense payment fringe benefit provided in respect of the employment of an employee of an employer, being a fringe benefit to which paragraph 20(a) applies—the amount paid to the provider or to the employer by the recipient or by the employee in respect of the provision of the fringe benefit.

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recipients current benefit, in relation to a period residual fringe benefit in relation to a year of tax, means the benefit to which the fringe benefit relates, insofar as that benefit was provided during the year of tax.

recipients current housing right, in relation to a housing fringe benefit in relation to a year of tax, means the housing right to which the fringe benefit relates, insofar as that housing right subsisted during the year of tax.

recipients expenditure, in relation to an expense payment benefit, means the expenditure incurred by the recipient as mentioned in paragraph 20(a) or (b), as the case requires.

recipients meal, in relation to a board fringe benefit, means the meal to which the fringe benefit relates.

recipients overall benefit, in relation to a period residual fringe benefit in relation to a year of tax, means the benefit to which the fringe benefit relates, including that benefit as it was or will be provided at any time outside the year of tax.

recipients overall housing right, in relation to a housing fringe benefit in relation to a year of tax, means the housing right to which the fringe benefit relates, including that housing right as it subsisted, or will subsist, outside the year of tax.

recipients parking, in relation to a car parking fringe benefit, means the provision of the parking facilities to which the benefit relates.

recipients portion, in relation to an expense payment fringe benefit, means the recipients expenditure reduced by whichever of the following amounts is applicable:

- (a) the amount of the payment referred to in paragraph 20(a) reduced by the amount of the recipients contribution;
- (b) the amount of the reimbursement referred to in paragraph 20(b).

recipients property, in relation to a property benefit, means the property to which the benefit relates.

recipients rent, in relation to a housing fringe benefit in relation to an employee of an employer in relation to a year of tax, means the

amount of any rent or other consideration paid to the provider or to the employer by the recipient or the employee in respect of the subsistence, during the year of tax, of the recipients housing right reduced by the amount of any reimbursement paid to the recipient in respect of that consideration.

recipients transport, in relation to an airline transport fringe benefit, means the transport and incidental services to which the benefit relates.

recipients unit of accommodation, in relation to a housing fringe benefit, means the unit of accommodation to which the fringe benefit relates.

recognised long service period, in relation to an employee of an employer, means:

- (a) if the employee has an entitlement to long service leave under:
 - (i) a law of the Commonwealth, a State, a Territory or a foreign country;
 - (ii) an award, order, determination or industrial agreement in force under any such law;
 - (iii) a scheme or arrangement by reason of the existence and nature of which the employer has secured an exemption from obligations to comply with any such law relating to long service leave;
 - (iv) a contract of employment; or
 - (v) the terms of appointment to an office;the period by reference to which that long service leave is determined;
- (b) if:
 - (i) long service leave may be made available to the employee as a privilege; and
 - (ii) the availability of that leave is determined by reference to matters similar to matters by reference to which an entitlement of the kind referred to in paragraph (a) is ordinarily determined;the period by reference to which that long service leave is determined; or
- (c) in any other case:

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- (i) the period for which the employee has been employed by the employer; or
- (ii) such longer period of employment (whether with that employer or any other employer) as might reasonably be expected to be taken into account in determining long service leave if the employee had an entitlement to long service leave.

recreation includes:

- (a) amusement;
- (b) sport or similar leisure-time pursuits; and
- (c) recreation or amusement provided on, or by means of, a vehicle, ship, vessel or aircraft.

recreational facility means a facility for recreation, but does not include a facility for accommodation or a facility for drinking or dining.

reducible fringe benefit has the meaning given by section 65CC.

registered tax agent has the meaning given by section 251A of the *Income Tax Assessment Act 1936*.

reimburse includes any act having the effect or result, direct or indirect, of a reimbursement.

relative has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

religious practitioner has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

remote area housing benefit has the meaning given by subsection 58ZC(2).

rent index number

- (a) in relation to a quarter in relation to a State or Territory—means the index number for the rent sub-group of the Consumer Price Index published by the Australian Statistician in respect of that quarter for the capital city of that State or Territory; or
- (b) in relation to a quarter in relation to Australia—means the index number for the rent sub-group of the Consumer Price Index, being the weighted average of the 8 capital cities,

published by the Australian Statistician in respect of that quarter.

reportable fringe benefits amount for a year of income in respect of the employment of an employee by an employer has the meaning given by section 135P or 135Q (as appropriate).

reportable fringe benefits total of an employee for a year of income has the meaning given by section 135N.

residential fuel means any form of fuel (including electricity) for use for domestic purposes.

residual benefit means a benefit that is a residual benefit by virtue of section 45.

residual fringe benefit means a fringe benefit that is a residual benefit.

retention period, in relation to a statutory evidentiary document in relation to an employer in relation to a year of tax, means the period that:

- (a) commences on:
 - (i) where the statutory evidentiary document is maintained by or on behalf of the employer—the day on which the document commences to be maintained; or
 - (ii) in any other case—the day on which the statutory evidentiary document is given to the employer; and
- (b) ends:
 - (i) in a case to which subparagraph (ii) does not apply—at the end of the period of 5 years commencing on the original assessment date in relation to an assessment of the fringe benefits taxable amount of the employer of the year of tax; or
 - (ii) if, at the end of that period of 5 years, an objection, or a request for amendment of an assessment (not being an objection) relating to a matter, or matters including a matter, to which the statutory evidentiary document is relevant, or a review or appeal arising out of such an objection, has not been determined or otherwise finally disposed of—on the day on which the objection (and any review or appeal arising out of it), the request, or review or appeal (and any appeal or further appeal

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arising out of it), as the case may be, is determined or so disposed of.

safety award benefit, in relation to an employee of an employer, means a benefit provided to the employee, in respect of the employment of the employee, solely by way of an award in recognition of the special achievements of the employee, or of the employee and another person or persons, in occupational health matters, or in occupational safety matters, relating to the employment of the employee, or of the employee and that other person or persons, but does not include:

- (a) a payment of salary or wages or a payment that would be salary or wages if salary or wages included exempt income for the purposes of the *Income Tax Assessment Act 1936*;
- (b) a benefit provided under a non-arm's length arrangement; or
- (c) a benefit provided under an arrangement where, having regard to:
 - (i) the form and substance of the arrangement;
 - (ii) the achievements recognised by the award; and
 - (iii) the eligibility of other employees of the employer to be awarded benefits in recognition of their special achievements in occupational health matters or in occupational safety matters;

it would be concluded that the arrangement, or any part of the arrangement, was entered into by any of the parties to the arrangement for the sole or dominant purpose of enabling the employer to obtain the benefit of the application of section 58R.

salary or wages means:

- (a) a payment from which an amount must be withheld (even if the amount is not withheld) under a provision in Schedule 1 to the *Taxation Administration Act 1953* listed in the table, to the extent that the payment is assessable income; and
- (b) a payment from which an amount must be withheld (even if the amount is not withheld) under section 12-47 in Schedule 1 to the *Taxation Administration Act 1953* where:
 - (i) the payment is made to a religious practitioner by a religious institution; and

- (ii) the activity, or series of activities, for which the payment is made is done by the religious practitioner as a member of the religious institution.

Withholding payments covered		
Item	Provision	Subject matter
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
4	Section 12-115	Commonwealth education or training payment
5	Section 12-120	Compensation, sickness or accident payment

Second Commissioner means a Second Commissioner of Taxation.

small expense payment fringe benefit means an expense payment fringe benefit where the recipients expenditure does not exceed \$10.

spouse has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

stand-by value, in relation to the recipients transport, in relation to an airline transport fringe benefit, means:

- (a) if the recipients transport is over a domestic route:
 - (i) if the recipients transport is on a scheduled passenger air service—37.5% of the lowest publicly advertised economy air fare charged by the provider at or about the comparison time in respect of transport over that route; and
 - (ii) if:
 - (A) the recipients transport is not on a scheduled passenger air service; and
 - (B) a carrier operates a scheduled passenger air service over that route at or about the comparison time;

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37.5% of the lowest publicly advertised economy air fare charged by a carrier at or about the comparison time in respect of transport over that route; and

(iii) if:

- (A) the recipients transport is not on a scheduled passenger air service; and
- (B) no carrier operates a scheduled passenger air service over that route at or about the comparison time; and
- (C) a combination of scheduled passenger air services operated by a carrier or carriers at or about the comparison time would enable a person to travel between the ports of embarkation and disembarkation;

37.5% of the lowest combination of publicly advertised economy air fares charged by carriers at or about the comparison time in respect of transport between the ports of embarkation and disembarkation; and

(iv) in any other case—75% of the notional value at the comparison time of the recipients transport; and

(b) where the recipients transport is over an international route:

- (i) if the recipients transport is on a scheduled passenger air service and there is, at or about the comparison time, a providers published air fare in respect of the route—37.5% of the lowest providers published air fare in respect of that route;
- (ii) if subparagraph (i) does not apply and a carrier operates a scheduled passenger air service over that route at or about the comparison time—37.5% of the lowest economy air fare charged by a carrier at or about the comparison time in respect of transport over that route;
- (iii) if neither subparagraph (i) nor (ii) applies and a combination of scheduled passenger air services operated by a carrier or carriers at or about the comparison time would enable a person to travel between the ports of embarkation and disembarkation—37.5% of the lowest combination of economy air fares charged by carriers at or about the comparison time in respect of transport between the ports of embarkation and disembarkation; and

- (iv) in any other case—75% of the notional value at the comparison time of the recipients transport.

statutory evidentiary document, in relation to an employer in relation to a year of tax (in this definition called the *current year of tax*), means:

- (a) a declaration or other document that is:
- (i) given to the employer pursuant to a provision of Part III or of a definition in this subsection that is relevant to that Part; and
 - (ii) relevant for the purposes of determining:
 - (A) the taxable value of a fringe benefit provided in, or in respect of, the current year of tax in respect of the employment of an employee of the employer;
 - (AA) the notional taxable value of a benefit provided in, or in respect of, the current year of tax in respect of the employment of an employee of the employer; or
 - (B) whether a benefit provided in, or in respect of, the current year of tax in respect of the employment of an employee of the employer is an exempt benefit; and
- (aa) records of a nomination under section 162K or 162L that:
- (i) are maintained by the employer in relation to the current year of tax; or
 - (ii) were maintained by the employer in relation to an earlier year of tax but are relevant to the employer's liability under this Act in respect of the current year of tax;
- (ab) a record of the business use percentage specified by the employer for the current year of tax; and
- (b) a document maintained by the employer in relation to the current year of tax as mentioned in section 10A or paragraph 10B(a) or sub-subparagraph 24(1)(c)(ia)(A) or 24(1)(c)(i)(B); and
- (c) log book records or odometer records maintained in relation to a particular car where any of the following subparagraphs apply:
- (i) both of the following conditions are satisfied:

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- (A) the current year of tax is not a log book year of tax of the employer in relation to the car;
 - (B) section 10A required the records to be maintained by or on behalf of the provider of a car fringe benefit in relation to the employer as a condition of the employer being entitled, in respect of the year of tax that was the last log book year of tax of the employer in relation to the car before the current year of tax, to a reduction in the operating cost of the car on account of business journeys undertaken in the car during that last log book year of tax;
- (ii) both of the following conditions are satisfied:
- (A) the current year of tax is not a log book year of tax of the recipient of a loan fringe benefit, an expense payment fringe benefit, a property fringe benefit or a residual fringe benefit in relation to the car while it was held by the recipient during a period in the current year of tax;
 - (B) section 65E required the records to be maintained by or on behalf of the recipient as a condition of the employer being entitled, in relation to the year of tax that was the last log book year of tax of the recipient before the current year of tax, to a reduction of the taxable value of a fringe benefit on account of business journeys undertaken in the car in that last log book year of tax; and
- (d) a no-private-use declaration or a recurring fringe benefit declaration that covers benefits provided in the current year of tax.

statutory food amount, in relation to a person, in relation to a period in relation to a year of tax, means the amount calculated in respect of that period:

- (a) in a case where the person had attained the age of 12 years before the beginning of the year of tax—at the rate of \$42 per week; and
- (b) in any other case—at the rate of \$21 per week.

statutory interest rate:

- (a) in relation to a year of tax, means the benchmark interest rate in relation to the year of tax; or
- (b) in relation to a time (in this paragraph referred to as the **loan time**) before 1 July 1986, means:
 - (i) if the loan time occurred after 2 April 1986:
 - (A) if there is only 1 benchmark interest rate in relation to the loan time—that rate;
 - (B) if there are 2 or more benchmark interest rates in relation to the loan time—the lower or lowest of those rates; or
 - (C) if there is no benchmark interest rate in relation to the loan time—such rate as is prescribed;
 - (ii) if the loan time occurred during a period specified in the Schedule—the rate specified in the Schedule in relation to that period; and
 - (iii) if the loan time occurred before 1 January 1946—3.875% per annum.

stratum unit, in relation to a dwelling, means a unit on a unit plan registered under a law of a State or Territory that provides for the registration of titles of a kind known as unit titles or strata titles, being a unit that comprises:

- (a) a part of a building containing the dwelling, being a part consisting of a flat or home unit; or
- (b) a part of a parcel of land, being a part on which the building containing the dwelling is constructed.

supplementary car rate, in relation to a year of tax, means the rate prescribed for the purposes of this definition in relation to the year of tax.

tangible property means goods and includes:

- (a) animals, including fish; and
- (b) gas and electricity.

tax-exempt body entertainment benefit means a benefit referred to in section 38.

tax-exempt body entertainment fringe benefit means a fringe benefit that is a tax-exempt body entertainment benefit.

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taxi means a motor vehicle that is licensed to operate as a taxi.

tenancy period, in relation to a housing benefit in relation to a year of tax, means the period during the year of tax when the housing right to which the benefit relates subsisted.

this Act includes:

- (a) the regulations; and
- (b) Part IVC of the *Taxation Administration Act 1953*, insofar as that Part relates to this Act.

travel agent, in relation to transport provided in respect of the employment of an employee, means a person who, at or about the time when that transport commenced to be provided, carried on a business that consisted of or included the sale principally to outsiders of airline tickets issued by airline operators.

travel diary, in relation to particular travel undertaken by the recipient of an expense payment fringe benefit, an airline transport fringe benefit, a property fringe benefit or a residual fringe benefit, means a diary or similar document, in the English language, in which, in relation to each activity engaged in by the recipient:

- (a) while undertaking that travel; and
 - (b) in the course of producing assessable income of the recipient; the recipient has made, before, at the time of, or as soon as reasonably practicable after, the conclusion of the activity, an entry setting out particulars of:
 - (d) the place where the activity was undertaken;
 - (e) the date and approximate time when the activity commenced;
 - (f) the duration of the activity; and
 - (g) the nature of the activity;
- and includes a copy of such a diary or document.

Tribunal means the Administrative Appeals Tribunal.

trustee includes:

- (a) a person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law; or
- (b) an executor, administrator or other personal representative of a deceased person; or
- (c) a guardian or committee; or

- (d) a receiver or receiver and manager; or
- (e) a liquidator of a company; or
- (ea) an administrator, within the meaning of the *Corporations Act 2001*, of a company; or
- (eb) an administrator of a deed of company arrangement executed by a company under Part 5.3A of that Act; or
- (f) a person:
 - (i) having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust;
 - (ii) acting in any fiduciary capacity; or
 - (iii) having the possession, control or management of any real or personal property of a person under any legal or other disability.

unincorporated company means a company being an unincorporated association or other unincorporated body of persons.

unit of accommodation includes:

- (a) a house, flat or home unit;
- (aa) accommodation in a house, flat or home unit;
- (b) accommodation in a hotel, hostel, motel or guesthouse;
- (c) accommodation in a bunkhouse or any living quarters;
- (d) accommodation in a ship, vessel or floating structure; and
- (e) a caravan or other mobile home.

unreimbursed expenditure means expenditure no part of which has been reimbursed.

unreimbursed interest means interest no part of which has been reimbursed.

wave includes release.

workers' compensation law means a law of the Commonwealth, a State, a Territory or a foreign country that provides for compensation or other benefits for or in respect of work-related trauma suffered by employees without requiring proof of any breach by, or by persons associated with, employers.

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work-related counselling:

- (a) in relation to an employee of an employer, means counselling attended by the employee; and
- (b) in relation to an associate of an employee of an employer, means counselling attended by the associate where the associate is accompanied by the employee;

where all of the following conditions are satisfied:

- (c) the attendance of:
 - (i) if paragraph (a) applies—the employee; and
 - (ii) if paragraph (b) applies—both the employee and the associate;

at the counselling gives effect to an objective, purpose, plan or policy devised, adopted or required to be followed, by the employer to:

- (iii) improve or maintain the quality of the performance of employees' duties; or
- (iv) prepare employees for retirement;
- (d) the counselling relates to any of the following matters:
 - (i) safety;
 - (ii) health;
 - (iii) fitness;
 - (iv) stress management;
 - (v) personal relationships;
 - (vi) retirement problems;
 - (vii) drug or alcohol abuse;
 - (viii) rehabilitation or prevention of work-related trauma or of other disease or injury;
 - (ix) first aid;
 - (x) any similar matter;

- (e) there is no benefit that:
 - (i) is provided in respect of the employment of the employee;
 - (ii) consists of the provision of, or relates to, the counselling; and
 - (iii) is provided wholly or principally as a reward for services rendered or to be rendered by the employee.

work-related medical examination, in relation to a benefit provided in respect of the employment of an employee, means an examination or test carried out by, or on behalf of, an audiometrist or a legally qualified medical practitioner, nurse, dentist or optometrist wholly or principally in order to ascertain the physiological or psychological condition of the employee for any or all of the following purposes:

- (a) the commencement of the employment of the employee;
- (b) the confirmation of probationary employment of the employee;
- (c) a change in the duties or location of the employment of the employee;
- (d) the employee becoming a member of a superannuation fund.

work-related medical screening, in relation to an employee of an employer, means an examination or test carried out by, or on behalf of, an audiometrist or a legally qualified medical practitioner, nurse, dentist or optometrist wholly or principally in order to ascertain whether the employee has suffered, is suffering or is at risk of suffering, from work-related trauma, but does not include an examination or test that is not made available generally to all employees of the employer:

- (a) who are likely to have suffered, be suffering or be at risk of suffering, from similar work-related trauma;
- (b) who perform the duties of their employment at or near the place where the employee performs the duties of his or her employment; and
- (c) whose duties of employment are similar to those of the employee.

work-related preventative health care, in relation to an employee of an employer, means any form of care provided by, or on behalf of, a legally qualified medical practitioner, nurse, dentist or optometrist wholly or principally in order to prevent the employee suffering from work-related trauma, but does not include a form of care that is not made available generally to all employees of the employer:

- (a) who are likely to be at risk of suffering from similar work-related trauma;

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- (b) who perform the duties of their employment at or near the place where the employee performs the duties of his or her employment; and
- (c) whose duties of employment are similar to those of the employee.

work-related trauma, in relation to an employee, means:

- (a) the injury of the employee (including the aggravation, acceleration or recurrence of an injury of the employee);
- (b) the contraction, aggravation, acceleration or recurrence of a disease of the employee;
- (c) the loss or destruction of, or damage to:
 - (i) an artificial limb or other artificial substitute;
 - (ii) a medical, surgical or similar aid or appliance used by the employee; or
 - (iii) clothing worn by the employee; or
- (d) the coming into existence, the aggravation, acceleration or recurrence of any other physiological or psychological condition in relation to the employee that is or may be harmful or disadvantageous to, or result in harm or disadvantage to, the employee;

that is related to any employment of the employee.

work-related travel, in relation to an employee, means:

- (a) travel by the employee between:
 - (i) the place of residence of the employee; and
 - (ii) the place of employment of the employee or any other place from which or at which the employee performs duties of his or her employment; or
- (b) travel by the employee that is incidental to travel in the course of performing the duties of his or her employment.

year of income means an income year (within the meaning of the *Income Tax Assessment Act 1997*).

year of tax means the year starting on 1 April 1987, and each later year starting on 1 April.

- (2) In the definition of **business premises** in subsection (1), **premises** includes a ship, vessel, floating structure, aircraft or train.

136AB What constitutes reasonable belief that a superannuation fund is a complying superannuation fund

- (1) Subject to subsection (2), if a person makes a payment to a superannuation fund, the person is taken, for the purposes of paragraph (j) of the definition of *fringe benefit* in subsection 136(1), to have reasonable grounds for believing that the fund is a complying superannuation fund (as defined by the *Income Tax Assessment Act 1997*) if, at or before the time when the payment is made, the person has obtained a written statement, provided by or on behalf of the trustee of the fund, that the fund:
 - (a) is a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and
 - (b) is not subject to a direction under section 63 of that Act.
- (2) A person who makes a payment to a superannuation fund is taken not to have reasonable grounds for believing that the fund is a complying superannuation fund if, when the payment is made:
 - (a) the person:
 - (i) is the trustee or the manager of the fund; or
 - (ii) is an associate of the trustee or the manager of the fund; and
 - (b) the person has reasonable grounds for believing that the fund is not a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* or is operating in contravention of a regulatory provision, as defined in section 38A of that Act.
- (3) Section 39 of the *Superannuation Industry (Supervision) Act 1993* applies for the purposes of subsection (2) of this section in a corresponding way to the way in which it applies for the purposes of Division 2 of Part 5 of that Act.

136A Reimbursement etc. of tax not to be regarded as consideration in respect of benefit etc.

For the purposes of this Act, an amount paid (including an amount deemed by section 145 to have been paid) in respect of fringe benefits tax shall not be regarded as also being consideration for or in respect of:

- (a) the provision of a benefit; or

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- (b) any other matter.

137 Salary or wages

- (1) For the purpose only of ascertaining whether a person is an employee or an employer within the meaning of this Act, where:
 - (a) a benefit is provided by a person (in this subsection referred to as the *first person*) to, or to an associate of, another person (in this subsection referred to as the *second person*);
 - (b) but for this subsection, the benefit would not be regarded as having been provided in respect of the employment of the second person; and
 - (c) either of the following conditions is satisfied:
 - (i) if the benefit were provided by the first person by way of a cash payment to the second person, the payment would constitute salary or wages paid by the first person to the second person;
 - (ii) all of the following conditions are satisfied:
 - (A) subparagraph (i) does not apply in relation to the benefit;
 - (B) the first person is an associate of a third person or the benefit is provided under an arrangement between the first person and a third person;
 - (C) if the benefit were provided by the third person by way of a cash payment to the second person, the payment would constitute salary or wages paid by the third person to the second person;
- a definition in subsection 136(1) applies as if the benefit were salary or wages paid to the second person by:
- (d) in a case to which subparagraph (c)(i) applies—the first person; or
 - (e) in a case to which subparagraph (c)(ii) applies—the third person.

138 Double counting of fringe benefits

- (1) Where:
 - (a) a person (in this subsection referred to as the *employee*) is both:

- (i) an employee of an employer (in this section referred to as the *first employer*); and
 - (ii) an employee of one or more associates of the first employer;
 - (b) a benefit is provided to, or to an associate of, the employee by the first employer; and
 - (c) the benefit is a fringe benefit in relation to the first employer; the benefit is not a fringe benefit in relation to an employer who is an associate of the first employer.
- (2) For the purposes of this Act, where, in a case to which subsection (1) does not apply, a benefit provided to, or to an associate of, an employee would, but for this subsection, be a fringe benefit in relation to 2 or more employers, the benefit shall be taken to be a fringe benefit in relation to such one of those employers as the Commissioner determines and not in relation to any other of those employers.
- (3) For the purposes of this Act, where a benefit in respect of the employment of an employee is provided jointly to the employee and one or more associates of the employee, the benefit shall be deemed to have been provided to the employee only.
- (4) For the purposes of this Act, where a benefit in respect of the employment of an employee is provided jointly to 2 or more associates of the employee but not to the employee, the benefit shall be taken to have been provided to such one of those associates as the Commissioner determines and not to any other of those associates.

138A Benefit provided in respect of a year of tax

A reference in this Act to a benefit provided in respect of a year of tax is a reference to a benefit that is deemed to be provided in respect of the year of tax.

138B Benefit provided in respect of the employment of an employee

A reference in this Act to a benefit provided in respect of the employment of an employee is a reference to a benefit provided, or originally provided, as the case may be, in respect of that employment.

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138C Application or use of benefit

A reference in this Act to the application or use of a benefit is a reference to the application or use of:

- (a) in the case of an airline transport benefit—the recipients transport;
- (b) in the case of a board benefit—the recipients meal;
- (c) in the case of a loan benefit—the loan to which the benefit relates;
- (d) in the case of a property benefit—the recipients property; or
- (e) in the case of a residual benefit—the recipients benefit.

139 Date on which return furnished

Where an employer furnishes, on different dates, 2 or more returns to the Commissioner under this Act relating to a year of tax, a reference in this Act to the day on which the return relating to that year was furnished is a reference to the earliest of those dates.

140 Eligible urban areas

- (1) In this Act:
 - (a) a reference to an eligible urban area is a reference to:
 - (i) an area that:
 - (A) is situated in an area described in Schedule 2 to the *Income Tax Assessment Act 1936*; and
 - (B) is an urban centre with a census population of not less than 28,000; and
 - (ii) an area that:
 - (A) is not situated in an area described in Schedule 2 to the *Income Tax Assessment Act 1936*; and
 - (B) is an urban centre with a census population of not less than 14,000; and
 - (b) a reference to a location that is adjacent to an eligible urban area is a reference to a location that, as at the date of commencement of this section:
 - (i) was situated less than 40 kilometres, by the shortest practicable surface route, from the centre point of an

eligible urban area with a census population of less than 130,000; or

- (ii) was situated less than 100 kilometres, by the shortest practicable surface route, from the centre point of an eligible urban area with a census population of not less than 130,000.

(1A) However, this Act operates in relation to a housing benefit provided in respect of the employment of an employee of an employer described in subsection (1B) or in respect of the employment of an employee described in subsection (1C), (1CA) or (1D) as if:

- (a) a reference in this Act (except in paragraph (1)(a), this paragraph and subsection 140(4)) to an eligible urban area were a reference to an eligible urban area that is an urban centre with a census population of not less than 130,000; and
- (b) subparagraph (1)(b)(i) were omitted.

(1B) Subsection (1A) applies in relation to each of the following employers:

- (a) a public hospital;
- (c) a hospital carried on by:
 - (i) a society that is a non-profit society for the purposes of section 65J; or
 - (ii) an association that is a non-profit association for the purposes of section 65J;
- (d) an employer that is a charitable institution.

(1C) Subsection (1A) also applies in relation to an employee:

- (a) whose employer is a government body; and
- (b) whose duties of employment are exclusively performed in, or in connection with:
 - (i) a public hospital; or
 - (iii) a hospital carried on by a society that is a non-profit society for the purposes of section 65J or by an association that is a non-profit association for the purposes of section 65J.

(1CA) Subsection (1A) also applies in relation to an employee:

- (a) whose employer provides public ambulance services or services that support those services; and

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- (b) who is predominantly involved in connection with the provision of those services.
- (1D) Subsection (1A) also applies in relation to an employee:
- (a) whose employer is a government body; and
 - (b) whose duties of employment are performed in a police service.
- (2) For the purposes of this section, the distance, by the shortest practicable surface route, between a location (in this subsection referred to as the *tested location*) and the centre point of an eligible urban area is:
- (a) where there is only one location within the eligible urban area from which distances between the eligible urban area and other places are usually measured—the distance, by the shortest practicable surface route, between the tested location and that location; and
 - (b) where there are 2 or more locations within the eligible urban area from which distances between parts of the eligible urban area and other places are usually measured—the distance, by the shortest practicable surface route, between the tested location and the one of those locations that is in the principal one of those parts.
- (2A) In applying subsection (2), if the shortest practicable surface route between the tested location and the location mentioned in that subsection includes a route by water, the distance between those locations is taken to be the amount worked out using the following formula:

$$\left(\begin{array}{l} \text{Total kilometres} \\ \text{of the surface route} \\ \text{that are by water} \end{array} \times 2 \right) + \begin{array}{l} \text{Total kilometres} \\ \text{of the surface route} \\ \text{that are by land} \end{array}$$

- (3) In this section:

census population, in relation to an urban centre, means the census count on an actual location basis of the population of that urban centre specified in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981, being the results published by the Australian Statistician in the document entitled “Persons and Dwellings in Local Government Areas and Urban Centres”.

surface route means a route other than an air route.

urban centre means an area that is described as an urban centre or bounded locality in the results of the Census of Population and Housing taken by the Australian Statistician on 30 June 1981, being the results published by the Australian Statistician in the document entitled “Persons and Dwellings in Local Government Areas and Urban Centres”.

- (4) If, but for this subsection, the whole or any part of a provision of this Act or of the *Fringe Benefits Tax Act 1986* would be invalid by reason of the enactment of paragraph (1)(a) of this section, this Act has effect as if that paragraph were omitted and the following paragraph were substituted:
- “(a) a reference to an eligible urban area is a reference to an area that is an urban centre with a census population of not less than 14,000; and”.

141 Housing loans, prescribed interests in land or stratum units and proprietary rights in respect of dwellings

- (1) For the purposes of this Act, where:
- (a) a loan is made to, and used by, a person (whether in his or her own right or jointly with his or her spouse) wholly:
 - (i) to enable the person to acquire a prescribed interest in land on which a building constituting or containing a dwelling was subsequently to be constructed or to acquire a prescribed interest in land and construct, or complete the construction of, such a building on the land;
 - (ii) to enable the person to construct, or complete the construction of, a building constituting or containing a dwelling on land in which the taxpayer held a prescribed interest;
 - (iii) to enable the person to acquire a prescribed interest in land on which there was a building constituting or containing a dwelling;
 - (iv) to enable the person to acquire a prescribed interest in a stratum unit in relation to a dwelling;
 - (v) to enable the person to extend a building constituting or containing a dwelling, being a building constructed on

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land in which the taxpayer held a prescribed interest, by adding a room or part of a room to the building or the part of the building containing the dwelling, as the case may be;

- (vi) in a case where the person held a prescribed interest in a stratum unit in relation to a dwelling—to enable the person to extend the dwelling by adding a room or part of a room to the dwelling;
 - (vii) to enable the person to acquire a proprietary right in respect of a dwelling, being a flat or a home unit; or
 - (viii) to enable the person to repay a loan that was made to, and used by, the person wholly for a purpose mentioned in a preceding subparagraph of this paragraph; and
- (b) at the time the loan was made, the dwelling was used or proposed to be used as the person's usual place of residence; the loan shall be taken to be a housing loan relating to the dwelling.

(2) For the purposes of this Act:

(a) where:

- (i) a person acquires, holds or held an estate in fee simple in land or in a stratum unit or 2 or more persons acquire, hold or held such an estate in land or in a stratum unit as joint tenants or tenants in common;
- (ii) a person acquires, holds or held an interest in land or in a stratum unit as lessee or licensee, or 2 or more persons acquire, hold or held jointly an interest in land or in a stratum unit as lessees or licensees, under a lease or licence, and the Commissioner is satisfied that the lease or licence gives or gave reasonable security of tenure to the lessee or licensee, or to the lessees or licensees, for a period of, or for periods aggregating, not less than 10 years;
- (iii) a person acquires, holds or held an interest in land or in a stratum unit as purchaser of an estate in fee simple in the land or in the stratum unit, or 2 or more persons acquired, hold or held an interest in land or in a stratum unit as purchasers of such an estate in the land or in the stratum unit as joint tenants or tenants in common, under an agreement that provides or provided for payment of the purchase price, or a part of the purchase price, to be made at a future time or by instalments; or

- (iv) a person acquires, holds or held an interest in land or in a stratum unit as purchaser, or 2 or more persons acquire, hold or held jointly an interest in land or in a stratum unit as purchasers, of the right to be granted a lease of the land or of the stratum unit under an agreement that provides or provided for payment of the purchase price, or a part of the purchase price, for the lease to be made at a future time or by instalments and the Commissioner is satisfied that the lease will give or gave reasonable security of tenure, to the lessee or lessees for a period of, or for periods aggregating, not less than 10 years;

that person or those persons shall be taken to acquire or hold, or to have held, as the case may be, a prescribed interest in that land or in that stratum unit, as the case requires; and

- (b) where a person acquires, holds or held, or 2 or more persons acquire, hold or held jointly, a right of occupancy of a dwelling, being a flat or a home unit, arising by virtue of the acquiring or holding of shares, or by virtue of a contract to purchase shares, in a company that owns or owned the building that contains the flat or home unit, that person, or those persons, as the case requires, shall be taken to acquire or hold, or to have held, as the case may be, a proprietary right in respect of the dwelling;
- (c) where:
- (i) a loan that but for this paragraph would be a housing loan relating to a dwelling is made by a person (in this paragraph referred to as *the lender*) to another person (in this paragraph referred to as *the borrower*);
 - (ii) the lender does not maintain an account in relation to the loan that is separate and apart:
 - (A) from any account kept by the lender in relation to any moneys deposited with the lender or applied by the lender on behalf of the borrower otherwise than for the purpose of repaying the loan, in whole or in part, or of paying, in whole or in part, interest that has accrued or will accrue in respect of the loan; and
 - (B) from any account kept by the lender in relation to any other loan made by the lender to the borrower;

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the loan referred to in subparagraph (i) is not a housing loan relating to a dwelling.

- (3) For the purposes of this Act, a loan shall not be taken to be a housing loan relating to a dwelling except as provided in this section.

141A Benefits incidental to acquisition or sale of prescribed interests in land or stratum units and proprietary rights in respect of dwellings

- (1) For the purposes of this Act, recipients expenditure shall be taken to be incidental to the acquisition or sale of a prescribed interest in land or a stratum unit or of a proprietary right in respect of a dwelling if, and only if:

- (a) in the case of an acquisition of a prescribed interest in land on which the employee or associate concerned proposes to construct, or complete the construction of, a building constituting or containing a dwelling—the recipients expenditure is in respect of any of the following matters:

- (i) stamp duty;
- (ii) legal services;
- (iii) agent's services;
- (iv) discharge of a mortgage;
- (v) expenses of borrowing;
- (vi) any similar matter;

being a matter of a capital nature that is incidental to the construction, or the completion of the construction, of that building;

- (b) in all cases—the recipients expenditure is in respect of any of the following matters:

- (i) stamp duty;
- (ii) advertising;
- (iii) legal services;
- (iv) agent's services;
- (v) discharge of a mortgage;
- (vi) expenses of borrowing;
- (vii) any similar matter;

being a matter of a capital nature that is incidental to the acquisition or sale of the interest or right; and

- (c) in all cases—the recipients expenditure is not in respect of:
- (i) interest;
 - (ii) repayments of principal;
 - (iii) loan service fees;
 - (iv) the discharge of a mortgage, or expenses of borrowing, where the money borrowed was not applied wholly in respect of the land, stratum unit or proprietary right or in respect of a building on the land;
 - (v) insurance; or
 - (vi) rates.
- (2) For the purposes of this Act, a recipients benefit shall be taken to be incidental to the acquisition or sale of a prescribed interest in land or a stratum unit or of a proprietary right in respect of a dwelling if, and only if:
- (a) the recipients benefit consists of any of the following matters:
- (i) advertising;
 - (ii) legal services;
 - (iii) agent's services;
 - (iv) services related to borrowing;
 - (v) any similar matter;
- being a matter of a capital nature that is incidental to the acquisition or sale of the interest or right; and
- (b) the recipients benefit does not consist of or relate to:
- (i) insurance; or
 - (ii) services related to borrowing where the money borrowed was not applied wholly in respect of the land, stratum unit or proprietary right or in respect of a building on the land.

142 Remote area housing

- (1) In this Act, a reference, in relation to a year of tax in relation to an employee of an employer, to a remote area housing loan connected with a dwelling is a reference to a housing loan relating to the dwelling where:

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- (a) during the whole of the period (in this subsection referred to as the *occupation period*) in the year of tax when the employee occupied or used the dwelling as his or her usual place of residence:
 - (i) the dwelling was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and
 - (ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;
 - (b) the common conditions set out in subsection (2E) are satisfied in relation to the occupation period; and
 - (d) the loan was not made to the employee pursuant to:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60.
- (1A) In this Act, a reference, in relation to a year of tax in relation to an employee of an employer, to remote area housing rent connected with a unit of accommodation is a reference to rent or other consideration payable in respect of the subsistence of a lease or licence in respect of the unit of accommodation where:
- (a) during the whole of the period (in this subsection referred to as the *occupation period*) in the year of tax when the employee occupied or used the unit of accommodation as his or her usual place of residence:
 - (i) the unit of accommodation was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and
 - (ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;
 - (b) the common conditions set out in subsection (2E) are satisfied in relation to the occupation period; and
 - (d) the lease or licence was not granted under:

- (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60.
- (2) In this Act, a reference, in relation to a property fringe benefit in relation to a year of tax in relation to an employee of an employer, to remote area residential property is a reference to property that consists of an estate or interest in land:
- (aa) on which is situated a dwelling occupied or used by the employee immediately after the provision time as his or her usual place of residence; or
 - (ab) on which the employee proposes, as at the provision time, to construct, or complete the construction of, a dwelling to be occupied or used by the employee as his or her usual place of residence;
- where:
- (ac) if paragraph (ab) applies—the Commissioner is satisfied that the employee has pursued sustained reasonable efforts to:
 - (i) commence the construction, or commence the completion of the construction, of the dwelling within 6 months after the provision time; and
 - (ii) occupy or use the dwelling as his or her usual place of residence within 18 months after the provision time;
 - (a) at the provision time:
 - (i) the land was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and
 - (ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;
 - (b) the common conditions set out in subsection (2E) are satisfied in relation to the provision time; and
 - (d) the property was not provided to the employee pursuant to:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for

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purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60 or Division 14A of Part III.

- (2A) In this Act, a reference, in relation to a property fringe benefit in relation to a year of tax in relation to an employee of an employer, to a remote area residential property option fee is a reference to property that consists of a fee paid to the employee by way of consideration in respect of the grant of an option to purchase an estate or interest in land:
- (a) held by the employee; and
 - (b) on which:
 - (i) there is a dwelling occupied or used by the employee immediately after the provision time as his or her usual place of residence; or
 - (ii) the employee proposes, as at the provision time, to construct, or complete the construction of, a dwelling to be occupied or used by the employee as his or her usual place of residence;

where:

- (c) if subparagraph (b)(ii) applies—the Commissioner is satisfied that the employee has pursued sustained reasonable efforts to:
 - (i) commence the construction, or commence the completion of the construction, of the dwelling within 6 months after the provision time; and
 - (ii) occupy or use the dwelling as his or her usual place of residence within 18 months after the provision time;
- (d) at the provision time:
 - (i) the land was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and
 - (ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;
- (e) the option was granted at or before the time the employee acquired the estate or interest and constituted a recognised remote area housing obligation restricting the disposal of the estate or interest concerned;

- (f) the common conditions set out in subsection (2E) are satisfied in relation to the provision time; and
 - (g) the property was not provided to the employee under:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60 or Division 14A of Part III.
- (2B) In this Act, a reference, in relation to a property fringe benefit in relation to a year of tax in relation to an employee of an employer, to remote area residential property repurchase consideration is a reference to property that consists of an amount paid to the employee by way of consideration for the purchase of an estate or interest in land:
- (a) held by the employee; and
 - (b) on which:
 - (i) there is a dwelling occupied or used by the employee immediately before the provision time as his or her usual place of residence; or
 - (ii) the employee proposed, as at the time the employee acquired the estate or interest, to construct, or complete the construction of, a dwelling to be occupied or used by the employee as his or her usual place of residence;
- where:
- (c) if subparagraph (b)(ii) applies—the Commissioner is satisfied that the employee has pursued sustained reasonable efforts to:
 - (i) commence the construction, or commence the completion of the construction, of the dwelling within 6 months after the time the employee acquired the estate or interest; and
 - (ii) occupy or use the dwelling as his or her usual place of residence within 18 months after the time the employee acquired the estate or interest;
 - (d) at the provision time:
 - (i) the land was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and

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- (ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;
 - (e) at or before the time the employee acquired the estate or interest, the employee entered into a recognised remote area housing obligation restricting the disposal of the estate or interest concerned;
 - (f) the purchase by the provider of the fringe benefit of the estate or interest is in accordance with that obligation;
 - (g) the common conditions set out in subsection (2E) are satisfied in relation to the provision time; and
 - (h) the property was not provided to the employee under:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60 or Division 14B of Part III.
- (2C) In this Act, a reference, in relation to an expense payment fringe benefit in relation to a year of tax in relation to an employee of an employer, to recipients expenditure in respect of remote area residential property is a reference to recipients expenditure that is incurred wholly:
- (a) to enable the employee to acquire an estate or interest in land on which a dwelling was subsequently to be constructed or to acquire an estate or interest in land and construct, or complete the construction of, a dwelling on the land;
 - (b) to enable the employee to construct, or complete the construction of, a dwelling on land in which the employee holds an estate or interest;
 - (c) to enable the employee to acquire an estate or interest in land on which there is a dwelling; or
 - (d) to enable the employee to extend a dwelling, being a dwelling constructed on land in which the employee holds an estate or interest, by adding a room or part of a room to the dwelling, as the case may be;
- where:
- (e) if paragraph (a) or (b) applies:

- (i) at the time the recipients expenditure was incurred, the employee proposed to occupy or use the dwelling as his or her usual place of residence; and
 - (ii) the Commissioner is satisfied that the employee has pursued sustained reasonable efforts to:
 - (A) commence the construction, or commence the completion of the construction, of the building constituting or containing the dwelling within 6 months after the time the recipients expenditure was incurred; and
 - (B) occupy or use the dwelling concerned as his or her usual place of residence within 18 months after the time the recipients expenditure was incurred;
 - (f) if paragraph (c) or (d) applies—as soon as reasonably practicable after the time the recipients expenditure was incurred, the dwelling concerned was occupied or used by the employee as his or her usual place of residence;
 - (g) at the time the recipients expenditure was incurred:
 - (i) the land was situated in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and
 - (ii) the employee was a current employee of the employer and the usual place of employment of the employee was not at a location in, or adjacent to, an eligible urban area;
 - (h) the common conditions set out in subsection (2E) are satisfied in relation to the time the recipients expenditure was incurred; and
 - (j) the fringe benefit was not provided to the employee under:
 - (i) a non-arm's length arrangement; or
 - (ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of section 60 or Division 14A of Part III.
- (2D) In this Act, a reference, in relation to a property fringe benefit or an expense payment fringe benefit in relation to a year of tax in relation to an employee of an employer, to a recognised remote area housing obligation restricting the disposal of an estate or

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interest in land is a reference to a contractual obligation entered into by the employee with the employer or an associate of the employer not to dispose of the estate or interest concerned except:

- (a) to the employer or an associate of the employer; and
- (b) for a price specified in, or ascertained in accordance with, the contract concerned;

at any time during a period specified in the contract concerned, being a period that ends not earlier than 5 years after:

- (c) in the case of a property fringe benefit where the recipients property is remote area residential property repurchase consideration—the time the employee acquired the estate or interest concerned;
- (d) in the case of any other property fringe benefit—the provision time; or
- (e) in the case of an expense payment fringe benefit—the time the recipients expenditure was incurred.

(2E) For the purposes of the application of this section to a fringe benefit in relation to a year of tax in relation to an employee of an employer, the common conditions in relation to a particular period or in relation to a particular time are as follows:

- (a) it is customary for employers in the industry in which the employee was employed during that period or at that time, as the case may be, to provide housing assistance for their employees;
- (b) it would be concluded that it was necessary for the employer, during the year of tax, to provide or arrange for the provision of housing assistance for employees of the employer because:
 - (i) the nature of the employer's business was such that employees of the employer were liable to be frequently required to change their places of residence;
 - (ii) there was not, at or near the place or places at which the employees of the employer were employed, sufficient suitable residential accommodation for those employees (other than residential accommodation provided by or on behalf of the employer); or
 - (iii) it is customary for employers in the industry in which the employee was employed during that period or at that time, as the case may be, to provide housing assistance for their employees.

- (3) A reference in this section to housing assistance is a reference to:
- (a) the provision of residential accommodation without charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned;
 - (aa) the making of payments in discharge or reimbursement of rent or other consideration incurred by a person in respect of the subsistence of a lease or licence in respect of a unit of accommodation;
 - (b) the making of a housing loan relating to a dwelling, being a loan in respect of which the rate of interest payable is less than the market rate of interest in respect of the loan concerned;
 - (c) the making of payments in discharge or reimbursement of expenditure incurred by a person in respect of interest incurred in respect of a housing loan relating to a dwelling;
 - (d) the provision of residential property without charge or for consideration that is less than the market value of the property at the provision time;
 - (e) the making of payments in discharge or reimbursement of expenditure incurred by a person in acquiring or constructing residential property; or
 - (f) the provision of a residential property ownership scheme involving:
 - (i) the granting by employees of options to purchase employees' residential property; or
 - (ii) the purchase of employees' residential property.
- (4) Nothing in section 74 prevents the amendment of an assessment at any time for the purpose of giving effect to paragraph (2)(ac), (2A)(c), (2B)(c) or (2C)(e).

142A Benefits relating to transport

- (1) For the purposes of this Act, recipients expenditure that is in respect of, or a recipients benefit that consists of:
- (a) accident insurance, airport or departure tax, passenger movement charge, a passport, a visa or a vaccination; or
 - (b) any similar matter or thing;

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in connection with transport shall be taken to be in respect of the provision of, or to consist of, transport.

- (2) For the purposes of this Act, where:
- (a) transport is between a particular place and another place;
 - (b) the transport is provided in consecutive stages; and
 - (c) apart from this subsection, a particular matter or thing would be in respect of only one, or only some, of those stages;
- the matter or thing shall be taken to be in respect of the provision of that transport.

142B Employee's new place of employment

Where a provision of this Act refers to an employee who is required to change his or her usual place of residence in order to perform the duties of his or her employment, a reference in the provision to the employee's new place of employment shall not be taken as implying that the employee was employed when he or she resided at his or her former usual place of residence.

142C Eligible shared accommodation in a house, flat or home unit

For the purposes of this Act, where:

- (a) the recipients unit of accommodation (in this section called the *shared unit of accommodation*) in relation to a housing fringe benefit in relation to an employee in relation to a year of tax consists of accommodation in a house, flat or home unit; and
- (b) throughout the tenancy period, there ordinarily subsisted 3 or more other housing fringe benefits, where each of those other housing fringe benefits was a housing fringe benefit:
 - (i) where the recipients unit of accommodation consisted of accommodation in the house, flat or home unit; and
 - (ii) in relation to a different employee;

the shared unit of accommodation shall be taken to be eligible shared accommodation in the house, flat or home unit in relation to the year of tax.

142D Eligible accommodation in an employees hostel

For the purposes of this Act, where:

- (a) the recipients unit of accommodation in relation to a housing fringe benefit in relation to an employee in relation to an employer in relation to a year of tax consists of accommodation in a hostel or a similar building that is operated wholly or principally for the purpose of providing accommodation for employees of:
 - (i) the employer; or
 - (ii) if the employer is a company—the employer or a company that is related to the employer; and
 - (b) the recipient is not entitled to exclusive use of:
 - (i) cooking facilities in the hostel or building; or
 - (ii) more than one bedroom in the hostel or building;
- the recipients unit of accommodation shall be taken to be eligible accommodation in an employees hostel in relation to the year of tax.

143 Remote area holiday transport

- (1) For the purposes of this Act:
 - (a) the recipients expenditure in relation to an expense payment fringe benefit;
 - (aa) the recipients property in relation to a property fringe benefit; or
 - (b) the recipients benefit in relation to a residual fringe benefit; in relation to an employer, in relation to an employee, in relation to a year of tax shall be taken to be in respect of remote area holiday transport if:
 - (c) in the case of an expense payment fringe benefit—the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;
 - (ca) in the case of a property benefit—the recipients property consists of meals in connection with transport;
 - (d) in the case of a residual fringe benefit—the recipients benefit consists of:
 - (i) the provision of transport or accommodation in connection with transport; or
 - (ii) the receipt of an allowance in respect of the cost of obtaining transport, or of obtaining meals or accommodation in connection with transport;

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- (e) the transport, accommodation or meals is for a family member;
- (f) apart from temporary absences, the employee performs the duties of his or her employment at a place in a State or internal Territory but not at a location in, or adjacent to, an eligible urban area;
- (g) the transport is provided wholly or principally to enable the family member to have a holiday for a period of not less than 3 days;
- (h) if the transport is for the employee:
 - (i) the transport is provided while the employee is on recreation leave, being recreation leave of not less than 3 working days; and
 - (ii) at the completion of that recreation leave, the employee resumes the duties of that employment at the place referred to in paragraph (f);
- (j) either of the following subparagraphs applies:
 - (i) the transport is between:
 - (A) a place at or near the place referred to in paragraph (f); and
 - (B) another place;
 - (ii) the transport is for the spouse, or a child, of the employee, being a spouse or a child of the employee who does not live with the employee at or near the place referred to in paragraph (f), and the transport is between:
 - (A) a place where the spouse or child, as the case may be, meets the employee; and
 - (B) another place;
- (ja) if the transport is for the spouse, or a child, of the employee—the transport is not provided to enable the spouse or child to accompany the employee:
 - (i) while the employee is undertaking travel in the course of performing the duties of his or her employment; and
 - (ii) where the circumstances referred to in subsection 26-30(2) of the *Income Tax Assessment Act 1997* do not apply; and
- (k) either of the following conditions is satisfied:

- (i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;
 - (ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient.
- (2) For the purposes of this Act, where:
- (a) the recipients expenditure in relation to an expense payment fringe benefit;
 - (b) the recipients property in relation to a property fringe benefit; or
 - (c) the recipients benefit in relation to a residual fringe benefit; is in respect of remote area holiday transport, the fringe benefit shall be taken to be a remote area holiday transport fringe benefit.
- (3) Where:
- (a) one or more remote area holiday transport fringe benefits in relation to a particular employee in relation to a year of tax relate to a holiday for a particular family member; and
 - (b) the transport to which that fringe benefit or those fringe benefits relates does not consist wholly of transport, by the most direct practicable route, between:
 - (i) a place at or near the place referred to in paragraph (1)(f); and
 - (ii) a place in a State or internal Territory, being:
 - (A) a place at or near the place that was the employee's usual place of residence immediately before the employee began employment at the place referred to in paragraph (1)(f); or
 - (B) the capital city of the State or Territory in which the place referred to in paragraph (1)(f) is located;

the benchmark travel amount in relation to that fringe benefit or those fringe benefits in relation to that holiday for that family member is:

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(c) if either of the following subparagraphs apply:

- (i) the employee was entitled to be provided with capital city holiday transport assistance pursuant to the provisions of an industrial instrument relating to the employment of the employee;
- (ii) there was a custom in the industry in which the employee was employed such that the employee could have been provided with capital city holiday transport assistance by the employer;

the sum of:

- (iii) the return economy air fare in respect of the air service, or the total of the return economy air fares in respect of the air services, to which that capital city holiday transport assistance relates; and
- (iv) the expenses that could reasonably be expected to have been incurred in respect of the family member (whether by way of airport transfer, meals, accommodation, accident insurance, airport or departure tax, passenger movement charge, or any similar matter or thing) in accordance with the entitlement or custom to which that capital city holiday transport assistance relates and in connection with travelling on that return service or those return services;

(d) if paragraph (c) does not apply but the following conditions are satisfied in respect of one or more return scheduled passenger air services:

- (A) the service was operated, at or about the time the holiday commenced, between eligible places;
- (B) the nature of the service is such that it would not be unreasonable for the family member to travel on the service;

the lowest of the return economy air fares for those services;

(e) if neither paragraph (c) nor (d) applies but the following conditions are satisfied in respect of one or more combinations of return scheduled passenger air services:

- (A) the combination was operated at or about the time the holiday commenced and would have enabled a person to travel between eligible places;

- (B) the nature of the combination, and of the services in the combination, is such that it would not be unreasonable for the family member to travel on the services;
- the total of the return economy air fares for the combination that has the lowest total of economy return air fares; or
- (f) in any other case—an amount equal to the lowest return fare, or combination of return fares, in respect of travel services in respect of which the following conditions are satisfied:
 - (A) the service, or combination of services, was operated at or about the time the holiday commenced and would have enabled a person to travel between eligible places;
 - (B) the nature of the service, or the nature of the combination and of the services included in the combination, is such that it would not be unreasonable for the family member to travel on the service or services.
- (4) For the purposes of the application of this section in relation to a benefit provided in respect of the employment of an employee:
 - (a) a reference in this section to travel, or to the operation of a service or services, between eligible places is a reference to travel, or the operation of a service or services, between:
 - (i) a place at or near the place referred to in paragraph (1)(f); and
 - (ii) the capital city of the State or Territory in which the place referred to in paragraph (1)(f) is located;
 - (b) a reference in this section to the provision of capital city holiday transport assistance to the employee is a reference to:
 - (i) the making of payments in discharge or reimbursement of expenditure incurred by a person in respect of a return scheduled passenger air service or combination of return scheduled passenger air services operated by a carrier or carriers between eligible places; or
 - (ii) the provision of transport on such a service or services;
 - (c) Adelaide shall be treated as the capital city of the Northern Territory; and

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- (d) Perth shall be treated as the capital city of the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

143A Relocation transport

For the purposes of this Act, where:

- (a) any of the following benefits is provided in, or in respect of, a year of tax to an employee, or to an associate of the employee, in respect of the employment of the employee:
 - (i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of transport;
 - (ii) an expense payment benefit where the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;
 - (iii) a property benefit where the recipients property consists of meals in connection with transport;
 - (iv) a residual benefit where the recipients benefit consists of the provision of transport or accommodation in connection with transport;
- (b) the transport, meals or accommodation is for a family member;
- (c) the transport is required solely because:
 - (i) the employee is required to live away from his or her usual place of residence in order to perform the duties of that employment;
 - (ii) the employee, having lived away from his or her usual place of residence in order to perform the duties of that employment, is required to return to his or her usual place of residence:
 - (A) in order to perform those duties; or
 - (B) because the employee has ceased to perform those duties; or
 - (iii) the employee is required to change his or her usual place of residence in order to perform the duties of that employment;
- (d) the transport is provided to enable a family member to:
 - (i) if subparagraph (c)(i) applies—take up residence at or near the place where the employee performs the duties

- of that employment while living away from his or her usual place of residence;
- (ii) if subparagraph (c)(ii) applies—take up residence at the employee’s usual place of residence; or
 - (iii) if subparagraph (c)(iii) applies—take up residence at the employee’s new usual place of residence;
- (e) if the transport is for the spouse, or a child, of the employee—the transport is not provided to enable the spouse or child to accompany the employee:
- (i) while the employee is undertaking travel in the course of performing the duties of that employment; and
 - (ii) where the circumstances referred to in subsection 26-30(2) of the *Income Tax Assessment Act 1997* do not apply; and
- (f) if the transport is for the employee—the transport is not provided while the employee is undertaking travel in the course of performing the duties of that employment; and
- (g) if subparagraph (c)(iii) applies—the benefit is not provided under a non-arm’s length arrangement;
- the benefit shall be taken to be in respect of relocation transport.

143B Overseas employees

For the purposes of this Act, where:

- (a) an employee’s usual place of residence is in a particular country (in this section called the *home country*);
- (b) apart from temporary absences, the employee performs the duties of his or her employment at:
 - (i) a place outside the home country; or
 - (ii) 2 or more places outside the home country; and
- (c) the employee is required to live outside the home country in order to perform the duties of his or her employment at the place or places referred to in paragraph (b);

the following provisions have effect:

- (d) the period commencing when the employee commences to perform the duties of his or her employment at:
 - (i) if subparagraph (b)(i) applies—the place referred to in that subparagraph; or

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- (ii) if subparagraph (b)(ii) applies—the first place referred to in that subparagraph at which the employee performs those duties;
and ending when the employee ceases, apart from any temporary absences, to perform those duties at:
- (iii) if subparagraph (b)(i) applies—the place referred to in that subparagraph; or
- (iv) if subparagraph (b)(ii) applies—the last place referred to in that subparagraph at which the employee performs those duties;
shall be taken to be the overseas posting period of the employee;
- (e) the employee shall be taken to be an overseas employee during the overseas posting period;
- (f) the place, or each of the places, referred to in paragraph (b) shall be taken to be an overseas employment place.

143C Overseas employment holiday transport

- (1) For the purposes of this Act, where:
 - (a) any of the following fringe benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee of an employer:
 - (i) an expense payment fringe benefit where the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;
 - (ii) a property fringe benefit where the recipients property consists of meals in connection with transport;
 - (iii) a residual fringe benefit where the recipients benefit consists of the provision of transport or accommodation in connection with transport;
 - (b) the transport, accommodation or meals is for a family member;
 - (c) the transport is provided wholly or principally to enable the family member to have a holiday for a period of not less than 3 days;
 - (d) at the time (in this section called the *outbound travel time*) immediately before the commencement of travel undertaken by the family member in connection with that holiday:
 - (i) the employee was an overseas employee; and

- (ii) disregarding days of recreation leave, the employee's overseas posting period was a period of not less than 28 days;
- (e) if the transport is for the employee:
 - (i) the transport is provided while the employee is on recreation leave, being recreation leave of not less than 3 working days; and
 - (ii) at the completion of that recreation leave, the employee resumes the duties of that employment at the place that was the employee's overseas employment place at the outbound travel time;
- (f) either of the following subparagraphs applies:
 - (i) the transport is between:
 - (A) a place at or near the place that was the employee's overseas employment place at the outbound travel time; and
 - (B) another place;
 - (ii) the transport is for the spouse, or a child, of the employee, being a spouse or a child of the employee who does not live with the employee at the place that was the employee's overseas employment place at the outbound travel time, and the transport is between:
 - (A) a place where the spouse or child, as the case may be, meets the employee; and
 - (B) another place;
- (g) in the case of an expense payment fringe benefit—the recipients expenditure is not in respect of remote area holiday transport;
- (h) in the case of a property fringe benefit—the recipients property is not in respect of remote area holiday transport;
- (j) in the case of a residual fringe benefit—the recipients benefit is not in respect of remote area holiday transport;
- (k) if the transport is for the spouse, or a child, of the employee—the transport is not provided to enable the spouse or child to accompany the employee:
 - (i) while the employee is undertaking travel in the course of performing the duties of his or her employment; and

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- (ii) where the circumstances referred to in subsection 26-30(2) of the *Income Tax Assessment Act 1997* do not apply; and
- (m) either of the following conditions is satisfied:
 - (i) the benefit is provided pursuant to the provisions of an industrial instrument relating to the employment of the employee;
 - (ii) it is customary for employers in the industry in which the employee is employed to provide benefits of the same kind as the benefit provided to the recipient and to provide such benefits in similar circumstances to those that applied in relation to the provision of the benefit to the recipient;

the following provisions have effect:

- (n) the fringe benefit shall be taken to be in respect of overseas employment holiday transport;
- (p) the benchmark travel amount in relation to the family member in relation to the fringe benefit is:
 - (i) if either of the following sub-subparagraphs apply:
 - (A) the employee was entitled to be provided with home country holiday transport assistance pursuant to the provisions of an industrial instrument relating to the employment of the employee;
 - (B) there was a custom in the industry in which the employee was employed such that the employee could have been provided with home country holiday transport assistance by the employer;

the sum of:

- (C) the return economy air fare in respect of the air service, or the total of the return economy air fares in respect of the air services, to which that home country holiday transport assistance relates; and
- (D) the expenses that could reasonably be expected to have been incurred in respect of the family member (whether by way of airport transfer, meals, accommodation, accident insurance, airport or departure tax, passenger movement

charge, or any similar matter or thing) in accordance with the entitlement or custom to which that home country holiday transport assistance relates and in connection with travelling on that return service or those return services;

- (ii) if subparagraph (i) does not apply but the following conditions are satisfied in respect of one or more return scheduled passenger air services:

- (A) the service was operated, at or about the outbound travel time, between eligible places;
- (B) the nature of the service is such that it would not be unreasonable for the family member to travel on the service;

the lowest of the return economy air fares for those services;

- (iii) if neither subparagraph (i) nor (ii) applies but the following conditions are satisfied in respect of one or more combinations of return scheduled passenger air services:

- (A) the combination was operated at or about the outbound travel time and would have enabled a person to travel between eligible places;
- (B) the nature of the combination, and of the services in the combination, is such that it would not be unreasonable for the family member to travel on the services;

the total of the economy return air fares for the combination that has the lowest total of economy return air fares; or

- (iv) in any other case—an amount equal to the lowest return fare, or combination of return fares, in respect of travel services in respect of which the following conditions are satisfied:

- (A) the service, or combination of services, was operated at or about the outbound travel time and would have enabled a person to travel between eligible places;
- (B) the nature of the service, or the nature of the combination and of the services included in the

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combination, is such that it would not be unreasonable for the family member to travel on the service or services;

- (q) if the transport for a particular family member consists wholly of transport:
 - (i) in respect of a holiday taken by the family member; and
 - (ii) by the most direct practicable route between:
 - (A) a place at or near the place that was the employee's overseas employment place at the outbound travel time; and
 - (B) a place in the country in which the employee's usual place of residence during the overseas posting period was located;

the fringe benefit shall be taken to be a home country fringe benefit in relation to the holiday for the family member.

- (2) For the purposes of the application of this section in relation to a benefit provided in respect of the employment of an employee:
 - (a) a reference in this section to travel, or to the operation of a service or services, between eligible places is a reference to travel, or the operation of a service or services, between:
 - (i) a place at or near the place that was the employee's overseas employment place at the outbound travel time; and
 - (ii) a place at or near the usual place of residence of the employee during the overseas posting period; and
 - (b) a reference in this section to the provision of home country holiday transport assistance to the employee is a reference to:
 - (i) the making of payments in discharge or reimbursement of expenditure incurred by a person in respect of a return scheduled passenger air service, or combination of return scheduled passenger air services, operated by a carrier or carriers between eligible places; or
 - (ii) the provision of transport on such a service or services.

143D Employment interviews and selection tests

For the purposes of this Act, where:

- (a) any of the following benefits is provided in, or in respect of, a year of tax to an employee of an employer in respect of his or her employment:
 - (i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of transport;
 - (ii) an expense payment benefit where the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;
 - (iii) a property benefit where the recipients property consists of meals in connection with transport;
 - (iv) a residual benefit where the recipients benefit consists of the provision of transport or accommodation in connection with transport;
- (b) the transport, meals or accommodation is for the employee;
- (c) the transport is required solely because the employee is required to attend an interview or selection test in connection with an application by the employee for:
 - (i) employment;
 - (ii) promotion; or
 - (iii) job transfer; and
- (d) the benefit is not provided under a non-arm's length arrangement;

the benefit shall be taken to be in respect of an employment interview or selection test.

143E Work-related medical examinations, work-related medical screening, work-related preventative health care, work-related counselling, migrant language training

For the purposes of this Act, where:

- (a) any of the following benefits is provided in, or in respect of, a year of tax in respect of the employment of an employee:
 - (i) a car benefit relating to a particular car where the application or availability of the car is in respect of the provision of transport;

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- (ii) an expense payment benefit where the recipients expenditure is in respect of the provision of transport, or meals or accommodation in connection with transport;
 - (iii) a property benefit where the recipients property consists of meals in connection with transport;
 - (iv) a residual benefit where the recipients benefit consists of the provision of transport or accommodation in connection with transport;
- (b) the transport is required solely because:
- (i) the employee attends:
 - (A) a work-related medical examination of the employee;
 - (B) work-related medical screening of the employee;
 - (C) work-related preventative health care of the employee;
 - (D) work-related counselling of the employee; or
 - (E) migrant language training of the employee; or
 - (ii) an associate of the employee attends:
 - (A) work-related counselling of the associate; or
 - (B) migrant language training of the associate;
- (c) if subparagraph (b)(i) applies—the transport, meals or accommodation is for the employee; and
- (d) if subparagraph (b)(ii) applies—the transport, meals or accommodation is for the associate of the employee;
- the benefit shall be taken to be associated with:
- (e) a work-related medical examination of the employee;
 - (f) work-related medical screening of the employee;
 - (g) work-related preventative health care of the employee;
 - (h) work-related counselling of the employee or of the associate of the employee; or
 - (j) migrant language training of the employee or of the associate of the employee;
- as the case requires.

144 Deemed payment

For the purposes of Part III, any conduct by a person that effects or results in a discharge or extinction of an obligation of another

person to pay an amount to a third person shall be taken to constitute the payment of the amount by the first-mentioned person.

145 Consideration not in cash

- (1) For the purposes of this Act, where, upon any transaction, any consideration is given by way of the provision of property (other than money), the money value of that consideration shall be deemed to have been paid or given.
- (2) Subsection (1) does not apply for the purpose of determining whether an act or thing constitutes the provision of a benefit to which a particular provision of this Act applies.

146 Amounts to be expressed in Australian currency

For the purposes of this Act, all amounts and values shall be expressed in terms of Australian currency.

147 Obligation to pay or repay an amount

For the purposes of this Act, a person shall be deemed to be under an obligation to pay or repay an amount notwithstanding that the amount is not due for payment or repayment.

148 Provision of benefits

- (1) A reference in this Act to the provision of a benefit to a person in respect of the employment of an employee is a reference to the provision of such a benefit:
 - (a) whether or not the benefit is also provided in respect of, by reason of, by virtue of, or for or in relation directly or indirectly to, any other matter or thing;
 - (b) whether the employment will occur, is occurring, or has occurred;
 - (c) whether or not the benefit is surplus to the needs or wants of the recipient;
 - (d) whether or not the benefit is also provided to another person;
 - (e) whether or not the benefit is, to any extent, offset by any inconvenience or disadvantage;

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- (f) whether or not the benefit is provided or used, or required to be provided or used, in connection with that employment;
 - (g) whether or not the provision of the benefit is, or is in the nature of, income; and
 - (h) whether or not the benefit is provided as a reward for services rendered, or to be rendered, by the employee.
- (2) Where, in respect of the employment of an employee, a benefit is provided by a person (in this subsection referred to as the *provider*) to a person other than:
- (a) the employee; or
 - (b) a person who, but for this subsection, is an associate of the employee;
- under an arrangement between:
- (c) the provider, the employer or an associate of the employer; and
 - (d) the employee or a person who, but for this subsection, is an associate of the employee;
- the recipient of the benefit shall be deemed to be an associate of the employee for the purposes of the application of this Act in relation to the provision of that benefit.
- (3) Where:
- (a) but for the prohibition on the doing of an act or thing, the doing of the act or thing would result in the provision of a benefit in respect of the employment of a person by another person (in this subsection referred to as the *provider*); and
 - (b) the prohibition is not consistently enforced;
- the provider shall be deemed, for the purposes of this Act, to have provided that benefit in respect of that employment.
- (4) For the purposes of this Act, a benefit that is received or obtained by an employee, or by an associate of an employee, in respect of the employment of the employee shall be deemed to have been provided by the provider in respect of that employment.
- (5) A provision of this Act that deems a benefit to have been provided in particular circumstances shall not, by implication, limit the meaning of the expression *provide* when used in relation to the provision of a benefit in other circumstances.

149 Provision of benefit during a period

- (1) For the purposes of this Act, a benefit shall be taken to be provided during a period if, and only if, the benefit:
 - (a) is provided, or subsists, during a period of more than 1 day; and
 - (b) is not deemed by a provision of this Act to be provided at a particular time or on a particular day.
- (2) For the purposes of subsection (1), but without limiting the generality of that subsection, a benefit constituted by the subsistence of a lease or licence in respect of property, or a benefit in respect of a loan, shall be taken to be provided during the period when the lease or licence subsists or while a person is under an obligation to repay the whole or any part of the loan, as the case may be.

149A What is a *GST-creditable benefit*?

- (1) A benefit provided in respect of the employment of an employee is a ***GST-creditable benefit*** if either of the following is or was entitled to an input tax credit under Division 111 of the *A New Tax System (Goods and Services Tax) Act 1999* because of the provision of the benefit:
 - (a) the person who provided the benefit;
 - (b) a person who is or was a member of the same GST group (as defined in that Act) as the person who provided the benefit.
- (2) A benefit provided in respect of the employment of an employee is also a ***GST-creditable benefit*** if:
 - (a) the benefit consists of:
 - (i) a thing (as defined in the *A New Tax System (Goods and Services Tax) Act 1999*); or
 - (ii) an interest in such a thing; or
 - (iii) a right over such a thing; or
 - (iv) a personal right to call for or be granted any interest in or right over such a thing; or
 - (v) a licence to use such a thing; or
 - (vi) any other contractual right exercisable over or in relation to such a thing; and

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- (b) the thing was acquired (within the meaning of that Act) or imported (within the meaning of that Act) and either of the following is or was entitled to an input tax credit under that Act because of the acquisition or importation:
 - (i) the person who provided the benefit;
 - (ii) a person who is or was a member of the same GST group (as defined in that Act) as the person who provided the benefit.

150 Credit cards

For the purposes of this Act, where, in respect of the employment of an employee of an employer, the employee or an associate of the employee uses a credit card issued by a third person to, or to an associate of, the employer to obtain the provision of a benefit on credit from a fourth person, the following provisions have effect:

- (a) the fourth person shall be taken to have provided the benefit, in respect of that employment, under an arrangement between:
 - (i) the employer or the associate of the employer, as the case requires; and
 - (ii) the fourth person;
- (b) where the employer or the associate of the employer, as the case may be, incurred expenditure to the third person under an arm's length transaction in respect of the provision of the benefit—the employer or the associate of the employer, as the case requires, shall be taken to have incurred that expenditure to the fourth person under an arm's length transaction.

151 Employee performing services for person other than employer

Where the employer of an employee contracts with another person (in this section referred to as the *purchaser*) for the employee to perform services for the purchaser, the following provisions have effect for the purposes of the application of section 54 and the definition of *board meal* in subsection 136(1) in relation to the provision of a meal, or food or drink, to the employee in respect of, by reason of, by virtue of, or for or in relation directly or indirectly to, the performance of those services:

- (a) premises of the purchaser shall be taken to be eligible premises of the employer;
- (b) a meal, or food or drink, provided by the purchaser to the employee shall be taken to have been provided by the employer.

152A Recurring fringe benefit declaration

Recipient may make recurring fringe benefit declaration

- (1) If a person is provided with a benefit (the **declaration benefit**), the person may make a **recurring fringe benefit declaration** in relation to the declaration benefit.

Expense payment fringe benefits covered by declaration

- (2) If the recurring fringe benefit declaration covers another benefit (the **later benefit**) that is an expense payment fringe benefit:
- (a) the recurring fringe benefit declaration is taken to have been made under paragraph 24(1)(e) in respect of the recipients expenditure for that benefit; and
 - (b) the **gross deduction** in paragraph 24(1)(b) in relation to the later benefit is taken to be the amount worked out using the formula:

$$\text{Gross expenditure} \times \text{Deductible proportion of} \\ \left[\text{later benefit} \right] \quad \times \quad \text{declaration benefit}$$

where:

Gross expenditure (later benefit) is the gross expenditure mentioned in paragraph 24(1)(b) in relation to the later benefit.

Deductible proportion of declaration benefit is the deductible proportion of the declaration benefit as worked out under subsection (9).

Note: The **gross deduction** is used as component GD in the formula in paragraph 24(1)(ba).

Property fringe benefits covered by declaration

- (3) If the recurring fringe benefit declaration covers another benefit (the **later benefit**) that is a property fringe benefit:

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- (a) the recurring fringe benefit declaration is taken to have been made under paragraph 44(1)(c) in respect of the recipients property for that benefit; and
- (b) the **gross deduction** in paragraph 44(1)(b) in relation to the later benefit is taken to be the amount worked out using the formula:

$$\text{Gross expenditure [later benefit]} \times \text{Deductible proportion of declaration benefit}$$

where:

Gross expenditure (later benefit) is the gross expenditure mentioned in paragraph 44(1)(b) in relation to the later benefit.

Deductible proportion of declaration benefit is the deductible proportion of the declaration as worked out under subsection (9).

Note: The **gross deduction** is used as component GD in the formula in paragraph 44(1)(ba).

Residual fringe benefits covered by declaration

- (4) If the recurring fringe benefit declaration covers another benefit (the **later benefit**) that is a residual fringe benefit:
 - (a) the recurring fringe benefit declaration is taken to have been made under paragraph 52(1)(c) in respect of the recipients benefit for that benefit; and
 - (b) the **gross deduction** in paragraph 52(1)(b) in relation to the later benefit is taken to be the amount worked out using the formula:

$$\text{Gross expenditure [later benefit]} \times \text{Deductible proportion of declaration benefit}$$

where:

Gross expenditure (later benefit) is the gross expenditure mentioned in paragraph 52(1)(b) in relation to the later benefit.

Deductible proportion of declaration benefit is the deductible proportion of the declaration benefit as worked out under subsection (9).

Note: The **gross deduction** is used as component GD in the formula in paragraph 52(1)(ba).

- (5) The declaration must be in a form approved in writing by the Commissioner and be made, and given to the employer, by the declaration date for the employer for the FBT year in which the declaration benefit is provided.

What benefit declaration covers

- (6) The declaration covers all benefits that are identical to the declaration benefit received by the person before the earlier of:
- (a) the time when the person revokes the declaration; and
 - (b) the end of 5 years starting when the declaration is made.
- (7) The declaration does not cover a benefit if the deductible proportion of the benefit is more than 10 percentage points less than the deductible proportion of the declaration benefit.
- (8) If a taxpayer makes a declaration for a benefit that is an identical benefit to a benefit covered by an earlier declaration, the earlier declaration is revoked.

Meaning of deductible proportion

- (9) The **deductible proportion** of a benefit is the percentage worked out using the formula:

$$\frac{\text{Gross deduction}}{\text{Gross expenditure}} \times 100\%$$

where:

gross deduction means the gross deduction mentioned in whichever of paragraph 24(1)(b), 44(1)(b) or 52(1)(b) applied to the benefit.

gross expenditure means the gross expenditure mentioned in whichever of paragraph 24(1)(b), 44(1)(b) or 52(1)(b) applied to the benefit.

Meaning of identical

- (10) A benefit is **identical** to another benefit if the benefits are the same in all respects except for any differences:
- (a) that are minimal or insignificant; or
 - (b) that relate to the value of the benefits; or

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- (c) in the deductible proportion of the benefits.

152B Employer may elect 50/50 split method for entertainment facility leasing costs

If:

- (a) the taxable value of one or more fringe benefits of an employer for an FBT year is attributable, in whole or in part, to entertainment facility leasing expenses incurred by the employer in the FBT year; and
- (b) the employer elects that this section applies for the FBT year;

then:

- (c) the aggregate fringe benefit amount for the employer for the FBT year is to be reduced by so much of the total taxable value of all fringe benefits as is attributable to entertainment facility leasing expenses; and
- (d) the aggregate fringe benefit amount for the employer for the FBT year is to then be increased by 50% of the total of entertainment facility leasing expenses incurred by the employer in the FBT year (including expenses not taken into account under paragraph (a)).

Note: The effect of this is that the employer's *aggregate fringe benefits amount* (see section 5C) for the FBT year will include 50% of the entertainment facility leasing expenses incurred by the employer for the FBT year.

153 Residual benefits to include provision of property in certain circumstances

For the purposes of this Act, where:

- (a) a person carries on a business that consists of, or includes, the entering into of contracts for the provision of property together with the provision of residual benefits;
- (b) the person provides property (other than food or drink) and residual benefits to another person;
- (c) but for this section, the provision would constitute a property benefit and a residual benefit; and
- (d) the provision is made in the same, or substantially the same, circumstances as a provision of the kind mentioned in paragraph (a);

the provision of the residual benefit shall be taken to include the provision of the property and the provision of the property shall not be taken to constitute a property benefit.

154 Creation of property

For the purposes of this Act, where a person does anything that results in the creation of property in another person, the first-mentioned person shall be deemed to have provided that property to the other person at the time when the property comes into existence.

155 Use of property before title passes

- (1) Subject to subsection (2), where, under a transaction, the use of property is obtained by a person for a period at the end of which the title to the property will or may pass to the person, the property shall be deemed, for the purposes of this Act, to have been provided to the person at the time when the use of the property was obtained by the person.
- (2) Property shall not be taken to have been provided to a person by virtue of subsection (1) if the period for which the person has the use of the property terminates without the title to the property passing to the person, and nothing in section 74 prevents the amendment of an assessment for the purpose of giving effect to this subsection.

156 Supply of electricity or gas through reticulation system

For the purposes of this Act, the supply of electricity or gas through a reticulation system shall be deemed not to constitute the provision of property.

157 Christmas Island and Cocos (Keeling) Islands

- (1) A reference in this Act to an internal Territory includes a reference to the Territory of Christmas Island and to the Territory of Cocos (Keeling) Islands.
- (2) For the purposes of this Act, a location in the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands shall be taken not to be situated in, or adjacent to, an eligible urban area.

158 Related companies

- (1) For the purposes of this Act, a company shall be taken to be related to another company if:
 - (a) one of the companies is a subsidiary of the other company; or
 - (b) each of the companies is a subsidiary of the same company.

- (2) For the purposes of this section, a company (in this subsection referred to as the *subsidiary company*) shall be taken to be the subsidiary of another company (in this subsection referred to as the *holding company*) if:
 - (a) all the shares in the subsidiary company are beneficially owned by:
 - (i) the holding company;
 - (ii) a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; or
 - (iii) the holding company and a company that is, or 2 or more companies each of which is, a subsidiary of the holding company; and
 - (b) there is no agreement in force by virtue of which any person is in a position to affect rights of the holding company or of a subsidiary of the holding company in relation to the subsidiary company.

- (3) For the purposes of this section, where a company is a subsidiary of another company (including a company that is such a subsidiary by virtue of another application or other applications of this subsection), every company that is a subsidiary of the first-mentioned company shall be taken to be a subsidiary of that other company.

- (4) For the purposes of subsection (2), a person shall be taken to be in a position to affect any rights of a company in relation to another company if that person has a right, power or option (whether by virtue of any provision in the constituent document of either of those companies or by virtue of any agreement or instrument or otherwise) to acquire those rights or do an act or thing that would prevent the first-mentioned company from exercising those rights for its own benefit or receiving any benefits accruing by reason of those rights.

159 Associates and relatives

- (2) For the purposes of this Act, but without limiting the generality of the expression *associate*:
- (a) a company that is related to another company shall be deemed to be an associate of that other company;
 - (b) the Commonwealth shall be deemed to be an associate of each authority of the Commonwealth;
 - (c) an authority of the Commonwealth shall be deemed an associate of each other authority of the Commonwealth;
 - (d) a State shall be deemed to be an associate of each authority of the State;
 - (e) an authority of a State shall be deemed to be an associate of each other authority of the State;
 - (f) a Territory shall be deemed to be an associate of each authority of the Territory; and
 - (g) an authority of a Territory shall be deemed to be an associate of each other authority of the Territory.
- (3) Where a person is an associate of another person by virtue of paragraph (2)(b), (c), (d), (e), (f) or (g), Part III has effect as if those persons were companies and were related to each other.
- (4) For the purposes of this Act, section 318 of the *Income Tax Assessment Act 1936* has effect as if “a partnership in which the primary entity is a partner” were omitted from paragraphs (1)(b) and (2)(a) of that section and “a partnership in which the primary entity is or was a partner (whether or not the partnership still exists)” were substituted.

160 Continuity of employment where business disposed of etc.

- (1) Where:
- (a) a person (in this subsection referred to as the *former employer*) disposes of the whole or a part of a business or undertaking to another person (in this subsection referred to as the *new employer*); and
 - (b) an arrangement relating to the disposal provides for the new employer or an associate of the new employer to provide or to continue to provide, or to arrange for the provision or continued provision of, benefits in respect of the employment

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of a person (in this subsection referred to as the *former employee*) by the former employer;

the following provisions have effect:

- (c) this Act applies, in relation to any benefit so provided or continued to be provided, as if the employment of the former employee by the former employer were, instead, employment by the new employer;
- (d) where the arrangement provides for the new employer or an associate of the new employer to assume, or arrange for the assumption of, the rights of:
 - (i) a lender under a loan;
 - (ii) a lessor under a lease; or
 - (iii) a licensor under a licence;

being a loan, lease or licence, as the case may be, granted in respect of the employment of the former employee by the former employer, this Act has effect, after the assumption of those rights, as if the employment of the former employee by the former employer were, instead, employment by the new employer and the loan, lease or licence had been granted in respect of that employment by the person who assumed the rights.

(2) Where, for any reason, including:

- (a) the formation or dissolution of a partnership; or
- (b) a variation in the constitution of a partnership, or in the interests of the partners;

a change has occurred in the ownership of, or in the interests of persons in, property constituting the whole or a part of the assets of a business and the person, or one or more of the persons, who owned the property before the change has or have an interest in the property after the change, this Act has effect as if the persons who owned the property before the change had, on the day on which the change occurred:

- (c) disposed of the whole of that business to the person, or all of the persons, by whom the property is owned after the change; and
- (d) disposed of the whole of the property to the person, or all of the persons, by whom the property is owned after the change for an amount equal to the notional value of the property.

- (3) For the purposes of this Act, the trustee or trustees from time to time of a trust, being an employer or employers, shall be deemed to be one employer.

161 Business journeys in car

- (1) For the purposes of this Act, where:
- (a) during a particular period during a day, 2 or more journeys are undertaken in a car; and
 - (b) each of the journeys in the car during that period is a business journey;
- the journeys referred to in paragraph (b) shall be deemed to constitute a single journey.

162 Holding of car

- (1) In this Act, unless the contrary intention appears, a reference to a car held by a person is a reference to:
- (a) a car owned by the person;
 - (b) a car leased to the person; or
 - (c) a car otherwise made available to the person by another person.
- (2) For the purposes of the application of section 10 in relation to car fringe benefits in relation to an employer in relation to a particular car, the car shall be taken to be held by a particular person if, and only if, the car is held by the person for use in providing those fringe benefits (whether or not the car was used for any other purpose while it was so held).
- (3) For the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, as the case requires, a car shall be taken to be held by the recipient of the fringe benefit if, and only if, the car is owned or leased by the recipient for use in the course of producing assessable income of the recipient (whether or not the car was used for any other purpose while it was so owned or leased).
- (4) A reference in this Act to a period during which a car was held by a person is a reference to a period during which the car was continuously held by the person.

Section 162B

162B When car used for the purpose of producing assessable income

For the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, as the case requires, the question whether a car is used by a person for the purposes of producing assessable income shall be determined in the same manner as the question whether property is used by a taxpayer for the purpose of producing assessable income is determined under the *Income Tax Assessment Act 1997*.

162C Holding period of car

Unless the contrary intention appears, a reference in this Act to a period in a year of tax during which a person held a car is a reference to the period that:

- (a) commences on whichever of the following times is applicable:
 - (i) if the person held the car at the time of commencement of the year of tax—that time;
 - (ii) in any other case—the time in the year of tax when the person commenced to hold the car; and
- (b) ends at whichever of the following times is applicable:
 - (i) if the person continued to hold the car until the time of the end of the year of tax—that time;
 - (ii) in any other case—the time in the year of tax when the person ceased to hold the car.

162F Reasonable estimate of number of business kilometres

For the purposes of this Act, the number of kilometres that represents a reasonable estimate of the number of business kilometres applicable to a car held by a person during a period in a year of tax shall be determined having regard to all relevant matters including, but without limiting the generality of the foregoing:

- (a) any log book records, odometer records or other records maintained by or on behalf of the person; and
- (b) any variations in the pattern of use of the car.

162G Log book year of tax

- (1) For the purposes of the application of section 10 in relation to a car fringe benefit in relation to an employer in relation to a particular car while it was held by a particular person (in this subsection called the *provider*) during a particular period (in this subsection called the *holding period*) in a year of tax (in this subsection called the *current year of tax*), the current year of tax is a log book year of tax of the employer in relation to the car if, and only if:
 - (a) none of the previous 4 years was a log book year of tax of the employer in relation to the car;

Note: This paragraph will apply if it is the first year that the employer uses the cost basis method.
 - (b) the employer elects that the current year of tax be treated as a log book year of tax of the employer in relation to the car; or
 - (h) the Commissioner causes a notice in writing to be served on the employer before the commencement of the current year of tax requiring the employer to treat the current year of tax as a log book year of tax of the employer in relation to the car.
- (2) For the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, as the case requires, in relation to an employer in relation to a particular car held by the recipient of the fringe benefit during a particular period (in this subsection called the *holding period*) in a year of tax (in this subsection called the *current year of tax*), the current year of tax is a log book year of tax of the recipient in relation to the car if, and only if:
 - (a) none of the previous 4 years was a log book year of tax of the employer in relation to the car;
 - (b) the employer elects that the current year of tax be treated as a log book year of tax of the recipient in relation to the car; or
 - (h) the Commissioner causes a notice in writing to be served on the employer before the commencement of the current year of tax requiring the employer to treat the current year of tax as a log book year of tax of the recipient in relation to the car.
- (3) An election under this section is to be in writing.

162H Applicable log book period

- (1) For the purposes of the application of section 10 in relation to a car fringe benefit in relation to an employer in relation to a car while it was held by a particular person during a particular period (in this subsection called the *holding period*) starting or ending in a year of tax, a reference to the applicable log book period is a reference to:
 - (a) if the holding period is a period of less than 12 weeks—the holding period; or
 - (b) in any other case—a continuous period of not less than 12 weeks that begins and ends during the holding period.
- (2) For the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, as the case requires, in relation to an employer in relation to a car held by the recipient of the fringe benefit during a particular period (in this subsection called the *holding period*) starting or ending in a year of tax, a reference to the applicable log book period is a reference to:
 - (a) if the holding period is a period of less than 12 weeks—the holding period; or
 - (b) in any other case—a continuous period of not less than 12 weeks that begins and ends during the holding period.
- (3) The applicable log book period must be specified in the log book records for the period at, or as soon as possible after, the end of the period.

162K Replacement cars—car fringe benefits

- (1) This section has effect for the purposes of the application of section 10 in relation to car fringe benefits in relation to an employer in relation to a year of tax (in this section called the *current year of tax*) or a subsequent year of tax.
- (2) Where the employer nominates a particular car (in this section called the *replacement car*) as having replaced another car (in this section called the *original car*) with effect from a specified date in the current year of tax:
 - (a) the original car shall be treated, with effect from that date, as a different car; and

- (b) the replacement car shall be treated, with effect from that date, as the same car as the original car.
- (2A) A nomination shall be made in writing on or before the declaration date for the current year of tax.
- (3) A nomination shall specify the make, model and registration number (if any) of the original car and of the replacement car.
- (4) This section does not apply for the purposes of the application of subsection 10(5) or section 11 or 12.

162L Replacement cars—otherwise deductible provisions

- (1) This section has effect for the purposes of the application of sections 19, 24, 44 and 52 in relation to a loan fringe benefit, expense payment fringe benefit, property fringe benefit or residual fringe benefit, in relation to an employer in relation to a year of tax (in this section called the *current year of tax*) or a subsequent year of tax.
- (2) Where the employer nominates a particular car (in this section called the *replacement car*) as having replaced another car (in this section called the *original car*) with effect from a specified date in the current year of tax:
 - (a) the original car shall be treated, with effect from that date, as a different car; and
 - (b) the replacement car shall be treated, with effect from that date, as the same car as the original car.
- (2A) A nomination shall be made in writing on or before the declaration date for the current year of tax.
- (3) A nomination shall specify the make, model and registration number (if any) of the original car and of the replacement car.

162N Registration of motor vehicle

For the purposes of this Act, a motor vehicle shall be taken to be registered in a particular place if it may be driven on a public road in that place without contravening the law in force in that place.

163 Application of Act

- (1) This Act extends to every external Territory and, except so far as the contrary intention appears, to acts, omissions, matters and things outside Australia, whether or not in a foreign country.
- (2) Except where otherwise expressly provided, this Act extends to matters and things whether occurring before or after the commencement of this Act.
- (3) This Act binds the Crown in right of each of the States, of the Northern Territory and of Norfolk Island.
- (4) In subsection (1), a reference to this Act includes a reference to the *Taxation Administration Act 1953* to the extent to which that Act relates to this Act.

164 Residence

- (1) For the purposes of this Act, a person shall be taken to have been a non-resident at a particular time if the person was not a resident of Australia at that time.
- (2) For the purposes of this Act, a person shall be taken to have been a resident of Australia at a particular time if:
 - (a) in the case of a natural person:
 - (i) the person resided in Australia at that time; or
 - (ii) except in the case where the Commissioner is satisfied that that person's permanent place of residence at that time was outside Australia—the person was domiciled in Australia at that time;
 - (b) in the case of an incorporated company:
 - (i) the company was incorporated in Australia at that time; or
 - (ii) at that time the company carried on business in Australia and:
 - (A) had its central management and control in Australia; or
 - (B) had its voting power controlled by shareholders who were residents of Australia; or

- (c) in the case of a partnership or an unincorporated company—
any member of the partnership or company was a resident of
Australia at that time by virtue of paragraph (a) or (b).

165 Partnerships

- (1) Subject to this section, this Act applies to a partnership as if the partnership were a person.
- (2) Where, but for this subsection, an obligation would be imposed on a partnership by virtue of the operation of subsection (1), the obligation is imposed on each partner, but may be discharged by any of the partners.
- (3) Where, by virtue of the operation of subsection (1), an amount is payable under this Act by a partnership, the partners are jointly and severally liable to pay that amount.
- (4) Where, by virtue of the operation of subsection (1), an offence against this Act is deemed to have been committed by a partnership, that offence shall be deemed to have been committed by each of the partners.
- (5) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person:
 - (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is deemed to have been committed; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is deemed to have been committed.
- (6) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act.

166 Unincorporated companies

- (1) Subject to this section, this Act applies to an unincorporated company as if the company were a person.
 - (2) Where, but for this subsection, an obligation would be imposed on an unincorporated company by virtue of the operation of
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Section 167

subsection (1), the obligation is imposed on each member of the committee of management of the company, but may be discharged by any of those members.

- (3) Where, by virtue of the operation of subsection (1), an offence against this Act is deemed to have been committed by an unincorporated company, that offence shall be deemed to have been committed by each member of the committee of management of the association.
- (4) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person:
 - (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is deemed to have been committed; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is deemed to have been committed.
- (5) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act.

167 Offences by government bodies

Notwithstanding anything in this Act or any other Act, a government body shall not be taken to be guilty of an offence against this Act.

Schedule—Statutory interest rates for periods between 1 January 1946 and 2 April 1986

Subsection 136(1)

Period		
Date on which period commenced	Date on which period ended	Interest rate (% per annum)
1 January 1946	1 August 1952	3.875
2 August 1952	31 March 1956	4.5
1 April 1956	28 February 1961	5.0
1 March 1961	10 April 1963	5.25
11 April 1963	31 March 1965	4.75
1 April 1965	31 July 1968	5.0
1 August 1968	31 March 1970	5.5
1 April 1970	30 September 1973	6.25
1 October 1973	13 September 1974	7.25
14 September 1974	28 February 1978	9.25
1 March 1978	31 March 1980	8.75
1 April 1980	31 July 1980	9.25
1 August 1980	31 December 1980	9.75
1 January 1981	31 August 1981	10.75
1 September 1981	31 March 1982	11.75
1 April 1982	31 January 1983	12.75
1 February 1983	30 September 1983	12.50
1 October 1983	30 November 1983	12.00
1 December 1983	15 April 1985	11.50
16 April 1985	14 July 1985	12.00
15 July 1985	30 September 1985	12.50
1 October 1985	2 April 1986	13.50

Notes to the *Fringe Benefits Tax Assessment Act 1986*

Note 1

The *Fringe Benefits Tax Assessment Act 1986* as shown in this compilation comprises Act No. 39, 1986 amended as indicated in the Tables below.

The *Fringe Benefits Tax Assessment Act 1986* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50). The amendment is incorporated in this compilation.

The *Fringe Benefits Tax Assessment Act 1986* was modified by the Bankruptcy Rules (1968 No. 2 as amended). The modifications are not incorporated in this compilation.

The *Fringe Benefits Tax Assessment Act 1986* was modified by the *Banking (State Bank of South Australia and Other Matters) Act 1994*. The modifications are not incorporated in this compilation.

The *Fringe Benefits Tax Assessment Act 1986* was modified by the Bankruptcy Regulations (1996 No. 263 as amended). The modifications are not incorporated in this compilation.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 18 December 1996 is not included in this compilation. For subsequent information see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Fringe Benefits Tax Assessment Act 1986</i>	39, 1986	24 June 1986	24 June 1986	
<i>Taxation Boards of Review (Transfer of Jurisdiction) Act 1986</i>	48, 1986	24 June 1986	S. 31 and Parts VII, VIII (ss. 45–56): (a) Remainder: 1 July 1986	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 1986</i>	112, 1986	4 Nov 1986	4 Nov 1986	S. 46
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1987</i>	23, 1987	26 May 1987	S. 3: 1 Sept 1987 (see <i>Gazette</i> 1987, No. S217) (b)	S. 4
<i>Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987</i>	139, 1987	18 Dec 1987	18 Dec 1987	Ss. 61 and 62
as amended by				
<i>Taxation Laws Amendment Act 1988</i>	11, 1988	26 Apr 1988	Part IX (ss. 49, 50): 18 Dec 1987 (c)	—
<i>Taxation Laws Amendment Act (No. 2) 1988</i>	78, 1988	24 June 1988	(see 78, 1988 below)	—
<i>Petroleum Resource Rent Tax (Miscellaneous Provisions) Act 1987</i>	145, 1987	18 Dec 1987	15 Jan 1988 (see s. 2)	—
<i>Australian Airlines (Conversion to Public Company) Act 1988</i>	6, 1988	9 Mar 1988	S. 69(1): Royal Assent (d)	—
<i>Taxation Laws Amendment Act (No. 2) 1988</i>	78, 1988	24 June 1988	Part II (ss. 3–6), Ss. 37, 39–53 and 55(15)–(25): 1 Nov 1988 (see <i>Gazette</i> 1988, No. S331) S. 14(2): 1 July 1988 S. 15: 22 Dec 1986 Part VI (ss. 62–64): 22 July 1986 Part VII (ss. 65, 66): 18 Dec 1987 Remainder: Royal Assent	—
<i>Taxation Laws Amendment Act (No. 4) 1988</i>	95, 1988	24 Nov 1988	Ss. 44(a) and 54(11): (e) Remainder: Royal Assent	S. 2 (am. by 107, 1989, s. 30) Ss. 9 and 10
as amended by				
<i>Taxation Laws Amendment Act (No. 3) 1989</i>	107, 1989	30 June 1989	(see 107, 1989 below)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment (Tax File Numbers) Act 1988</i>	97, 1988	25 Nov 1988	S. 12: 1 July 1989 (see <i>Gazette</i> 1989, No. S159) Remainder: 1 Jan 1989 (see s. 2(1) and <i>Gazette</i> 1988, No. S399)	—
<i>Taxation Laws Amendment Act (No. 5) 1988</i>	153, 1988	26 Dec 1988	Div. 6 of Part III (s. 43): 1 Jan 1989 Remainder: Royal Assent	S. 7
<i>Higher Education Funding Act 1988</i>	2, 1989	6 Jan 1989	Ss. 86 and 87: Royal Assent (f)	—
<i>Taxation Laws Amendment Act 1989</i>	11, 1989	16 Mar 1989	16 Mar 1989	Ss. 19 and 20
<i>Taxation Laws Amendment Act (No. 2) 1989</i>	97, 1989	30 June 1989	30 June 1989	S. 17
<i>Taxation Laws Amendment Act (No. 3) 1989</i>	107, 1989	30 June 1989	Part 6 (ss. 29, 30): (g) Remainder: Royal Assent	S. 7
<i>Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990</i>	37, 1990	7 June 1990	18 Feb 1991 (see s. 2 and <i>Gazette</i> 1991, No. S47)	—
<i>Taxation Laws Amendment Act (No. 3) 1990</i>	58, 1990	16 June 1990	S. 11: 16 June 1990 (see s. 2(2)) S. 23: 4 Dec 1989 Part 5 (ss. 36–38): 11 May 1989 Remainder: Royal Assent	Ss. 7 and 8
<i>Training Guarantee (Administration) Act 1990</i>	60, 1990	16 June 1990	S. 43 and Part 10 (ss. 88–95): 31 Oct 1990 (see <i>Gazette</i> 1990, No. S272) Remainder: 1 July 1990	—
<i>Taxation Laws Amendment Act (No. 5) 1990</i>	135, 1990	28 Dec 1990	Part 2 (ss. 3–5): Royal Assent (h)	S. 5
<i>Taxation Laws Amendment Act 1991</i>	48, 1991	24 Apr 1991	Part 2 (ss. 3–7): Royal Assent (i)	S. 7
<i>Taxation Laws Amendment Act (No. 2) 1991</i>	100, 1991	27 June 1991	Ss. 3, 5, 7, 10, 12 and 13: Royal Assent (j) Ss. 4, 6, 8, 9 and 11: 28 June 1991 (j)	Ss. 12 and 13

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 1991</i>	216, 1991	24 Dec 1991	Ss. 5–8, 88, 123 and 124: Royal Assent (<i>k</i>) Ss. 113 and 114: 1 Mar 1992 (see <i>Gazette</i> 1992, No. GN7) (<i>k</i>)	Ss. 8, 114 and 124
<i>Taxation Laws Amendment Act 1992</i>	35, 1992	25 May 1992	25 May 1992	S. 5
<i>Superannuation Guarantee (Consequential Amendments) Act 1992</i>	92, 1992	30 June 1992	1 July 1992	—
<i>Taxation Laws Amendment (Self Assessment) Act 1992</i>	101, 1992	30 June 1992	30 June 1992	—
<i>Sales Tax Amendment (Transitional) Act 1992</i>	118, 1992	30 Sept 1992	28 Oct 1992	—
<i>Taxation Laws Amendment Act (No. 4) 1992</i>	191, 1992	21 Dec 1992	21 Dec 1992	—
<i>Corporate Law Reform Act 1992</i>	210, 1992	24 Dec 1992	Part 1 (ss. 1–3): Royal Assent Ss. 26(2) and 28(1): 1 Feb 1994 Ss. 29–173 and 177: 23 June 1993 (see <i>Gazette</i> 1993, No. S186) Remainder: 1 Feb 1993 (see <i>Gazette</i> 1993, No. S25)	—
<i>Taxation Laws Amendment (Fringe Benefits Tax Measures) Act 1992</i>	223, 1992	24 Dec 1992	1 Apr 1994	S. 4
<i>Taxation Laws Amendment (Car Parking) Act 1992</i>	237, 1992	24 Dec 1992	24 Dec 1992	S. 7
<i>Taxation Laws Amendment Act 1993</i>	17, 1993	9 June 1993	Ss. 3–6: Royal Assent (<i>l</i>)	S. 5
<i>Taxation Laws Amendment Act (No. 2) 1993</i>	18, 1993	9 June 1993	Ss. 3–6: Royal Assent (<i>m</i>)	Ss. 5 and 6
<i>Taxation (Deficit Reduction) Act (No. 1) 1993</i>	57, 1993	27 Oct 1993	27 Oct 1993	Ss. 4, 7, 8 and 11
<i>Taxation Laws Amendment Act (No. 3) 1993</i>	118, 1993	24 Dec 1993	Ss. 7–12 and 176: Royal Assent (<i>n</i>) Div. 3 of Part 14 (ss. 180–182): (<i>n</i>)	Ss. 8, 10, 11, 176 and 182
<i>Taxation Laws Amendment Act 1994</i>	56, 1994	7 Apr 1994	Ss. 3–12: Royal Assent (<i>o</i>)	Ss. 4, 6, 7, 9, 10 and 12
<i>Taxation Laws Amendment Act (No. 2) 1994</i>	82, 1994	23 June 1994	Ss. 3–6 and 128–131: Royal Assent (<i>p</i>)	Ss. 4, 6, 128 and 131

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Departure Tax Collection Amendment Act 1994</i>	159, 1994	16 Dec 1994	16 Dec 1994	Ss. 3 and 18–20
<i>Taxation Laws Amendment Act (No. 4) 1994</i>	181, 1994	19 Dec 1994	Schedule 1 (items 22–85): 13 Oct 1994 Remainder: Royal Assent	Sch. 3 (items 1, 5) and Sch. 5 (items 1, 46(10))
<i>Income Tax (International Agreements) Amendment Act 1995</i>	22, 1995	29 Mar 1995	29 Mar 1995	—
<i>Tax Law Improvement (Substantiation) Act 1995</i>	30, 1995	7 Apr 1995	7 Apr 1995	—
<i>Superannuation Laws Amendment (Small Accounts and Other Measures) Act 1995</i>	53, 1995	23 June 1995	1 July 1995	—
<i>Taxation Laws Amendment Act (No. 1) 1995</i>	120, 1995	25 Oct 1995	Schedule 2 (item 5): Royal Assent (<i>q</i>)	—
<i>Taxation Laws Amendment (FBT Cost of Compliance) Act 1995</i>	145, 1995	12 Dec 1995	12 Dec 1995	Sch. 1 (item 5), Sch. 2 (items 10, 11), Sch. 3 (item 4), Sch. 4 (item 8) and Sch. 5 (item 74)
<i>Taxation Laws Amendment Act (No. 2) 1995</i>	169, 1995	16 Dec 1995	Schedule 2 (item 9): Royal Assent (<i>r</i>)	Sch. 2 (items 11–15)
<i>Law and Justice Legislation Amendment Act (No. 1) 1995</i>	175, 1995	16 Dec 1995	16 Dec 1995	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 2 (items 58, 59): (<i>s</i>)	—
<i>Taxation Laws Amendment Act (No. 2) 1996</i>	76, 1996	18 Dec 1996	Schedule 5: Royal Assent (<i>t</i>)	Sch. 5 (item 2) [see Table A]
<i>Income Tax (Consequential Amendments) Act 1997</i>	39, 1997	17 Apr 1997	1 July 1997	—
<i>Retirement Savings Accounts (Consequential Amendments) Act 1997</i>	62, 1997	28 May 1997	2 June 1997 (see s. 2 and <i>Gazette</i> 1997, No. S202)	—
<i>Tax Law Improvement Act 1997</i>	121, 1997	8 July 1997	S. 4: Royal Assent (<i>u</i>) Schedule 4: (items 139, 140): (<i>u</i>) Schedule 10: (items 16–23): (<i>u</i>)	S. 4, Sch. 4 (item 140) and Sch. 10 (item 23) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 7: Royal Assent (v)	Sch. 7 (item 3) [see Table A]
<i>Foreign Affairs and Trade Legislation Amendment Act 1997</i>	150, 1997	17 Oct 1997	Schedule 2: (item 2): Royal Assent (w)	—
<i>Taxation Laws Amendment Act (No. 4) 1997</i>	174, 1997	21 Nov 1997	Schedule 7: (items 19–32): Royal Assent (x)	Sch. 7 (item 32(2)) [see Table A]
<i>Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997</i>	196, 1997	8 Dec 1997	Schedule 1: (item 11): 8 Dec 1997 (y)	—
<i>Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998</i>	17, 1998	16 Apr 1998	16 Apr 1998	Sch. 1 (item 32) [see Table A]
<i>Taxation Laws (Technical Amendments) Act 1998</i>	41, 1998	4 June 1998	Schedule 5 (items 1–15, 20): Royal Assent	Sch. 5 (item 20) [see Table A]
<i>Taxation Laws Amendment Act (No. 3) 1998</i>	47, 1998	23 June 1998	Schedule 8 (items 11, 12): Royal Assent (z)	Sch. 8 (item 12) [see Table A]
<i>Taxation Laws Amendment Act (No. 3) 1999</i>	11, 1999	31 Mar 1999	Schedule 1 (items 1–11, 398, 399, 404, 405): 1 July 1999	Sch. 1 (items 398, 399, 404, 405) [see Table A]
<i>Taxation Laws Amendment Act (No. 1) 1999</i>	16, 1999	9 Apr 1999	Schedule 2, Schedule 3 (items 1–7, 12) and Schedule 12: Royal Assent (za)	Sch. 2 (item 2), Sch. 3 (item 12) and Sch. 12 (items 4, 5) [see Table A]
<i>A New Tax System (Fringe Benefits Reporting) Act 1999</i>	17, 1999	19 Apr 1999	Schedule 1 (items 1–16): Royal Assent (zb)	Sch. 1 (item 16) [see Table A]
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedule 7 (items 50–52): 1 July 1999 (see <i>Gazette</i> 1999, No. S283) (zc) Schedule 8: Royal Assent	S. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4]) Sch. 8 (items 22, 23) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Financial Sector Legislation Amendment Act (No. 1) 2000</i>	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—
<i>A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999</i>	83, 1999	8 July 1999	Schedule 10 (items 1–6, 68(1)): 1 July 2000 (zd)	S. 2(2) (am. by 172, 1999, Sch. 2 [item1]) Sch. 10 (item 68(1)) [see Table A]
as amended by				
<i>Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999</i>	172, 1999	10 Dec 1999	Schedule 2 (item 1): (zda)	—
<i>Taxation Laws Amendment (CPI Indexation) Act 1999</i>	102, 1999	16 July 1999	Schedule 1 (items 1, 2, 5): Royal Assent (ze) Schedule 1 (items 3, 4): 12 Dec 1995 (ze)	Sch. 1 (items 2, 5) [see Table A]
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 495): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (zf)	—
<i>A New Tax System (Pay As You Go) Act 1999</i>	178, 1999	22 Dec 1999	Schedule 1 (items 6, 8, 70–78): 1 July 2000 Remainder: Royal Assent	S. 2(1A) (ad. by 179, 1999, Sch. 10 [item 19]) Sch. 1 (item 84) and Sch. 2 (item 140): [see Table A]
as amended by				
<i>A New Tax System (Tax Administration) Act 1999</i>	179, 1999	22 Dec 1999	Schedule 10 (item 19): 22 Dec 1999 (zg)	—
<i>A New Tax System (Tax Administration) Act 1999</i>	179, 1999	22 Dec 1999	Schedule 2 (items 9–19, 130–136): (zh)	Sch. 2 (items 130–136) [see Table A]
<i>Timor Gap Treaty (Transitional Arrangements) Act 2000</i>	25, 2000	3 Apr 2000	Ss. 4–6 and Schedule 2 (item 33): (zi)	Ss. 4–6 [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>A New Tax System (Tax Administration) Act (No. 1) 2000</i>	44, 2000	3 May 2000	Schedule 2 (items 1, 3, 4, 6–8, 11(1)): 1 Apr 2000 (zj) Schedule 2 (items 2, 5, 9, 10, 11(2)): 1 Apr 2001 (zj) Schedule 3 (items 7–10): (zj)	Sch. 2 (item 11) and Sch. 3 (item 9) [see Table A]
<i>A New Tax System (Fringe Benefits) Act 2000</i>	52, 2000	30 May 2000	30 May 2000	Sch. 1 (item 30) [see Table A]
<i>New Business Tax System (Alienation of Personal Services Income) Act 2000</i>	86, 2000	30 June 2000	Schedule 1 (item 61): Royal Assent (zk)	—
<i>A New Tax System (Tax Administration) Act (No. 2) 2000</i>	91, 2000	30 June 2000	Schedule 2 (items 8, 8A, 9–12): (zl) Schedule 2 (items 148–157): 1 Apr 2001 (zl)	Sch. 1 (item 157) [see Table A]
as amended by				
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (item 71): Royal Assent	—
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	Schedule 6 (item 4): (zm)	—
<i>Family and Community Services (2000 Budget and Related Measures) Act 2000</i>	138, 2000	24 Nov 2000	Schedule 2 (items 11, 12): 1 Jan 2001 (zn)	—
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 207–209): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (zo)	Ss. 4–14 [see Note 1]
<i>Taxation Laws Amendment Act (No. 3) 2001</i>	73, 2001	30 June 2001	Schedule 1 (items 69–78): 23 May 2001 Schedule 2 (items 48–52): 1 Jan 2001 Schedule 3 (items 34–36): 1 Apr 2001 Remainder: Royal Assent	Sch. 3 (item 8) [see Table A]
<i>Taxation Laws Amendment (Superannuation Contributions) Act 2001</i>	89, 2001	18 July 2001	18 July 2001	Sch. 1 (item 11(2)) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Services Reform (Consequential Provisions) Act 2001</i>	123, 2001	27 Sept 2001	Schedule 1 (item 237): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (zp)	—
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001</i>	146, 2001	1 Oct 2001	S. 4 and Schedule 4 (items 33–40): 15 Dec 2001 (zq)	S. 4 [see Table A]
<i>Taxation Laws Amendment Act (No. 2) 2001</i>	167, 2001	1 Oct 2001	Schedule 1 and Schedule 4 (items 1–4): Royal Assent (zr)	Sch. 1 (item 2) and Sch. 4 (item 4) [see Table A]
<i>Taxation Laws Amendment Act (No. 5) 2001</i>	168, 2001	1 Oct 2001	Schedule 2: 1 July 2000 Remainder: Royal Assent	Sch. 1 (items 8, 9) and Sch. 5 (item 3) [see Table A]
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 2, 3): (zs)	—
<i>Taxation Laws Amendment (Venture Capital) Act 2002</i>	136, 2002	19 Dec 2002	Schedule 3 (item 1): Royal Assent	—
<i>Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003</i>	10, 2003	2 Apr 2003	Schedule 1 (items 1–52, 54–75, 78–82): 20 May 2002 Remainder: Royal Assent	—
<i>Taxation Laws Amendment Act (No. 4) 2003</i>	66, 2003	30 June 2003	Schedule 7 (items 1–5): Royal Assent	Sch. 7 (item 5) [see Table A]
<i>Taxation Laws Amendment Act (No. 6) 2003</i>	67, 2003	30 June 2003	Schedule 9 (items 5, 18, 19): 1 Sept 2003	Sch. 9 (items 18, 19) [see Table A]
<i>Taxation Laws Amendment Act (No. 3) 2003</i>	101, 2003	14 Oct 2003	Schedule 2 (items 17, 18): Royal Assent	Sch. 2 (item 18) [see Table A]
<i>Taxation Laws Amendment Act (No. 8) 2003</i>	107, 2003	21 Oct 2003	Schedule 4: Royal Assent	Sch. 4 (item 3) [see Table A]
<i>Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003</i>	122, 2003	5 Dec 2003	Schedule 2 (items 14, 15): Royal Assent	Sch. 2 (item 15) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 5) 2003</i>	142, 2003	17 Dec 2003	Schedule 5: Royal Assent	Sch. 5 (item 8) [see Table A]
<i>Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003</i>	150, 2003	19 Dec 2003	Schedule 2 (item 103): (zt)	—
<i>Taxation Laws Amendment Act (No. 2) 2004</i>	20, 2004	23 Mar 2004	Schedule 6: 1 July 2000 Remainder: Royal Assent	Sch. 3 (item 5) [see Table A]
<i>Tax Laws Amendment (2004 Measures No. 2) Act 2004</i>	83, 2004	25 June 2004	Schedule 4 and Schedule 8 (items 1–3, 5–8): Royal Assent Schedule 8 (item 4): (zu)	S. 2(1) (am. by 58, 2006, Sch. 7 [item 212]) Sch. 4 (item 2) and Sch. 8 (item 8) [see Table A]
as amended by				
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	Schedule 7 (item 212): (zua)	—
<i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i>	95, 2004	29 June 2004	Schedule 10 (items 18–27, 43, 44(3)): 1 July 2005	Sch. 10 (items 43, 44(3)) [see Table A]
<i>Tax Laws Amendment (2004 Measures No. 3) Act 2004</i>	105, 2004	30 June 2004	Schedule 2: 1 Apr 2004	Sch. 2 (item 4) [see Table A]
<i>Tax Laws Amendment (2004 Measures No. 6) Act 2005</i>	23, 2005	21 Mar 2005	Schedule 7: Royal Assent	Sch. 7 (item 6) [see Table A]
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 4 and Schedule 10 (items 16–18): Royal Assent Schedule 10 (item 246): 1 Apr 2001	Sch. 4 (item 3) and Sch. 10 (item 18) [see Table A]
<i>Tax Laws Amendment (2005 Measures No. 3) Act 2005</i>	63, 2005	26 June 2005	Schedule 4: (zv) Remainder: Royal Assent	Sch. 4 (item 3) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005</i>	64, 2005	26 June 2005	Schedule 4 (items 1, 37): Royal Assent	Sch. 4 (item 37) [see Table A]
<i>Tax Laws Amendment (2005 Measures No. 1) Act 2005</i>	77, 2005	29 June 2005	29 June 2005	Sch. 1 (item 5) [see Table A]
<i>Tax Laws Amendment (2005 Measures No. 2) Act 2005</i>	78, 2005	29 June 2005	29 June 2005	Sch. 8 (item 3) [see Table A]
<i>Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005</i>	161, 2005	19 Dec 2005	Schedule 2 (items 2, 32): Royal Assent	Sch. 2 (item 32) [see Table A]
<i>Tax Laws Amendment (2006 Measures No. 1) Act 2006</i>	32, 2006	6 Apr 2006	6 Apr 2006	—
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	Schedule 7 (items 32–34, 239, 240): Royal Assent	—
<i>Tax Laws Amendment (2006 Measures No. 3) Act 2006</i>	80, 2006	30 June 2006	Schedule 8 (items 1–3): Royal Assent	Sch. 8 (item 3) [see Table A]
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 1 (items 1, 4), Schedule 2 (items 81–112, 1017, 1020, 1021), Schedule 5 (items 119–123) and Schedule 6 (items 1, 5–11): Royal Assent	Sch. 6 (items 1, 5–11) [see Table A]
<i>Tax Laws Amendment (2006 Measures No. 5) Act 2006</i>	110, 2006	23 Oct 2006	Schedule 1: 1 Apr 2007 Remainder: Royal Assent	Sch. 1 (item 7) [see Table A]
<i>Statute Law Revision Act 2007</i>	8, 2007	15 Mar 2007	Schedule 1 (item 14): (zw) Schedule 4 (item 16): Royal Assent	—
<i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i>	9, 2007	15 Mar 2007	Schedule 5 (items 1–5, 36): Royal Assent	Sch. 5 (item 36) [see Table A]
<i>Superannuation Legislation Amendment (Simplification) Act 2007</i>	15, 2007	15 Mar 2007	Schedule 1 (items 17–21, 406(1)–(3)): (zx)	Sch. 1 (item 406(1)–(3)) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (2007 Measures No. 1) Act 2007</i>	56, 2007	12 Apr 2007	12 Apr 2007	Sch. 3 (item 39) [see Table A]
<i>Tax Laws Amendment (2007 Measures No. 3) Act 2007</i>	79, 2007	21 June 2007	Schedule 1 (items 30–32, 43(1)–(3)): Royal Assent	Sch. 1 (item 43(1)–(3)) [see Table A]
<i>Tax Laws Amendment (Small Business) Act 2007</i>	80, 2007	21 June 2007	21 June 2007	Sch. 5 (items 6, 7) [see Table A]
<i>Tax Laws Amendment (2007 Measures No. 4) Act 2007</i>	143, 2007	24 Sept 2007	Schedule 1 (items 9–17, 222, 225, 226) and Schedule 7 (items 7, 8, 104(1)): Royal Assent	Sch. 1 (items 222, 225, 226) and Sch. 7 (item 8) [see Table A]
<i>Tax Laws Amendment (Budget Measures) Act 2008</i>	59, 2008	30 June 2008	Schedule 1 (items 1–5): Royal Assent	Sch. 1 (items 3, 5) [see Table A]
<i>First Home Saver Accounts (Further Provisions) Amendment Act 2008</i>	92, 2008	30 Sept 2008	Schedule 1 (items 4, 26): 1 Oct 2008	Sch. 1 (item 26) [see Table A]
<i>Tax Laws Amendment (2008 Measures No. 4) Act 2008</i>	97, 2008	3 Oct 2008	Schedule 3 (items 2–4): Royal Assent	Sch. 3 (item 4) [see Table A]
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 14 (items 3–6): 10 Dec 2008	Sch. 14 (item 6) [see Table A]
<i>Tax Laws Amendment (2008 Measures No. 5) Act 2008</i>	145, 2008	9 Dec 2008	Schedule 4 (items 1–75): Royal Assent	Sch. 4 (items 9, 23, 32, 41) [see Table A]

Act Notes

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- (a) Subsection 2(2) of the *Taxation Boards of Review (Transfer of Jurisdiction) Act 1986* provides as follows:
- (2) Section 31 and Parts VII and VIII (sections 45–56) shall come into operation, or shall be deemed to have come into operation, immediately after the *Fringe Benefits Tax Assessment Act 1986* comes into operation.
- The *Fringe Benefits Tax Assessment Act 1986* came into operation on 24 June 1986.
- (b) The *Fringe Benefits Tax Assessment Act 1986* was amended by section 3 only of the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987*, subsection 2(2) of which provides as follows:
- (2) The amendments made by this Act to an Act specified in the Schedule shall come into operation on such day as is fixed by Proclamation in relation to those amendments.
- (c) The *Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987* was amended by Part IX (sections 49 and 50) only of the *Taxation Laws Amendment Act 1988*, subsection 2(6) of which provides as follows:
- (6) Part IX shall be deemed to have come into operation on the commencement of the *Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987*.
- (d) The *Fringe Benefits Tax Assessment Act 1986* was amended by subsection 69(1) only of the *Australian Airlines (Conversion to Public Company) Act 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (e) Subsection 2(2) of the *Taxation Laws Amendment Act (No. 4) 1988* provides as follows:
- (2) Paragraph 44(a) and subsection 54(11) commence immediately after the commencement of the *Taxation Laws Amendment Act 1989*.
- The *Taxation Laws Amendment Act 1989* came into operation on 16 March 1989.
- (f) The *Fringe Benefits Tax Assessment Act 1986* was amended by sections 86 and 87 only of the *Higher Education Funding Act 1988*, subsection 2(1) of which provides as follows:
- (1) Chapters 1, 2, 3, 4, 6 and 7 commence on the day on which this Act receives the Royal Assent.
- (g) Subsection 2(2) of the *Taxation Laws Amendment Act (No. 3) 1989* provides as follows:
- (2) Part 6 shall be taken to have commenced immediately after the *Taxation Laws Amendment Act (No. 4) 1988* received the Royal Assent.
- The *Taxation Laws Amendment Act (No. 4) 1988* received the Royal Assent on 24 November 1988.
- (h) The *Fringe Benefits Tax Assessment Act 1986* was amended by Part 2 (sections 3–5) only of the *Taxation Laws Amendment Act (No. 5) 1990*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (i) The *Fringe Benefits Tax Assessment Act 1986* was amended by Part 2 (sections 3–7) only of the *Taxation Laws Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (j) The *Fringe Benefits Tax Assessment Act 1986* was amended by sections 3–13 only of the *Taxation Laws Amendment Act (No. 2) 1991*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Sections 4, 6, 8, 9 and 11 commence on the day after the day on which this Act receives the Royal Assent.
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Act Notes

- (k) The *Fringe Benefits Tax Assessment Act 1986* was amended by sections 5–8, 88, 113, 123 and 124 only of the *Taxation Laws Amendment Act (No. 3) 1991*, subsections 2(1) and (10) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (10) Subject to subsection (11), sections 112 to 117 (inclusive) commence on a day to be fixed by Proclamation.
- (l) The *Fringe Benefits Tax Assessment Act 1986* was amended by sections 3–6 only of the *Taxation Laws Amendment Act 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (m) The *Fringe Benefits Tax Assessment Act 1986* was amended by sections 3–6 only of the *Taxation Laws Amendment Act (No. 2) 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (n) The *Fringe Benefits Tax Assessment Act 1986* was amended by sections 7–12, 176 and Division 3 of Part 14 (sections 180–182) only of the *Taxation Laws Amendment Act (No. 3) 1993*, subsections 2(1) and (5) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (5) Division 3 of Part 14 commences immediately after the commencement of the *Taxation Laws Amendment (Fringe Benefits Tax Measures) Act 1992*.
The *Taxation Laws Amendment (Fringe Benefits Tax Measures) Act 1992* came into operation on 1 April 1994.
- (o) The *Fringe Benefits Tax Assessment Act 1986* was amended by sections 3–12 only of the *Taxation Laws Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (p) The *Fringe Benefits Tax Assessment Act 1986* was amended by sections 3–6 and 128–131 only of the *Taxation Laws Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (q) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (item 5) only of the *Taxation Laws Amendment Act (No. 1) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (r) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (item 9) only of the *Taxation Laws Amendment Act (No. 2) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (s) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (items 58 and 59) only of the *Statute Law Revision Act 1996*, subsection 2(2) of which provides as follows:
- (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
Item 58 is taken to have commenced immediately after the commencement of the *Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987*.
The *Taxation Laws Amendment (Fringe Benefits and Substantiation) Act 1987* came into operation on 18 December 1987.
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Act Notes

Item 59 is taken to have commenced immediately after the commencement of the *Fringe Benefits Tax Assessment Act 1986*.

The *Fringe Benefits Tax Assessment Act 1986* came into operation on 24 June 1986.

- (t) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 5 only of the *Taxation Laws Amendment Act (No. 2) 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (u) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 4 (item 139) and Schedule 10 (items 16–22) only of the *Tax Law Improvement Act 1997*, subsections 2(1)–(3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.
 - (3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.
- (v) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 7 only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (w) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (item 2) only of the *Foreign Affairs and Trade Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (x) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 7 (items 19–32) only of the *Taxation Laws Amendment Act (No. 4) 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (y) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 1 (item 11) only of the *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997*, subsection 2(5) of which provides as follows:
- (5) Items 11, 17, 18, 19, 20, 21 and 41 of Schedule 1 commence on the commencement of the *Child Care Payments Act 1997*.
- (z) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 8 (items 11 and 12) only of the *Taxation Laws Amendment Act (No. 3) 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (za) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2, Schedule 3 (items 1–7) and Schedule 12 only of the *Taxation Laws Amendment Act (No. 1) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (zb) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (items 1 and 2) only of the *A New Tax System (Fringe Benefits Reporting) Act 1999*, subsection 2(1) of which provides as follows:
- (1) This Act commences on the day on which it receives the Royal Assent.

Act Notes

- (zc) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 7 (items 50–52) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(e) and (16) of which provide as follows:
- (2) The following provisions commence on the transfer date:
 - (e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).
 - (16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.
- (zd) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 10 (items 1–6) only of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*, subsection 2(2) of which provides as follows:
- (2) Schedule 1 (Parts 1 to 5), Schedules 3 to 6, Schedule 7 (other than item 14), Schedules 8 and 9, Schedule 10 (other than items 22, 63, 66 and 67) and Schedule 11 (items 3 and 4 only) commence, or are taken to have commenced, on the commencement of Schedule 1 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.
Schedule 1 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999* commenced on 1 July 2000.
- (ze) The *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*, was amended by Schedule 2 (item 1) only of the *Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Act 1999*, subsection 2(4) of which provides as follows:
- (4) Schedule 2 commences, or is taken to have commenced, immediately after the commencement of section 2 of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.
Section 2 commenced on 8 July 1999.
- (zf) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 1 (items 1, 3 and 4) only of the *Taxation Laws Amendment (CPI Indexation) Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) Items 3 and 4 of Schedule 1 are taken to have commenced on the day on which the *Taxation Laws Amendment (FBT Cost of Compliance) Act 1995* received the Royal Assent.
- (zg) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 1 (item 495) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (zh) The *A New Tax System (Pay As You Go) Act 1999* was amended by Schedule 10 (item 19) only of the *A New Tax System (Tax Administration) Act 1999*, subsection 2(11) of which provides as follows:
- (11) Subsection 2(1A) of the *A New Tax System (Pay As You Go) Act 1999* (inserted by item 19 of Schedule 10 to this Act) commences, or is taken to have commenced, at the commencement of section 1 of that Act.
- (zi) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (items 9–19) only of the *A New Tax System (Tax Administration) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.

Act Notes

Section 1 commenced on 22 December 1999.

(zi) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (item 33) only of the *Timor Gap Treaty (Transitional Arrangements) Act 2000*, subsection 2(2) of which provides as follows:

(2) Sections 3 to 7 and Schedules 1 and 2 (other than items 18 to 25 of Schedule 2) are taken to have commenced at the transition time. [see Table A]

(zj) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (items 1–10) and Schedule 3 (items 7, 8 and 10) only of the *A New Tax System (Tax Administration) Act (No. 1) 2000*, subsections 2(1)–(3) of which provide as follows:

(1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Tax Administration) Act 1999*.

(2) Schedule 2 (except items 2, 5, 9 and 10 and subitem 11(2)) commences on 1 April 2000.

(3) Items 2, 5, 9 and 10, and subitem 11(2), of Schedule 2 commence on 1 April 2001.

Section 1 commenced on 22 December 1999.

(zk) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 1 (item 61) only of the *New Business Tax System (Alienation of Personal Services Income) Act 2000*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zl) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (items 8, 8A, 9–12 and 148–156) only of the *A New Tax System (Tax Administration) Act (No. 2) 2000*, subsections 3(1) and (3) of which provide as follows:

(1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

(3) Part 4 of Schedule 2 commences, or is taken to have commenced, on 1 April 2001.

Section 1-1 of the *A New Tax System (Goods and Services Tax) Act 1999* commenced on 1 July 2000.

(zm) Subsection 2(1) (item 11) of the *Taxation Laws Amendment Act (No. 3) 2003* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
11. Schedule 6, item 4	Immediately after the time specified in the <i>A New Tax System (Tax Administration) Act (No. 2) 2000</i> for the commencement of item 8A of Schedule 2 to that Act	1 July 2000

(zn) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 2 (items 11 and 12) only of the *Family and Community Services (2000 Budget and Related Measures) Act 2000*, subsection 2(2)(b) of which provides as follows:

(2) The following provisions:

(b) Schedules 2 and 3;

commence on 1 January 2001.

Act Notes

- (zo) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 3 (items 207–209) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (zp) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 1 (item 237) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1) and (6) of which provide as follows:
- (1) In this section:
FSR commencement means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.
- (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.
- (zq) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 4 (items 33–40) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.
- (zr) The *Fringe Benefits Tax Assessment Act 1986* was amended by Schedule 1 and Schedule 4 (items 1–3) only of the *Taxation Laws Amendment Act (No. 2) 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (zs) Subsection 2(1) (item 20) of the *Taxation Laws Amendment Act (No. 2) 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
20. Schedule 12, items 2 and 3	Immediately after item 11 of Schedule 8 to the <i>Taxation Laws Amendment Act (No. 3) 1998</i> commenced	23 June 1998

- (zt) Subsection 2(1) (item 8) of the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
8. Schedule 2, items 95 to 103	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .	1 January 2004

Act Notes

(zu) Subsection 2(1) (item 19) of the *Tax Laws Amendment (2004 Measures No. 2) Act 2004* as amended by the *Tax Laws Amendment (2006 Measures No. 2) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
19. Schedule 8, item 4	Immediately after the commencement of Schedule 10 to the <i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i> .	1 July 2005

(zua) Subsection 2(1) (item 23) of the *Tax Laws Amendment (2006 Measures No. 2) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
23. Schedule 7, items 211 and 212	Immediately after the commencement of Schedule 10 to the <i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i> .	1 July 2005

(zv) Subsection 2(1) (item 3) of the *Tax Laws Amendment (2005 Measures No. 3) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
3. Schedule 4	Immediately after the commencement of Schedule 10 to the <i>Tax Laws Amendment (2004 Measures No. 1) Act 2004</i> .	1 July 2005

(zw) Subsection 2(1) (item 11) of the *Statute Law Revision Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
11. Schedule 1, item 14	Immediately after the commencement of item 1 of Schedule 7 to the <i>Taxation Laws Amendment Act (No. 4) 2003</i> .	30 June 2003

Act Notes

(zx) Subsection 2(1) (item 2) of the *Superannuation Legislation Amendment (Simplification) Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
2. Schedule 1	Immediately after the commencement of Schedule 1 to the <i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i> .	15 March 2007

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 2A	ad. No. 146, 2001
Part II	
S. 5	am. No. 48, 1986; No. 97, 1988; No. 146, 2001; No. 122, 2003
Part IIA	
Part IIA	ad. No. 17, 1999
Division 1	
S. 5A	ad. No. 17, 1999
Subhead. to s. 5B(1)	ad. No. 52, 2000
Subhead. to s. 5B(2)	ad. No. 52, 2000
S. 5B	ad. No. 17, 1999 am. No. 52, 2000; No. 142, 2003; No. 83, 2004
Division 2	
S. 5C	ad. No. 17, 1999 am. No. 52, 2000
Note to s. 5C	rep. No. 52, 2000
Division 3	
S. 5D	ad. No. 17, 1999
S. 5E	ad. No. 17, 1999 am. No. 52, 2000; No. 80, 2006
S. 5F	ad. No. 17, 1999
Part III	
Division 2	
Subdivision A	
S. 7	am. No. 17, 1999
S. 8	am. No. 139, 1987; No. 145, 1995; No. 86, 2000
Subdivision B	
S. 9	am. No. 139, 1987; No. 145, 1995; No. 178, 1999
S. 10	am. No. 139, 1987 (as am. by No. 78, 1988); No. 11, 1989; No. 145, 1995; No. 41, 1998
S. 10A	ad. No. 139, 1987 am. No. 11, 1989; No. 145, 1995; No. 41, 1998
S. 10B	ad. No. 139, 1987 am. No. 11, 1989; No. 145, 1995
S. 10C	ad. No. 139, 1987 am. No. 11, 1989 rep. No. 145, 1995
S. 11	am. No. 139, 1987; No. 178, 1999; No. 107, 2003; No. 143, 2007
S. 12	rs. No. 178, 1999

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 3	
Subdivision B	
S. 15	am. No. 139, 1987
Division 4	
Subdivision A	
Note to s. 16(1)	ad. No. 79, 2007
S. 17	am. No. 139, 1987
Subdivision B	
S. 18	am. No. 139, 1987
S. 19	am. No. 139, 1987; No. 11, 1989; No. 48, 1991; Nos. 30 and 145, 1995; No. 39, 1997; No. 178, 1999; No. 101, 2006; No. 143, 2007; No. 145, 2008
Division 5	
Subdivision A	
S. 20A	ad. No. 145, 1995
S. 21	am. No. 139, 1987
S. 22	am. No. 139, 1987; No. 30, 1995; No. 39, 1997
Subdivision B	
S. 22A	ad. No. 139, 1987
S. 23	am. No. 139, 1987
S. 24	am. No. 139, 1987; No. 11, 1989; No. 48, 1991; Nos. 30 and 145, 1995; No. 39, 1997; No. 41, 1998; No. 178, 1999; No. 101, 2006; No. 143, 2007; No. 145, 2008
Division 6	
Subdivision B	
S. 26	am. No. 139, 1987; No. 178, 1999; No. 52, 2000
S. 28	am. No. 139, 1987; No. 100, 1991
S. 29	am. No. 139, 1987; No. 178, 1999 rep. No. 52, 2000
S. 29A	ad. No. 139, 1987 am. No. 43, 1996 rep. No. 52, 2000
Division 7	
Subdivision A	
S. 30	am. No. 139, 1987; No. 216, 1991
Subdivision B	
S. 31	am. No. 139, 1987; No. 216, 1991
Division 8	
Subdivision B	
S. 34	am. No. 139, 1987; No. 30, 1995; No. 39, 1997; No. 101, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
Division 9	
Subdivision B	
S. 37	am. No. 139, 1987; No. 17, 1993; No. 30, 1995; No. 39, 1997; No. 101, 2006
Division 9A	
Div. 9A of Part III	ad. No. 145, 1995
Subdivision A	
Ss. 37A, 37AA–37AG.....	ad. No. 145, 1995
Subdivision B	
S. 37B	ad. No. 145, 1995
S. 37BA	ad. No. 145, 1995 am. No. 41, 1998
Note to s. 37BA	am. No. 17, 1999
Subdivision C	
Ss. 37C, 37CA	ad. No. 145, 1995
S. 37CB.....	ad. No. 145, 1995
Note to s. 37CB(1)	am. No. 17, 1999
Ss. 37CC, 37CD.....	ad. No. 145, 1995
S. 37CE	ad. No. 145, 1995 am. No. 121, 1997; No. 41, 1998
Heading to s. 37CF	am. No. 41, 1998
S. 37CF	ad. No. 145, 1995
Division 10	
Subdivision B	
S. 39	am. No. 139, 1987
Division 10A	
Div. 10A of Part III	ad. No. 237, 1992
Subdivision A	
S. 39A	ad. No. 237, 1992 am. No. 145, 1995; No. 102, 1999
S. 39AA	ad. No. 145, 1995 am. No. 102, 1999
S. 39AB.....	ad. No. 145, 1995
S. 39B	ad. No. 237, 1992
Subdivision B	
Ss. 39C, 39D	ad. No. 237, 1992 am. No. 145, 1995
S. 39DA	ad. No. 145, 1995 am. No. 102, 1999
S. 39E	ad. No. 237, 1992 am. No. 145, 1995

Table of Amendments

Provision affected	How affected
ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Subdivision C	
Subdiv. C of Div. 10A of Part III	ad. No. 145, 1995
Ss. 39F, 39FA–39FE	ad. No. 145, 1995
Subdivision D	
Subdiv. D of Div. 10A of Part III	ad. No. 145, 1995
Ss. 39G, 39GA–39GH	ad. No. 145, 1995
Division 11	
Subdivision A	
S. 41	am. No. 59, 2008
Subdivision B	
S. 44	am. No. 139, 1987; No. 153, 1988; No. 48, 1991; Nos. 30 and 145, 1995; No. 39, 1997; No. 41, 1998; No. 178, 1999; No. 101, 2006; No. 143, 2007; No. 145, 2008
Division 12	
Subdivision A	
S. 47	am. No. 139, 1987; No. 135, 1990; No. 18, 1993; No. 196, 1997; Nos. 83 and 178, 1999; No. 138, 2000; No. 167, 2001
S. 47A	ad. No. 145, 1995
Subdivision B	
S. 52	am. No. 139, 1987; No. 153, 1988; No. 48, 1991; Nos. 30 and 145, 1995; No. 39, 1997; No. 41, 1998; No. 178, 1999; No. 101, 2006; No. 143, 2007; No. 145, 2008
Division 13	
Heading to Div. 13 of Part III	am. No. 139, 1987
S. 55	am. No. 150, 1997
S. 57	am. No. 139, 1987
Heading to s. 57A.....	am. No. 52, 2000; Nos. 83 and 95, 2004
S. 57A	rs. No. 139, 1987 am. No. 52, 2000; No. 167, 2001; No. 142, 2003; Nos. 83 and 95, 2004
S. 58	am. No. 139, 1987
S. 58A	ad. No. 139, 1987 am. No. 30, 1995; No. 39, 1997
S. 58AA	ad. No. 77, 2005
S. 58B	ad. No. 139, 1987
S. 58C	ad. No. 139, 1987 am. No. 23, 2005
Ss. 58D, 58E	ad. No. 139, 1987
S. 58F	ad. No. 139, 1987 am. No. 30, 1995; No. 39, 1997
S. 58G	ad. No. 139, 1987 am. No. 237, 1992; No. 145, 1995

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
S. 58GA.....	ad. No. 16, 1999 am. No. 80, 2007		
Ss. 58H, 58J, 58K	ad. No. 139, 1987		
S. 58L	ad. No. 139, 1987 am. No. 56, 1994		
S. 58LA	ad. No. 11, 1989		
S. 58M	ad. No. 139, 1987 am. No. 30, 1995; No. 39, 1997		
S. 58N	ad. No. 139, 1987		
S. 58P	ad. No. 139, 1987 am. No. 76, 1996; No. 110, 2006		
S. 58PA	ad. No. 66, 2003 am. No. 78, 2005		
S. 58PB	ad. No. 66, 2003 am. No. 58, 2006; Nos. 8 and 15, 2007		
S. 58PC.....	ad. No. 66, 2003 am. No. 105, 2004; No. 78, 2005		
S. 58Q	ad. No. 139, 1987 am. No. 41, 2005		
Ss. 58R–58U	ad. No. 139, 1987		
S. 58V	ad. No. 139, 1987 am. No. 144, 2008		
S. 58W	ad. No. 53, 1995		
S. 58X	ad. No. 145, 1995 am. No. 77, 2005; No. 59, 2008		
S. 58Y	ad. No. 145, 1995		
S. 58Z.....	ad. No. 145, 1995 am. No. 16, 1999		
S. 58ZA	ad. No. 147, 1997 rep. No. 52, 2000		
S. 58ZB	ad. No. 16, 1999		
S. 58ZC.....	ad. No. 52, 2000 am. Nos. 41 and 77, 2005		
S. 58ZD	ad. No. 52, 2000		
Division 14			
Heading to Div. 14 of	ad. No. 139, 1987		
Part III			
S. 59	am. No. 139, 1987 (as am. by No. 11, 1988); No. 147, 1997; No. 52, 2000		
S. 60	am. No. 139, 1987; No. 95, 1988		
S. 60AA	ad. No. 95, 1988		
S. 60A	ad. No. 139, 1987 am. No. 11, 1989; No. 30, 1995; No. 39, 1997		
S. 61	am. No. 139, 1987; No. 11, 1989; No. 30, 1995; No. 39, 1997		
Ss. 61A, 61B	ad. No. 139, 1987 am. No. 11, 1989; No. 100, 1991; No. 57, 1993; No. 30, 1995; No. 39, 1997		

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
S. 61C	ad. No. 139, 1987 am. No. 100, 1991; No. 57, 1993; No. 178, 1999		
S. 61D	ad. No. 139, 1987 am. No. 100, 1991; No. 57, 1993		
Ss. 61E, 61F	ad. No. 139, 1987 am. No. 11, 1989; No. 100, 1991; No. 57, 1993; No. 30, 1995; No. 39, 1997		
S. 61G	ad. No. 20, 2004		
S. 62	am. No. 139, 1987; No. 178, 1999; No. 110, 2006		
S. 63	am. No. 139, 1987; No. 100, 1991; No. 57, 1993		
S. 63A	ad. No. 82, 1994 am. No. 121, 1997		
S. 64	rep. No. 57, 1993		
S. 64A	ad. No. 2, 1989 rep. No. 57, 1993		
S. 65	rep. No. 57, 1993		
S. 65A	ad. No. 139, 1987 am. No. 100, 1991; No. 57, 1993		
Ss. 65B, 65C	ad. No. 139, 1987 rep. No. 100, 1991		
S. 65CAA	ad. No. 100, 1991 rep. No. 57, 1993		
Division 14A			
Div. 14A of Part III	ad. No. 95, 1988		
S. 65CA	ad. No. 95, 1988 am. No. 58, 1990		
S. 65CB	ad. No. 95, 1988		
Division 14B			
Div. 14B of Part III	ad. No. 95, 1988		
S. 65CC	ad. No. 95, 1988		
Division 15			
Div. 15 of Part III	ad. No. 139, 1987		
S. 65D	ad. No. 139, 1987		
S. 65E	ad. No. 139, 1987 am. No. 11, 1989; No. 145, 1995; No. 41, 1998		
S. 65F	ad. No. 139, 1987 am. No. 11, 1989; No. 145, 1995		
Ss. 65G, 65H	ad. No. 139, 1987 am. No. 11, 1989 rep. No. 145, 1995		
Part IIIA			
Part IIIA	ad. No. 223, 1992		
S. 65J	ad. No. 223, 1992 am. No. 118, 1993; No. 56, 1994; No. 145, 1995; No. 52, 2000; Nos. 167 and 168, 2001; No. 95, 2004; No. 63, 2005; SLI 2006 No. 50		

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
Part IV	
S. 67	am. No. 48, 1986; No. 37, 1990; No. 216, 1991; No. 223, 1992; No. 22, 1995; No. 25, 2000; No. 10, 2003
Part V	
Division 1	
S. 68.....	am. No. 178, 1999
S. 70.....	am. No. 174, 1997 rs. No. 91, 2000
Ss. 70A, 70B	ad. No. 174, 1997 rep. No. 91, 2000
S. 70D	ad. No. 174, 1997 am. No. 146, 2001
S. 71	am. No. 78, 1988; No. 118, 1993; No. 174, 1997 rep. No. 91, 2000
Division 2	
S. 74.....	am. No. 174, 1997; No. 91, 2000
Ss. 74A–74F	ad. No. 101, 1992 rep. No. 161, 2005
S. 78A	ad. No. 216, 1991
Part VI	rs. No. 48, 1986 rep. No. 216, 1991
S. 79	rs. No. 48, 1986; No. 23, 1987 rep. No. 216, 1991
S. 79A	ad. No. 48, 1986 rep. No. 23, 1987
S. 80	rs. No. 48, 1986 rep. No. 216, 1991
S. 81	rs. No. 48, 1986 am. No. 23, 1987 rep. No. 216, 1991
Ss. 82, 83	rs. No. 48, 1986 rep. No. 216, 1991
S. 84	rs. No. 48, 1986 am. No. 112, 1986; No. 23, 1987 rep. No. 216, 1991
S. 85	rs. No. 48, 1986 am. No. 23, 1987 rep. No. 216, 1991
S. 86	rs. No. 48, 1986 rep. No. 216, 1991
S. 86A	ad. No. 48, 1986 am. No. 112, 1986 rep. No. 216, 1991
S. 86B	ad. No. 48, 1986 rep. No. 23, 1987
S. 86C	ad. No. 48, 1986 am. No. 23, 1987 rep. No. 216, 1991

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
S. 86D	ad. No. 48, 1986	rep. No. 23, 1987	
S. 86E	ad. No. 48, 1986	am. No. 23, 1987	rep. No. 216, 1991
S. 87	rs. No. 48, 1986	rep. No. 23, 1987	
S. 88	rs. No. 48, 1986	rep. No. 216, 1991	
S. 89	rep. No. 48, 1986		
Part VII			
Division 1			
S. 90.....	am. No. 178, 1999		
Note to s. 90(2)	ad. No. 179, 1999		
Ss. 91, 92	rep. No. 179, 1999		
S. 93	am. No. 191, 1992; No. 181, 1994; No. 120, 1995; No. 11, 1999		
Note to s. 93(2)	am. No. 101, 2006		
Ss. 94, 95.....	am. No. 11, 1999	rep. No. 179, 1999	
S. 96	am. No. 145, 1987; No. 60, 1990; Nos. 92 and 118, 1992	rep. No. 179, 1999	
S. 97	rep. No. 179, 1999		
S. 98	am. No. 48, 1986; No. 216, 1991	rep. No. 179, 1999	
S. 99	am. No. 216, 1991; No. 44, 1999	rep. No. 179, 1999	
Division 2			
Subdivision A			
S. 101.....	am. Nos. 44 and 91, 2000		
S. 102.....	am. No. 178, 1999		
S. 103.....	rs. No. 178, 1999	am. No. 73, 2001	
Note to s. 103.....	ad. No. 44, 2000		
S. 104	am. No. 139, 1987; No. 11, 1999	rs. No. 178, 1999	
S. 105.....	rs. No. 178, 1999; No. 44, 2000		
Subdiv. B of Div. 2 of..... Part VII	rep. No. 178, 1999		
S. 106	am. No. 139, 1987; No. 11, 1989	rep. No. 178, 1999	
Ss. 107, 108.....	rep. No. 178, 1999		
Subdivision C			
Heading to Subdiv. C	rs. No. 178, 1999		
of Div. 2 of Part VII			
S. 109.....	am. No. 11, 1999; No. 178, 1999; No. 73, 2001		

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
S. 110	am. No. 223, 1992; No. 178, 1999; No. 44, 2000; No. 73, 2001		
S. 111	am. No. 178, 1999; No. 44, 2000; No. 73, 2001		
S. 112	am. No. 191, 1992; No. 11, 1999; No. 178, 1999; No. 44, 2000		
S. 112A	ad. No. 44, 2000 am. No. 73, 2001		
Note to s. 112A(1)	rs. No. 44, 2000		
S. 112B	ad. No. 44, 2000		
Part VIII			
S. 113A	ad. No. 91, 2000		
S. 115	am. No. 174, 1997		
S. 115A	ad. No. 139, 1987 am. No. 11, 1989 rs. No. 145, 1995		
S. 115B	ad. No. 16, 1999		
Part IX			
S. 119	am. No. 48, 1986 rep. No. 91, 2000		
Note	ad. No. 91, 2000		
S. 121	am. No. 48, 1986; No. 78, 1988; No. 146, 2001; No. 143, 2007		
S. 122	am. No. 78, 1988; No. 146, 2001; No. 143, 2007		
Note to s. 122(2)	ad. No. 146, 2001		
Part X			
Heading to Part X	am. No. 11, 1989		
S. 123	am. No. 139, 1987; No. 145, 1995; No. 41, 1998		
S. 123A	ad. No. 11, 1989 rs. No. 145, 1995		
S. 123B	ad. No. 35, 1992 am. No. 145, 1995		
Part XA			
Part XA	ad. No. 95, 2004		
Ss. 123C, 123D	ad. No. 95, 2004		
S. 123E	ad. No. 95, 2004 am. No. 63, 2005		
Part XI			
S. 124A	ad. No. 139, 1987 am. No. 100, 1991		
Ss. 124B, 124C	ad. No. 174, 1997 rep. No. 91, 2000		
S. 126	am. No. 48, 1986; No. 216, 1991; No. 174, 1997		
S. 127	am. No. 91, 2000		
Note to s. 127	ad. No. 91, 2000		
Ss. 130, 131	rep. No. 179, 1999		

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
S. 132	am. No. 145, 1995; No. 91, 2000		
Note to s. 132(1)	ad. No. 16, 1999		
Note 1 to s. 132	ad. No. 91, 2000		
Note 2 to s. 132	ad. No. 91, 2000		
S. 132A	ad. No. 145, 1995		
S. 133	am. No. 48, 1986; No. 175, 1995 rep. No. 67, 2003		
S. 135	am. No. 143, 2007		
Part XIA			
Part XIA	ad. No. 16, 1999		
Division 1			
S. 135A	ad. No. 16, 1999		
Division 2			
Ss. 135B, 135C	ad. No. 16, 1999		
Division 3			
Ss. 135D–135H, 135J–135L	ad. No. 16, 1999		
Part XIB			
Part XIB	ad. No. 17, 1999		
S. 135M	ad. No. 17, 1999 am. No. 150, 2003; Nos. 83 and 95, 2004		
S. 135N	ad. No. 17, 1999		
Ss. 135P, 135Q	ad. No. 17, 1999 am. No. 110, 2006		
Note to s. 135Q(1)	am. No. 52, 2000; No. 167, 2001; No. 83, 2004		
Part XIC			
Part XIC	ad. No. 167, 2001		
Ss. 135R, 135S	ad. No. 167, 2001		
S. 135T	ad. No. 167, 2001 am. No. 97, 2008		
Ss. 135U–135W	ad. No. 167, 2001		
S. 135X	ad. No. 167, 2001 am. No. 83, 2004		
Part XII			
S. 136	am. No. 48, 1986; No. 139, 1987; Nos. 6, 95 and 153, 1988; Nos. 11 and 97, 1989; Nos. 48 and 216, 1991; Nos. 210, 223 and 237, 1992; Nos. 17, 57 and 118, 1993; Nos. 56, 82 and 181, 1994; Nos. 30, 145 and 169, 1995; No. 43, 1996; Nos. 39, 62, 121 and 174, 1997; Nos. 17, 41 and 47, 1998; ; Nos. 11, 16, 17, 146 and 178, 1999; Nos. 44, 52, and 91, 2000; Nos. 55, 73, 89 and 168, 2001; Nos. 57 and 136, 2002; Nos. 66 and 101, 2003; No. 95, 2004; Nos. 41 and 64, 2005; Nos. 32, 58 and 101, 2006; Nos. 8, 9, 15, 56, 79 and 143, 2007; Nos. 92 and 144, 2008		

Table of Amendments

<u>ad. = added or inserted</u>	<u>am. = amended</u>	<u>rep. = repealed</u>	<u>rs. = repealed and substituted</u>
<u>Provision affected</u>	<u>How affected</u>		
S. 136AA	ad. No. 223, 1992		
	am. No. 16, 1999		
	rep. No. 17, 1999		
S. 136AB	ad. No. 181, 1994		
	am. No. 123, 2001; No. 15, 2007		
S. 136A	ad. No. 11, 1989		
S. 137	am. No. 178, 1999		
Ss. 138A–138C	ad. No. 139, 1987		
S. 140	am. No. 52, 2000; No. 142, 2003; No. 83, 2004; No. 110, 2006		
S. 141	am. No. 139, 1987		
S. 141A	ad. No. 139, 1987		
S. 142	am. No. 139, 1987; No. 95, 1988; No. 107, 1989		
S. 142A	ad. No. 139, 1987		
	am. No. 159, 1994		
Ss. 142B–142D	ad. No. 139, 1987		
S. 143	am. No. 139, 1987; No. 11, 1989; No. 100, 1991; No. 159, 1994; No. 121, 1997		
S. 143A	ad. No. 139, 1987		
	am. No. 121, 1997		
S. 143B	ad. No. 139, 1987		
S. 143C	ad. No. 139, 1987		
	am. No. 159, 1994; No. 121, 1997		
Ss. 143D, 143E	ad. No. 139, 1987		
S. 149A	ad. No. 52, 2000		
S. 152	rep. No. 121, 1997		
S. 152A	ad. No. 145, 1995		
	am. No. 145, 2008		
S. 152B	ad. No. 145, 1995		
Note to s. 152B	am. No. 17, 1999		
S. 153	am. No. 139, 1987		
S. 157	am. No. 100, 1991		
S. 159	am. No. 139, 1987; No. 101, 2006		
Ss. 161, 162	am. No. 139, 1987		
S. 162B	ad. No. 139, 1987		
	am. No. 58, 2006		
S. 162C	ad. No. 139, 1987		
S. 162D	ad. No. 139, 1987		
	rs. No. 11, 1989		
	rep. No. 145, 1995		
S. 162E	ad. No. 139, 1987		
	rep. No. 145, 1995		
Heading to s. 162F	am. No. 145, 1995		
S. 162F	ad. No. 139, 1987		
	am. No. 145, 1995		

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
Ss. 162G, 162H	ad. No. 139, 1987 am. No. 11, 1989; No. 145, 1995		
S. 162J	ad. No. 139, 1987 rep. No. 145, 1995		
Ss. 162K, 162L	ad. No. 139, 1987 am. No. 11, 1989; No. 145, 1995		
S. 162M	ad. No. 139, 1987 rep. No. 145, 1995		
S. 162N	ad. No. 139, 1987		

Table A

Application, saving or transitional provisions

Taxation Laws Amendment Act (No. 2) 1996 (No. 76, 1996)

Schedule 5

2 Application

The amendment made by this Schedule applies to a benefit provided after the commencement of the Schedule.

Tax Law Improvement Act 1997 (No. 121, 1997)

4 Application of amendments

An amendment made by an item in a Schedule (except Schedule 1) applies to assessments for the 1997-98 income year and later income years, unless otherwise indicated in that Schedule.

Schedule 4

140 Application of amendment

The amendment made by item 139 applies to travel on or after 1 July 1997.

Schedule 10

23 Application

The amendments made by items 16 to 22 apply to the providing of entertainment on or after 1 July 1997.

Table A

Taxation Laws Amendment Act (No. 3) 1997 (No. 147, 1997)

Schedule 7

3 Application

The amendments made by this Schedule apply to assessments for the FBT year beginning on 1 April 1997 and for all later FBT years.

Taxation Laws Amendment Act (No. 4) 1997 (No. 174, 1997)

Schedule 7

32 Application of amendments

Fringe Benefits Tax

- (2) The amendments made by this Schedule apply in relation to:
- (a) returns, applications for amendments or other documents given to the Commissioner for the purposes of the *Fringe Benefits Tax Assessment Act 1986* on or after 1 April 1998; and
 - (b) statements made for the purposes of the *Fringe Benefits Tax Assessment Act 1986* on or after 1 April 1998; and
 - (c) payments made under the *Fringe Benefits Tax Assessment Act 1986* on or after 1 April 1998.

Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998
(No. 17, 1998)

Schedule 1

32 Application

The amendment made by this Part applies to benefits conferred either before or after the commencement of this Part.

Table A

Taxation Laws (Technical Amendments) Act 1998 (No. 41, 1998)

Schedule 5

20 Application

- (1) The amendments made by items 1 to 14 apply to assessments of the fringe benefits taxable amount of an employer of the FBT year beginning on 1 April 1998 and later FBT years.
- (2) The amendment made by item 15 applies to assessments of the fringe benefits taxable amount of an employer of the FBT year beginning on 1 April 1995 and later FBT years.

Taxation Laws Amendment Act (No. 3) 1998 (No. 47, 1998)

Schedule 8

12 Application

The amendment made by item 11 applies for the year of tax containing 4 December 1997, and later years of tax.

Taxation Laws Amendment Act (No. 3) 1999 (No. 11, 1999)

Schedule 1

398 Application

- (1) This item applies to amendments made by items 1 to 3, 11, 12, 14, 18 to 27, 29, 37 to 42, 69 to 75, 77 to 80, 88 to 101, 107, 111, 113, 118, 120, 121, 127, 128, 130, 140, 148, 149, 153, 156, 158, 161 to 169, 175, 178, 179, 185, 187 to 189, 191, 192, 195, 200 to 204, 212, 214 to 217, 221, 223, 225, 226 to 228, 234, 236 to 242, 245, 252, 254 to 278, 280, 281, 296 to 298, 301, 304, 306, 309, 310, 314, 315 to 320, 322 to 328, 331, 332 to 335, 337 to 341, 344, 345, 346, 348, 352, 355 to 360, 373, 375 to 377, 379 to 385, 387 to 394, 396 and 397.

Table A

- (2) The amendments apply in relation to amounts that are due to be paid on or after 1 July 1999.
- (3) The amendments, other than the amendments referred to in subitem (5), also apply in relation to amounts that are due to be paid before 1 July 1999 if:
 - (a) some or all of the amount remains unpaid on 1 July 1999; and
 - (b) the amendments would have applied to the unpaid amount if the day by which the amount is due to be paid had been on or after 1 July 1999.
- (4) In applying the amendments in that case:
 - (a) the unpaid amount is taken to be the sum of the unpaid amount and any unpaid penalty or interest that had accrued before 1 July 1999; and
 - (b) the day by which the unpaid amount is due to be paid is taken to be 1 July 1999; and
 - (c) the unpaid amount and the unpaid penalty or interest that had accrued before 1 July 1999 continues to be payable.
- (5) In addition to applying in relation to amounts that are due to be paid on or after 1 July 1999, the amendments made by items 101, 107, 111, 118, 140, 185, 195, 201, 214, 225, 226, 238, 240, 255, 301, 304, 306 and 355 to 359 also apply in relation to amounts that are due to be paid before 1 July 1999, if some or all of the amount remains unpaid on that day, from the day by which the amount is due to be paid.

399 Application

- (1) This item applies to amendments made by items 6, 7, 8 to 10, 43 to 51, 53 to 68, 102, 103, 114, 115, 119, 131 to 139, 141, 151, 152, 170 to 174, 186, 196, 247 to 251, 282 to 295, 305, 311 to 313, 329, 330, 354, 361 to 363, 369 and 378.
- (2) The amendments apply where the period for which the person is liable to pay the general interest charge starts on or after 1 July 1999.

404 Application

- (1) This item applies to amendments made by items 4, 5, 28, 30, 31, 32, 33, 34, 35, 36, 52, 76, 116, 122, 123, 124, 125, 126, 129, 144, 145, 146, 147, 150, 155, 157, 159, 160, 176, 177, 181, 182, 183, 184, 190, 205, 206, 207, 208, 209, 210, 218, 219, 220, 229, 230, 231, 243, 244, 253,

Table A

279, 299, 300, 302, 321, 336, 342, 343, 365, 367, 370, 374, 386 and 395.

- (2) The amendments apply in relation to credits and payments to which section 8AAZL of the *Taxation Administration Act 1953* applies.

405 Application of new Part IIB of the Taxation Administration Act

- (1) Part IIB of the *Taxation Administration Act 1953*, so far as that Part relates to the establishment, operation and effect of RBAs, applies as follows:
- (a) tax debts owing at or after the commencing time may be allocated to an RBA after the commencing time, regardless of when the debts arose;
 - (b) in all other respects, the amendments apply from the commencing time.
- (2) Section 8AAZL of the *Taxation Administration Act 1953* applies as follows:
- (a) payments received by the Commissioner either before or after the commencing time (and not already applied before the commencing time) must be applied in accordance with that section after the commencing time;
 - (b) credits arising either before or after the commencing time (and not already applied before the commencing time) may be applied in accordance with that section after the commencing time.
- (3) Section 8AAZM of the *Taxation Administration Act 1953* applies to payments received after the commencing time.
- (4) Section 8AAZN of the *Taxation Administration Act 1953* applies to overpayments made by the Commissioner after the commencing time.
- (5) In this item:
- commencing time*** means the beginning of 1 July 1999.

Table A

Taxation Laws Amendment Act (No. 1) 1999 (No. 16, 1999)

Schedule 2

2 Application

The amendment made by this Schedule applies to the year of tax commencing on 1 April 1996 and all later years of tax.

Schedule 3

12 Application

- (1) The amendments made by items 1, 2 and 3 apply to assessments of the fringe benefits taxable amount of an employer of the FBT year beginning on 1 April 1997 and of all later years.
- (2) The amendments made by items 4, 5 and 6 apply to assessments of the fringe benefits taxable amount of an employer of the FBT year beginning on 1 April 1998 and of all later years.
- (3) The repeals made by items 9, 10 and 11 apply in relation to expenditure to the extent to which it is incurred in respect of the provision of car parking facilities for a car on a day on or after 1 July 1997.

Schedule 12

4 Application of amendments

- (1) The amendments made by this Schedule apply in relation to benefits provided in the FBT year beginning on 1 April 1998 and later FBT years.
- (2) However, section 135E of the *Fringe Benefits Tax Assessment Act 1986* (as inserted by this Schedule) does not apply in relation to benefits provided before the commencement of this Schedule.

5 Transitional—first base year

- (1) For the purposes of Part XIA of the *Fringe Benefits Tax Assessment Act 1986* (as inserted by this Schedule), an employer may use the FBT year beginning on 1 April 1996, or any later FBT year, as the employer's first base year.

Table A

- (2) If the employer uses the FBT year beginning on 1 April 1996 as the first base year, then, in determining whether the conditions in Division 2 of that Part are satisfied for any later FBT year:
- (a) section 135B of that Act is taken to require that the employer's aggregate fringe benefits amount for the FBT year beginning on 1 April 1997 was no more than 20% greater than it was for that base year (unless the difference is \$100 or less); and
 - (b) that section is taken not to require anything else to be true of the FBT year beginning on 1 April 1997; and
 - (c) the test in paragraph (a) of this subitem is to be applied using the rules in subsections 135K(3) to (6) of that Act.

A New Tax System (Fringe Benefits Reporting) Act 1999 (No. 17, 1999)

Schedule 1

16 Application of amendments

The amendments made by this Schedule apply in relation to the year of tax starting on 1 April 1999 and later years of tax.

Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999 (No. 44, 1999)

Schedule 8

22 Regulations may deal with transitional, saving or application matters

- (1) The regulations may deal with matters of a transitional, saving or application nature relating to:
- (a) the transition from the application of provisions of the replaced legislation to the application of provisions of the *Banking Act 1959*, the *Life Insurance Act 1995*, the *Financial Sector (Transfers of Business) Act 1999*, the *Financial Sector*

Table A

- (Shareholdings) Act 1998 or the Australian Prudential Regulation Authority Act 1998; or
- (b) the transition, for The Cairns Cooperative Weekly Penny Savings Bank Limited, from the application of provisions of the *Financial Intermediaries Act 1996* of Queensland to the application of provisions of any of the Acts referred to in paragraph (a); or
 - (c) the amendments and repeals made by the Schedules to this Act.
- (2) Without limiting subitem (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
- (a) by applying (with or without modifications) to the matter:
 - (i) provisions of a law of the Commonwealth, or of a State or Territory; or
 - (ii) provisions of a repealed or amended law of the Commonwealth, or of a State or Territory, in the form that those provisions took before the repeal or amendment; or
 - (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
 - (b) by otherwise specifying rules for dealing with the matter;
 - (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of a law of the Commonwealth.
- (3) Without limiting subitems (1) and (2), the regulations may provide for the continued effect, for the purposes of a provision of a law of the Commonwealth, of a thing done or instrument made, or a class of things done or instruments made, before the transfer date under or for the purposes of a provision of a law of a State or Territory. In the case of an instrument or class of instruments, the regulations may provide for the instrument or instruments to continue to have effect subject to modifications.
- (4) Without limiting subitem (3), regulations providing for the continued effect of things done or instruments made may permit all or any of the following matters to be determined in writing by a specified person, or by a person included in a specified class of persons:
- (a) the identification of a thing done or instrument made, or a class of things done or instruments made, that is to continue to have effect;

Table A

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- (b) the purpose for which a thing done or instrument made, or a class of things done or instruments made, is to continue to have effect;
 - (c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.
- (5) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations for the purposes of this item:
- (a) may be expressed to take effect from a date before the regulations are notified in the *Gazette*; and
 - (b) may provide for a determination of a kind referred to in subitem (4) to take effect from a date before the determination is made (including a date before the regulations are notified in the *Gazette*).
- (6) In this item, a reference to a *law*, whether of the Commonwealth or of a State or Territory, includes a reference to an instrument made under such a law.
- (7) In this item:
- replaced legislation* means:
- (a) the AFIC Codes; and
 - (b) the Financial Institutions Codes; and
 - (c) the Friendly Societies Codes; and
 - (d) the *Australian Financial Institutions Commission Act 1992* of Queensland, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in section 21 of the *Australian Financial Institutions Commission Act 1992* of Queensland; and
 - (e) the *Financial Institutions (Queensland) Act 1992* of Queensland, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in section 30 of the *Financial Institutions (Queensland) Act 1992* of Queensland; and
 - (f) the **Friendly Societies (Victoria) Act 1996** of Victoria, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in the Schedule to the **Friendly Societies (Victoria) Act 1996** of Victoria; and
 - (g) the *Friendly Societies (Western Australia) Act 1999*; and
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Table A

- (h) any other law of a State or Territory prescribed by the regulations for the purposes of this definition.

23 Power to make regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed.

A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999 (No. 83, 1999)

Schedule 10

68 Application

- (1) Subject to this item, the amendments made by this Schedule apply to assessments in relation to the 2000-2001 year of income and later years of income.

Taxation Laws Amendment (CPI Indexation) Act 1999 (No. 102, 1999)

Schedule 1

2 Application

The amendment of section 39A of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule applies in relation to each FBT year starting on or after 1 April 1998.

5 Application

The amendments of sections 39AA and 39DA of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule apply in relation to each FBT year starting on or after 1 April 1995.

Table A

A New Tax System (Pay As You Go) Act 1999 (No. 178, 1999)

Schedule 1**84 Application**

The amendments of the *Fringe Benefits Tax Assessment Act 1986* made by this Part apply to a payment made, or a benefit provided, on or after 1 July 2000.

Schedule 2**140 Application of amendments**

The amendments made by this Part apply in relation to the year of tax starting on 1 April 2000 and all later years of tax.

A New Tax System (Tax Administration) Act 1999 (No. 179, 1999)

Schedule 2**130 Recovery of a tax-related liability that is due and payable**

Despite its repeal, a provision listed in the table continues to have effect in relation to an amount that became due and payable before 1 July 2000.

Tax-related liability that became due and payable before 1 July 2000		
Item	Act	Provision
	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 94
	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 86
	<i>Sales Tax Assessment Act 1992</i>	section 69
	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	section 26 or 27
	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	section 22 or 23
	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 50

Table A

Tax-related liability that became due and payable before 1 July 2000		
Item	Act	Provision
	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	section 17 or 18
	<i>Taxation Administration Act 1953</i>	subsection 8AAV(1) or (2)
	<i>Tobacco Charges Assessment Act 1955</i>	section 21
	<i>Wool Tax (Administration) Act 1964</i>	section 44

131 Time for payment etc. of a tax-related liability

Despite the repeal of a provision listed in the table, anything done under that provision before 1 July 2000 continues to have effect on and after that day as if the provision had not been repealed.

Time for payment etc. of a tax-related liability		
Item	Act	Provision
	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 91 or 92
	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 83 or 84
	<i>Sales Tax Assessment Act 1992</i>	section 65 or 66
	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 48
	<i>Taxation Administration Act 1953</i>	section 45-85 in Schedule 1
	<i>Tobacco Charges Assessment Act 1955</i>	subsection 17(2) or (3) or section 23
	<i>Wool Tax (Administration) Act 1964</i>	section 37

132 Collecting amounts from third parties

Despite the repeal of a provision listed in the table:

- (a) anything done under that provision before 1 July 2000 continues to have effect on and after that day as if the provision had not been repealed; and
- (b) anything done on or after that day, under that provision as it continues to have effect because of this item, has effect as if the provision had not been repealed.

Table A

Collecting amounts from third parties		
Item	Act	Provision
	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 99
	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 91
	<i>Sales Tax Assessment Act 1992</i>	section 74
	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	section 40A
	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	section 35
	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 56
	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	section 28A
	<i>Wool Tax (Administration) Act 1964</i>	section 54

133 Liquidators, receivers and agents

Despite its repeal, a provision listed in the table continues to have effect in relation to:

- (a) a person who becomes a liquidator before 1 July 2000; or
- (b) a receiver, or receiver and manager, who takes possession of a company's assets before 1 July 2000; or
- (c) an agent who is instructed, before 1 July 2000, to wind up the principal's business in Australia;

as appropriate.

Liquidators, receivers and agents before 1 July 2000		
Item	Act	Provision
	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 96
	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 88
	<i>Sales Tax Assessment Act 1992</i>	section 123 or 124
	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 53
	<i>Tobacco Charges Assessment Act 1955</i>	section 27
	<i>Wool Tax (Administration) Act 1964</i>	section 47 or 48

Table A**134 Deceased estates**

Despite its repeal, a provision listed in the table continues to have effect in relation to a person who dies before 1 July 2000.

Person who dies before 1 July 2000		
Item	Act	Provision
	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 97 or 98
	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 89 or 90
	<i>Sales Tax Assessment Act 1992</i>	section 72 or 73
	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 54 or 55
	<i>Tobacco Charges Assessment Act 1955</i>	section 28
	<i>Wool Tax (Administration) Act 1964</i>	section 49, 50 or 51

135 Amount of tax-related liability paid for someone else

Despite its repeal, a provision listed in the table continues to have effect in relation to an amount that was paid before 1 July 2000.

Amount paid before 1 July 2000		
Item	Act	Provision
	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 130
	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 110
	<i>Sales Tax Assessment Act 1992</i>	section 70
	<i>Wool Tax (Administration) Act 1964</i>	section 52

136 Right of contribution if entities are jointly liable

Despite its repeal, a provision listed in the table continues to have effect in relation to a liability that arose before 1 July 2000.

Tax-related liability that became due and payable before 1 July 2000		
Item	Act	Provision
	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 131
	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 111
	<i>Sales Tax Assessment Act 1992</i>	section 71
	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 78

Table A

Tax-related liability that became due and payable before 1 July 2000		
Item	Act	Provision
	<i>Wool Tax (Administration) Act 1964</i>	section 53

Timor Gap Treaty (Transitional Arrangements) Act 2000 (No. 25, 2000)

4 The transition time

In this Act:

transition time means 1.23 am Australian Central Standard Time on 26 October 1999.

Note: This time corresponds to the time in New York when the United Nations Security Council adopted Resolution 1272 (1999), which established UNTAET and gave it responsibility for the administration of East Timor. In 2000 the text of the Resolution was available in the Library of the Department of Foreign Affairs and Trade and accessible on the Internet through the Department's or the United Nations' world-wide web site.

5 Validity of things done by the Ministerial Council and the Joint Authority

- (1) Any thing done by the Ministerial Council or the Joint Authority, during the period commencing on the transition time and ending on 5.55 pm Australian Central Standard Time on 10 February 2000, is not invalid:
- (a) merely because the Republic of Indonesia ceased to be a party to the Treaty, and UNTAET became a party to the Treaty, at the transition time; or
 - (b) merely because of an invalidity in the membership of the Ministerial Council or the Joint Authority.

- (2) In this section:

Joint Authority and **Ministerial Council** have the meanings given them by subsection 5(1) of the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*.

Table A

Treaty has the meaning given by subsection 5(1) of the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990* (as in force immediately before the transition time).

UNTAET means the United Nations Transitional Administration in East Timor.

6 Protection against retrospective criminal liability

A person does not commit an offence if the person would not have committed the offence had the amendments made by the items in Schedules 1 and 2 (other than items 18 to 25 of Schedule 2) commenced on the day on which this Act received the Royal Assent (rather than commencing at the transition time).

A New Tax System (Tax Administration) Act (No. 1) 2000 (No. 44, 2000)

Schedule 2

11 Application of amendments

- (1) The amendments made by this Schedule (except items 2, 5, 9 and 10) apply in relation to instalments of tax for the year of tax starting on 1 April 2000 and all later years of tax.
- (2) The amendments made by items 2, 5, 9 and 10 apply in relation to instalments of tax for the year of tax starting on 1 April 2001 and all later years of tax.

Schedule 3

9 Saving

A reference to section 92, 94, 130 or 131 of the *Fringe Benefits Tax Assessment Act 1986* (the *FBTA Act*) in an item in Part 3 of Schedule 2 to the *A New Tax System (Tax Administration) Act 1999* includes a reference to that section as it had effect, before its repeal, because of section 101 of the *FBTA Act*.

Table A

A New Tax System (Fringe Benefits) Act 2000 (No. 52, 2000)

Schedule 1

30 Application

The amendments made by this Schedule apply in respect of the FBT year beginning on 1 April 2000 and in respect of all later FBT years.

A New Tax System (Tax Administration) Act (No. 2) 2000 (No. 91, 2000)

Schedule 2

157 Application of amendments

The amendments made by this Part apply to returns for the year of tax starting on 1 April 2001 and later years.

Taxation Laws Amendment Act (No. 3) 2001 (No. 73, 2001)

Schedule 2

8 Application

The amendments of the *Fringe Benefits Tax Assessment Act 1986* made by this Part apply, and are taken to have applied, in respect of instalments of fringe benefits tax that are due and payable on or after 1 April 2001.

Taxation Laws Amendment (Superannuation Contributions) Act 2001
(No. 89, 2001)

Schedule 1

11 Application of amendments

- (2) The amendments made by Part 3 of this Schedule apply to contributions made after 7 September 2000.

Table A

Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001 (No. 146, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Taxation Laws Amendment Act (No. 2) 2001 (No. 167, 2001)

Schedule 1

2 Application

The amendment made by item 1 applies in relation to the year of tax starting on 1 April 2000 and later years of tax.

Schedule 4

4 Application

- (1) The amendment of the *Fringe Benefits Tax Assessment Act 1986* made by item 1 of this Schedule applies in respect of the FBT year beginning on 1 April 1998 and in respect of all later FBT years.
 - (2) The amendment of the *Fringe Benefits Tax Assessment Act 1986* made by item 2 of this Schedule applies in respect of the FBT year beginning on 1 April 2000 and in respect of all later FBT years.
 - (3) The amendment of the *Fringe Benefits Tax Assessment Act 1986* made by item 3 of this Schedule applies in respect of the FBT year beginning on 1 April 1999 and in respect of all later FBT years.
-

Table A

Taxation Laws Amendment Act (No. 5) 2001 (No. 168, 2001)

Schedule 1

8 Application

The amendment of the *Fringe Benefits Tax Assessment Act 1986* made by item 7 of this Schedule applies to payments made on or after 1 July 2002.

9 Transitional treatment of payments to religious practitioners

- (1) This item applies to payments made to religious practitioners during the period (the *transitional period*) from the start of 1 July 2000 until the end of 30 June 2002.
- (2) For the purposes of the *Fringe Benefits Tax Assessment Act 1986*, a payment to a religious practitioner during the transitional period is taken to be a payment of *salary or wages* if it would have been a payment of salary or wages had it been made immediately after the end of the transitional period.
- (3) In this item, *religious practitioner* has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

Schedule 5

3 Application

- (1) The amendment made by item 1 applies to benefits provided on or after 1 April 2000.
 - (2) The amendment made by item 2 applies to benefits provided on or after 1 April 1999.
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Table A

Taxation Laws Amendment Act (No. 4) 2003 (No. 66, 2003)

Schedule 7

5 Application

The amendments made by items 1 to 4 of this Schedule apply to benefits provided in a year of tax that begins on or after 1 April 2003.

Taxation Laws Amendment Act (No. 6) 2003 (No. 67, 2003)

Schedule 9

18 Transitional provision

- (1) This item applies to an application made under:
 - (a) section 133 of the *Fringe Benefits Tax Assessment Act 1986* before its repeal by item 5 of this Schedule; or
 - (b) section 265 of the *Income Tax Assessment Act 1936* before its repeal by item 15 of this Schedule.
- (2) If the application has not been finally determined before the commencement of this Schedule, Division 340 in Schedule 1 to the *Taxation Administration Act 1953* applies as if the application had been made under section 340-5 in Schedule 1 to that Act.

19 Application provision

A person may be released, under Division 340 in Schedule 1 to the *Taxation Administration Act 1953*, from a liability that the person has incurred even if the liability was incurred before the commencement of this Schedule.

Table A

Taxation Laws Amendment Act (No. 3) 2003 (No. 101, 2003)

Schedule 2

18 Application

The amendment made by this Part applies in respect of the FBT year beginning on 1 April 1995 and in respect of all later FBT years.

Taxation Laws Amendment Act (No. 8) 2003 (No. 107, 2003)

Schedule 4

3 Application

The amendments of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule apply in relation to a person and a car if the person becomes the owner of the car after 30 June 2002 (whether or not anyone else owned the car before the person becomes the owner of it).

Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Act 2003 (No. 122, 2003)

Schedule 2

15 Application

The amendment of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule applies to information acquired before, on or after the commencement of this Schedule by the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner.

Table A

Taxation Laws Amendment Act (No. 5) 2003 (No. 142, 2003)

Schedule 5

8 Application of amendments

The amendments of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule apply in relation to benefits provided on or after 1 April 2003.

Taxation Laws Amendment Act (No. 2) 2004 (No. 20, 2004)

Schedule 3

5 Application of amendment in item 1

The amendment made by item 1 of this Schedule applies to fringe benefits provided after 30 June 2000.

Tax Laws Amendment (2004 Measures No. 2) Act 2004 (No. 83, 2004)

Schedule 4

2 Application

The amendment made by this Schedule applies in respect of the FBT year beginning on 1 April 2001 and in respect of all later FBT years.

Schedule 8

8 Application

The amendments made by items 1 to 7 apply in respect of the FBT year beginning on 1 April 2004 and in respect of all later FBT years.

Table A

Tax Laws Amendment (2004 Measures No. 1) Act 2004 (No. 95, 2004)

Schedule 10

43 Application of FBT amendments

The amendments of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule apply in relation to benefits provided on or after 1 July 2005.

44 Transitional—GST and FBT endorsements

- (3) The entity is taken to have made an application to the Commissioner under section 426-15 in Schedule 1 to the *Taxation Administration Act 1953* for whichever of these kinds of endorsement is most appropriate for the entity:
- (a) endorsement as a public benevolent institution under subsection 123C(1) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (b) endorsement for the operation of a public benevolent institution under subsection 123C(3) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (c) endorsement as a health promotion charity under subsection 123D(1) of the *Fringe Benefits Tax Assessment Act 1986*;
 - (d) endorsement under subsection 123E(1) of the *Fringe Benefits Tax Assessment Act 1986* as a charitable institution covered by paragraph 65J(1)(baa) of that Act.

Tax Laws Amendment (2004 Measures No. 3) Act 2004 (No. 105, 2004)

Schedule 2

4 Application

The amendments made by this Schedule apply in respect of the FBT year beginning on 1 April 2004 and in respect of all later FBT years.

Table A

Tax Laws Amendment (2004 Measures No. 6) Act 2005 (No. 23, 2005)

Schedule 7

6 Application

The amendments made by this Schedule apply to benefits provided in a year of tax that begins on or after 1 April 2004.

Tax Laws Amendment (2004 Measures No. 7) Act 2005 (No. 41, 2005)

Schedule 4

3 Application

The amendments made by this Schedule apply to FBT years beginning on or after 1 April 2005.

Schedule 10

18 Application

The amendments made by items 16 and 17 apply in respect of the FBT year beginning on 1 April 2000 and in respect of all later FBT years.

Tax Laws Amendment (2005 Measures No. 3) Act 2005 (No. 63, 2005)

Schedule 4

3 Application

The amendments made by this Schedule apply to benefits provided on or after 1 July 2005.

Table A

New International Tax Arrangements (Foreign-owned Branches and Other Measures) Act 2005 (No. 64, 2005)

Schedule 4

37 Application—amendment of the *Fringe Benefits Tax Assessment Act 1986*

The amendment made by item 1 of this Schedule applies in respect of the FBT year in which this Act receives the Royal Assent and in respect of all later FBT years.

Tax Laws Amendment (2005 Measures No. 1) Act 2005 (No. 77, 2005)

Schedule 1

5 Application

The amendments made by this Schedule apply in respect of the FBT year following the FBT year in which this Act receives the Royal Assent and in respect of all later FBT years.

Tax Laws Amendment (2005 Measures No. 2) Act 2005 (No. 78, 2005)

Schedule 8

3 Application

The amendments made by items 1 and 2 of this Schedule apply in respect of the FBT year beginning on 1 April 2005 and in respect of all later FBT years.

Table A

Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005
(No. 161, 2005)

Schedule 2

32 Application

The amendments made by this Schedule apply to things done on or after the later of:

- (a) the day on which this Act receives the Royal Assent; and
- (b) 1 January 2006.

Tax Laws Amendment (2006 Measures No. 3) Act 2006 (No. 80, 2006)

Schedule 8

3 Application

The amendments made by this Schedule apply to the FBT year starting on 1 April 2004 and to all later FBT years.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

1 Application of Schedule 1 and 2 amendments

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

5 Application of Schedule 5 amendments

The repeals and amendments made by Schedule 5 apply to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the

Table A

Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the Acts Interpretation Act 1901

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

Table A

Tax Laws Amendment (2006 Measures No. 5) Act 2006 (No. 110, 2006)

Schedule 1

7 Application

The amendments made by this Schedule apply in relation to the FBT year starting on 1 April 2007 and later FBT years.

Tax Laws Amendment (Simplified Superannuation) Act 2007 (No. 9, 2007)

Schedule 5

36 Application

- (1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.
- (2) Despite subitem (1), items 1, 2, 3, 4, 5, 34 and 35 of this Schedule apply on and after 1 July 2007.

Superannuation Legislation Amendment (Simplification) Act 2007
(No. 15, 2007)

Schedule 1

406 Application

- (1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.
- (2) Despite subitem (1), those amendments apply to the 2007-2008 financial year and later years, to the extent that they relate to Division 292 of the *Income Tax Assessment Act 1997*.
- (3) Despite subitem (1), those amendments apply on and after 1 July 2007, to the extent that they relate to any of the following:
 - (a) Divisions 82 and 83 of the *Income Tax Assessment Act 1997*;
 - (b) Divisions 301 to 307 of that Act.

Table A

Tax Laws Amendment (2007 Measures No. 1) Act 2007 (No. 56, 2007)

Schedule 3

39 Application

- (1) The amendments made by this Schedule apply to acquisitions of stapled securities, and of rights to acquire stapled securities, on or after 1 July 2006.
- (2) In this item:
acquisition has the same meaning as in Division 13A of Part III of the *Income Tax Assessment Act 1936*.

Tax Laws Amendment (2007 Measures No. 3) Act 2007 (No. 79, 2007)

Schedule 1

43 Application

- (1) The amendments made by this Schedule apply to assessments for the income year in which 1 July 2006 occurred and later income years.
- (2) Despite subitem (1), the amendments made by this Schedule to the *Fringe Benefits Tax Assessment Act 1986* apply to benefits provided in a year of tax that begins on or after 1 April 2007.
- (3) If:
 - (a) a loan was made in a year of tax that began before 1 April 2007; and
 - (b) the loan is covered under paragraph (s) of the definition of *fringe benefit* in the *Fringe Benefits Tax Assessment Act 1986* (as added by this Schedule); and
 - (c) because of the loan, a loan benefit is taken under subsection 16(1) of the *Fringe Benefits Tax Assessment Act 1986* to be provided in respect of a year of tax that begins on or after 1 April 2007;treat the loan benefit as not being a fringe benefit for the purposes of that Act.

Table A

Tax Laws Amendment (Small Business) Act 2007 (No. 80, 2007)

Schedule 5

6 Application

The amendments made by this Schedule apply in relation to the FBT year starting on 1 April 2007 and later FBT years.

7 Transitional—being a small business entity for the 2005-06 or 2006-07 income year

For the purposes of subparagraph 58GA(1)(d)(ii) of the *Fringe Benefits Tax Assessment Act 1986*, an employer is taken to be a small business entity for the 2005-06 income year or the 2006-07 income year (each a *relevant income year*) if the employer would have been a small business entity for the relevant income year had the amendments made by Schedule 1 to the *Tax Laws Amendment (Small Business) Act 2007* been in force in relation to that year.

Tax Laws Amendment (2007 Measures No. 4) Act 2007 (No. 143, 2007)

Schedule 1

222 Application

Subject to items 223 and 224, the amendments made by this Schedule apply in relation to income years, statutory accounting periods and notional accounting periods starting on or after the first 1 July that occurs after the day on which this Act receives the Royal Assent.

225 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

226 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example: For the 2006-07 income year, Smart Investor Pty Ltd, an Australian resident private investment company, has assessable foreign income in the passive income class on which it has paid foreign tax for which it wishes to claim a foreign tax credit. The company also has a tax loss for the year from its Australian investments. When it lodges its tax return for the year it does not elect to claim a deduction for any of the tax loss under section 79DA of the ITAA 1936, because the Australian tax payable on its passive foreign income equals the foreign tax it has paid.

In 2009 the amount of foreign tax payable in respect of some foreign rental income it had included in its return for the 2006-07 year is reduced and Smart Investor receives a refund of the difference in foreign tax. Smart Investor Pty Ltd then applies to be able to make an election under section 79DA, that is, after the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* (which repeals section 79DA) receives Royal Assent. The Commissioner allows Smart Investor to submit an election to claim a deduction for so much of its 2006-07 tax loss as to reduce the amount of Australian tax payable on its 2006-07 assessable foreign income to the revised foreign tax paid, by the end of 2009.

Despite the repeal of section 79DA, item 226 allows the Commissioner to permit an election to be lodged after the return for 2006-07 has been lodged, and to amend Smart Investor's assessment for that year, because these actions relate to a thing done, and periods ending, before the repeal of section 79DA applies.

Table A

Schedule 7

8 Application

The amendment made by item 7 applies to the FBT year starting on 1 April 2008 and to all later FBT years.

Tax Laws Amendment (Budget Measures) Act 2008 (No. 59, 2008)

Schedule 1

3 Application

- (1) The amendment made by item 2 applies to food and drink provided after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008.
- (2) However, that amendment does not apply to an agreement made by an employee before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 to the extent that:
 - (a) a reduction in salary or wages has already occurred by that time; and
 - (b) the food or drink is provided before 1 April 2009.

5 Application

- (1) The amendments made by item 4 apply to items acquired after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008, other than items acquired under a contract entered into at or before that time.
- (2) To avoid doubt, subsections 58X(3) and (4) of the *Fringe Benefits Tax Assessment Act 1986* as amended by this Act apply where both the later item and the other item referred to in those subsections are acquired after that time.

Table A

First Home Saver Accounts (Further Provisions) Amendment Act 2008
(No. 92, 2008)

Schedule 1

26 Application

The amendments made by this Schedule apply from 1 October 2008.

Tax Laws Amendment (2008 Measures No. 4) Act 2008 (No. 97, 2008)

Schedule 3

4 Application

The amendments made by items 2 and 3 of this Schedule apply to the first year of tax starting after the day on which this Act receives the Royal Assent and later years.

Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 (No. 144, 2008)

Schedule 14

6 Application of amendments of the *Fringe Benefits Tax Assessment Act 1986*

The amendments of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule apply in relation to the FBT year starting on 1 April 2009 and later FBT years.

Table A

Tax Laws Amendment (2008 Measures No. 5) Act 2008 (No. 145, 2008)

Schedule 4

9 Application

- (1) The amendments made by items 1 to 8 apply to a loan benefit that is provided after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the *commencing time*).
- (2) However, those amendments do not apply to a loan benefit that is provided after the commencing time and before 1 April 2009 if the loan was entered into before the commencing time.

23 Application

- (1) The amendments made by items 10 to 22 apply to an expense payment benefit that is provided after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the *commencing time*).
- (2) However, those amendments do not apply to an expense payment benefit that is provided to an employee after the commencing time and before 1 April 2009 if:
 - (a) the benefit is provided:
 - (i) because the employee agreed to receive the benefit in return for a reduction in the employee's salary or wages that would not have happened apart from the agreement; or
 - (ii) as part of the employee's remuneration package, in circumstances where it is reasonable to conclude that the employee's salary or wages would be greater if the benefit were not made part of that package; and
 - (b) the agreement was made, or the remuneration package was agreed to, before the commencing time.

32 Application

- (1) The amendments made by items 24 to 31 apply to a property benefit that is provided after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the *commencing time*).

Table A

- (2) However, those amendments do not apply to a property benefit that is provided to an employee after the commencing time and before 1 April 2009 if:
- (a) the benefit is provided:
 - (i) because the employee agreed to receive the benefit in return for a reduction in the employee's salary or wages that would not have happened apart from the agreement; or
 - (ii) as part of the employee's remuneration package, in circumstances where it is reasonable to conclude that the employee's salary or wages would be greater if the benefit were not made part of that package; and
 - (b) the agreement was made, or the remuneration package was agreed to, before the commencing time.

41 Application

- (1) The amendments made by items 33 to 40 apply to a benefit that is provided after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the *commencing time*).
- (2) However, those amendments do not apply to a benefit that is provided to an employee after the commencing time and before 1 April 2009 if:
- (a) the benefit is provided:
 - (i) because the employee agreed to receive the benefit in return for a reduction in the employee's salary or wages that would not have happened apart from the agreement; or
 - (ii) as part of the employee's remuneration package, in circumstances where it is reasonable to conclude that the employee's salary or wages would be greater if the benefit were not made part of that package; and
 - (b) the agreement was made, or the remuneration package was agreed to, before the commencing time.