

Income Tax Assessment Act (No. 4) 1973

No. 164 of 1973

AN ACT

To amend the Law relating to Income Tax.

[Assented to 11 December 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Income Tax Assessment Act (No. 4) 1973*.

(2) The *Income Tax Assessment Act 1936–1972*,* as amended by the *Income Tax Assessment Act 1973*,† the *Income Tax Assessment Act (No. 2) 1973*‡ and the *Income Tax Assessment Act (No. 3) 1973*,§ is in this Act referred to as the Principal Act.

(3) Section 1 of the *Income Tax Assessment Act (No. 3) 1973* is amended by omitting sub-section (4).

(4) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act 1936–1973*.

* Act No. 27, 1936, as amended by No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; and Nos. 5, 46, 47, 65 and 85, 1972.

† Act No. 51, 1973.

‡ Act No. 52, 1973.

§ Act No. 53, 1973.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.
3. Section 5 of the Principal Act is repealed. Parts.
4. Section 6 of the Principal Act is amended— Interpretation.
- (a) by omitting from the definition of “friendly society” in sub-section (1) the words “the Commonwealth” and substituting the word “Australia”; and
- (b) by omitting sub-section (3) and substituting the following sub-section:—
- “ (3) The express references in this Act to companies do not imply that references to persons do not include references to companies.”.
5. Section 7 of the Principal Act is repealed and the following sections are substituted:—
- “ 7. (1) This Act extends to Papua New Guinea, but does not apply to any income derived by a resident of Papua New Guinea from sources within Papua New Guinea. Extension of Act to Papua New Guinea.
- “ (2) A taxpayer who is resident in Papua New Guinea shall, for the purposes of assessment and payment of income tax on income derived from sources in Australia, be deemed to be a resident of Australia.
- “ 7A. (1) This Act extends to Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island. Application of Act in relation to certain other Territories.
- “ (2) Subject to Division 1A of Part III, this Act has effect as if Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island were part of Australia.”.
6. Section 23 of the Principal Act is amended— Exemptions.
- (a) by omitting from paragraphs (d) and (f) the words “the Commonwealth” and substituting the word “Australia”; and
- (b) by inserting in paragraph (n), after the words “New Zealand”, the words “or Norfolk Island”.
7. After Division 1 of Part III of the Principal Act the following Division is inserted:—
- “ Division 1A—Provisions relating to certain External Territories.
- “ 24B. (1) In this Division, unless the contrary intention appears— Interpretation.
- ‘prescribed person’ means—
- (a) a person who is a Territory resident;
- (b) a person who is a trustee of a trust that is a Territory trust in relation to the year of income, being the person in his capacity as trustee of that trust; or
- (c) a company that is a Territory company in relation to the year of income;

'prescribed Territory' means Norfolk Island, the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island.

"(2) For the purposes of this Division—

- (a) a reference to an agreement, right, power or option shall be construed as including a reference to an agreement, right, power or option that is not enforceable by legal proceedings whether or not it was intended to be so enforceable; and
- (b) an arrangement or understanding, whether formal or informal and whether expressed or implied, shall be deemed to be an agreement.

"(3) Where the effect of a provision of this Division that refers to the derivation of income by a person not being a company or to the application of income for the benefit of a person not being a company depends upon the determination of the question whether or not the person is a Territory resident, that question shall be determined as at the time of the derivation of the income by the person or of the application of the income for the benefit of the person, as the case may be.

**Territory
resident.**

"24c. A reference in this Division to a Territory resident is a reference to a person, not being a company, who—

- (a) resides, and has his ordinary place of residence, in a prescribed Territory; and
- (b) would not, but for the operation of sub-section (2) of section 7A, be treated as a resident of Australia.

**Territory
company.**

"24d. (1) Subject to this section, a company is, for the purposes of this Division, a Territory company in relation to the year of income if, and only if—

- (a) the company was incorporated in a prescribed Territory;
- (b) at all times during the year of income the company was managed and controlled wholly and exclusively in that Territory and was so managed and controlled by a person who was a Territory resident or by persons who were Territory residents;
- (c) at no time during the year of income was a shareholding interest in the company held by a person (not being a company) who was not a Territory resident;
- (d) at no time during the year of income was a person, or were two or more persons, in a position to affect any rights in connexion with the company of the holder of a shareholding interest in the company; and
- (e) no agreement was entered into before or during the year of income by virtue of which a person or persons would be in a position after the year of income to affect any rights in connexion with the company of the holder of a shareholding interest in the company.

“(2) For the purposes of this section, a person shall be deemed to have held a shareholding interest in a company at a particular time if at that time—

- (a) in the case of a company having a share capital—the person was beneficially entitled to, or to an interest in, any shares in the company (whether or not the whole or any part of the legal ownership of the shares was vested in the person); or
- (b) in the case of a company limited by guarantee or limited by both shares and guarantee—the person was a member of the company or had a beneficial interest in any right or interest of a member of the company in or in relation to the company.

“(3) For the purposes of this section, where at any time a person held a shareholding interest in a company and at that time that company held a shareholding interest in another company (including a shareholding interest that the first-mentioned company is deemed to have held by another application or other applications of this sub-section), that person shall be deemed to have held at that time a shareholding interest in that other company.

“(4) For the purposes of paragraphs (d) and (e) of sub-section (1), a person or persons shall be taken to have been, or to be, in a position at a particular time to affect rights in connexion with a company of the holder of a shareholding interest in the company if at that time that person had or has, or those persons had or have, a right, power or option (whether by virtue of any provision of the constituent document of the company or of any other company or by virtue of any agreement or instrument or otherwise) to do any act or thing that would divest the holder of that shareholding interest of all or any of those rights, to reduce the extent of all or any of those rights, to specify the manner in which all or any of those rights were or are to be exercised or to do any act or thing that would prevent the holder of that shareholding interest from exercising all or any of those rights for his own benefit or receiving any benefits accruing by reason of the existence of all or any of those rights.

“(5) A reference in sub-section (4) to the doing of any act or thing that would reduce the extent of any rights in connexion with a company of the holder of a shareholding interest in the company includes a reference to the doing of any act or thing that would reduce the proportion that those rights bear to the total number of the rights of the same kind in connexion with the company of all the holders of shareholding interests in the company.

“(6) A company that would, apart from this sub-section, be a Territory company for the purposes of this Division in relation to the year of income shall be deemed not to be a Territory company for the purposes of this Division in relation to the year of income if the affairs or business operations of the company were to any extent managed or conducted in

the year of income in the interests of persons other than the holders of shareholding interests in the company or are likely to be so managed or conducted in a later year of income.

“(7) In determining for the purposes of this section whether the affairs or business operations of a company were, or are likely to be, managed or conducted to any extent in the interests of persons other than the holders of shareholding interests in the company, regard shall be had to any act or thing done, or likely to be done, in the course of the management or conduct of those affairs or operations, irrespective of the purpose or purposes for which that act or thing was done, or is likely to be done, and notwithstanding that the doing of that act or thing took place, or is likely to take place, in the course of ordinary family or commercial dealing.

“(8) Where, but for this sub-section, a company would not be a Territory company for the purposes of this Division in relation to a year of income by reason of a non-compliance of a temporary nature with the requirements of paragraph (b) or (c) of sub-section (1), the Commissioner may disregard that non-compliance.

“(9) Where, but for this sub-section, a company would not be a Territory company for the purposes of this Division in relation to a year of income by reason of a non-compliance with paragraph (d) or (e) of sub-section (1) or by reason of sub-section (6) but the Commissioner is of the opinion that, having regard to the general effect of the provisions of this section and to special circumstances that exist in relation to the company, it would be inappropriate not to regard the company as a Territory company in relation to that year of income, the Commissioner may regard the company as a Territory company for the purposes of this Division in relation to that year of income.

Territory trusts.

“24E. (1) A trust is, for the purposes of this Division, a Territory trust in relation to the year of income if—

- (a) the trust resulted from—
 - (i) a will, a codicil or an order of a court that varied or modified the provisions of a will or codicil; or
 - (ii) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate;
- (b) the deceased person was a Territory resident immediately before his death; and
- (c) either of the following sub-paragraphs applies in relation to the trust:—
 - (i) the administration of the estate of the deceased person had not, before the end of the year of income, progressed to a stage that would give to any beneficiary a present entitlement to income that was derived by the trustee before or during the year of income; or

- (ii) at no time during the year of income was any person presently entitled to income derived by the trustee during the year of income and at the end of the year of income no person other than a Territory resident had any interest, whether vested or contingent, in any income derived by the trustee during the year of income or could by the exercise of a power conferred on any person obtain such an interest.

“(2) A trust is, for the purposes of this Division, a Territory trust in relation to the year of income if—

- (a) the trust was created by an instrument (not being a will or a codicil) executed in a prescribed Territory by a Territory resident; and
- (b) at no time during the year of income was any person presently entitled to income derived by the trustee during the year of income and at the end of the year of income no person other than a Territory resident had any interest, whether vested or contingent, in any income derived by the trustee during the year of income or could by the exercise of a power conferred on any person obtain such an interest.

“(3) A trust is not, for the purposes of this Division, a Territory trust in relation to the year of income except as provided by this section.

“(4) For the purposes of this Division—

- (a) where two or more beneficiaries are presently entitled to shares of any income derived by a trustee (whether or not any of those beneficiaries is under a legal disability), the respective shares of that income to which those beneficiaries are so entitled shall be deemed to be held by the trustee upon separate trusts for those beneficiaries;
- (b) if there is a share of any income derived by a trustee to which no beneficiary is presently entitled, the trustee shall be deemed to hold that share upon a trust separate from the trust or trusts upon which he holds the remainder of that income; and
- (c) a reference to income derived by a trustee of a trust is a reference to income derived by the trustee in his capacity as trustee of that trust.

“24F. (1) Subject to sub-sections (2), (3) and (4), this section applies to income derived (otherwise than as a trustee) from sources outside Australia by a person being a Territory resident, or by a company being a Territory company in relation to the year of income.

Exemption from tax of certain income derived from sources outside Australia.

“(2) This section does not apply to income consisting of a dividend paid by a company that is a resident of Australia other than a company that is a resident of Australia by reason only of the operation of sub-section (2) of section 7A.

“(3) Subject to sub-section (4), this section does not apply to income if the Commissioner is satisfied that the income has been, or may be, applied for the benefit of a person not being a Territory resident, or for the benefit of a company not being a Territory company in relation to the year of income of the company in which the income has been or may be applied.

“(4) Sub-section (3) does not exclude the operation of this section in relation to any income if the Commissioner is satisfied that the application of the income as mentioned in that sub-section resulted, or would result, from an agreement or transaction that was a genuine commercial or family dealing and was not entered into or effected for the purpose, or for purposes that included the purpose, of avoiding liability to taxation.

“(5) Income to which this section applies is exempt from income tax.

Exemption
from tax of
certain
income
derived from
sources in a
prescribed
Territory.

“24G. (1) Subject to sub-sections (2) and (3), this section applies to—

- (a) income derived (otherwise than as a trustee) from sources in a prescribed Territory by a person who is a Territory resident;
- (b) income derived (otherwise than as a trustee) from sources in a prescribed Territory by a company that is a Territory company in relation to the year of income;
- (c) income derived from sources in a prescribed Territory by a trustee of a trust that is a Territory trust in relation to the year of income;
- (d) income derived from sources in a prescribed Territory by a trustee of a trust, being income to which a beneficiary who is under a legal disability and is a Territory resident is presently entitled; and
- (e) income derived by a person from an office or employment the duties of which are wholly or mainly performed in a prescribed Territory, if the Commissioner is satisfied that, at the time when the person commenced to perform duties of that office or employment in that Territory, he intended to remain in that Territory for a continuous period of more than six months.

“(2) Subject to sub-section (3), this section does not apply to income if the Commissioner is satisfied that the income has been, or may be, applied for the benefit of a person not being a Territory resident, or for the benefit of a company not being a Territory company in relation to the year of income of the company in which the income has been or may be applied.

“(3) Sub-section (2) does not exclude the operation of this section in relation to any income if the Commissioner is satisfied that the application of the income as mentioned in that sub-section resulted, or would

result, from an agreement or transaction that was a genuine commercial or family dealing and was not entered into or effected for the purpose, or for purposes that included the purpose, of avoiding liability to taxation.

“(4) Income to which this section applies is exempt from income tax.

“24H. (1) In determining for the purposes of this Division whether any income has been, or may be, applied for the benefit of a person, regard shall be had to all benefits that have accrued, or may accrue, as the case may be, at any time to the person (whether or not the person had, or may have, rights at law or in equity in or to those benefits) as a result of the derivation of, or in relation to, that income, irrespective of the nature or form of the benefits.

When income to be taken to be applied for benefit of a person.

“(2) Without limiting the generality of sub-section (1), income shall be taken, for the purposes of this Division, to have been applied for the benefit of a person if—

- (a) the income has been so dealt with that it will, at a future time, and whether in the form of income or not, enure for the benefit of the person;
- (b) the derivation of the income has operated to increase the value to the person of any property or rights of any kind held by or for the benefit of the person;
- (c) the person has received or become entitled to receive any benefit (including a loan or a repayment, in whole or in part, of a loan, or any other payment of any kind) provided out of the income or out of property or money that was available for the purpose by reason of the derivation of the income;
- (d) the person has power, by means of the exercise by the person of any power of appointment or revocation or otherwise, to obtain, whether with or without the consent of any other person, the beneficial enjoyment of the income; or
- (e) the person is able, in any manner whatsoever, and whether directly or indirectly, to control the application of the income.

“(3) Without limiting the generality of sub-section (1), it shall be taken, for the purposes of this Division, that income may be applied for the benefit of a person if—

- (a) the income may be so dealt with that it will, at a future time, and whether in the form of income or not, enure for the benefit of the person;
- (b) the derivation of the income may operate to increase the value to the person of any property or rights of any kind held by or for the benefit of the person;

- (c) the person may receive or become entitled to receive any benefit (including a loan or a repayment, in whole or in part, of a loan, or any other payment of any kind) to be provided out of the income or out of property or money that is or will be available for the purpose by reason of the derivation of the income;
- (d) the person may, in the event of the exercise of any power vested in any other person, become entitled to the beneficial enjoyment of the income; or
- (e) the person may become able, in any manner whatsoever, and whether directly or indirectly, to control the application of the income.

Source of
dividends.

“ 24J. (1) In this section—

- ‘ prescribed income ’ means income consisting of Territory income or residual income, or both;
- ‘ residual income ’ means income derived before 20 July 1972 from a source that, for the purposes of the *Income Tax Assessment Act 1936* as amended and in force at the time when the income was derived, was a source outside Australia or was a source in a Territory that is a prescribed Territory;
- ‘ Territory income ’ means income to which section 24F or 24G applies.

“(2) For the purposes of this Division, but subject to sub-section (3), income consisting of a dividend shall be deemed to be derived from a source in a prescribed Territory if, and only if—

(a) the dividend—

- (i) is paid by a company that is a Territory company in relation to the year of income of the company in which the dividend is paid; and
 - (ii) is paid by that company wholly and exclusively out of the amount remaining after deducting from prescribed income of the company all losses and outgoings incurred in gaining or producing that income that would have been allowable deductions if that income had been assessable income; or
- (b) the dividend is paid by a company that was incorporated in a prescribed Territory but is not a Territory company in relation to the year of income of the company in which the dividend is paid, and is paid by that company—
- (i) wholly and exclusively out of the amount remaining after deducting from residual income of the company all losses and outgoings incurred in gaining or producing that income that would have been allowable deductions if that income had been assessable income; or

- (ii) wholly and exclusively out of the amount remaining after deducting from income, being a dividend, derived by the company, being a dividend that is deemed to be derived from a source in a prescribed Territory by another application or other applications of this paragraph, all losses and outgoings incurred in gaining or producing that income that would have been allowable deductions if that income had been assessable income.

“(3) Where—

- (a) a dividend derived by a prescribed person is attributable to residual income; and
- (b) the Commissioner is satisfied that the dividend would not have been derived by a prescribed person but for—
 - (i) a change in the beneficial ownership of shares in a company that took place on or after 20 July 1972; or
 - (ii) the making of any agreement or other instrument, the granting or assignment of, or the failure to exercise, any right, power or option, or the doing of any other act or thing, in relation to shares in a company on or after that date,

the dividend shall be deemed, for the purposes of this Division, not to have been derived from a source in a prescribed Territory.

“(4) Sub-paragraph (i) of paragraph (b) of sub-section (3) does not apply in relation to a change in the beneficial ownership of shares resulting from—

- (a) a will, a codicil or an order of a court that varied or modified the provisions of a will or codicil; or
- (b) an intestacy or an order of a court that varied or modified the application, in relation to the estate of a deceased person, of the provisions of the law relating to the distribution of the estates of persons who die intestate.

“(5) For the purposes of sub-section (3), a dividend is attributable to residual income if the dividend is paid in whole or in part out of—

- (a) an amount ascertained in accordance with paragraph (a) of sub-section (2), where the amount is so ascertained by reference to an amount of prescribed income of a company that includes residual income of the company; or
- (b) an amount ascertained in accordance with paragraph (b) of sub-section (2).

“(6) Where a dividend paid by a company incorporated in a prescribed Territory to another company incorporated in a prescribed Territory is attributable to residual income, any dividend paid by the other company in whole or in part out of the first-mentioned dividend shall be deemed to be attributable to residual income.

“(7) The reference in sub-section (6) to a dividend that is attributable to residual income includes a reference to a dividend that is deemed to be attributable to residual income by virtue of any other application or applications of that sub-section.

Source of
income from
employment.

“24K. For the purposes of this Division, income derived from an office or employment shall be deemed to be derived from a source in a prescribed Territory—

- (a) if, and only if, the duties of that office or employment are wholly or mainly performed in a prescribed Territory; and
- (b) to such extent only as the Commissioner considers reasonable remuneration for the performance of those duties.

Source of
interest or
royalty.

“24L. (1) This section applies to income derived by a person who is a prescribed person, being income that consists of interest or a royalty that—

- (a) is paid to the prescribed person by Australia, by a State, by an authority of Australia or of a State or by a person who is, or by persons at least one of whom is, a resident and is not an outgoing wholly incurred by Australia, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of Australia, the State, the authority or that person or those persons in that country; or
- (b) is paid to the prescribed person by a person who is, or by persons each of whom is, a non-resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.

“(2) For the purposes of this Division, but subject to this section, income to which this section applies shall be deemed—

- (a) not to have been derived from a source in a prescribed Territory; and
- (b) not to have been derived from a source outside Australia.

“(3) Where—

- (a) income to which this section applies is paid to the prescribed person by whom it is derived by Australia, by a State, by an authority of Australia or of a State or by a person who is, or by persons at least one of whom is, a resident; and
- (b) the interest or royalty of which the income consists is, in part, an outgoing incurred by Australia, the State, the authority or that person or those persons in carrying on business in a country

outside Australia at or through a permanent establishment of Australia, the State, the authority or that person or those persons in that country,

sub-section (2) has effect in relation to so much only of the income as is attributable to so much of the interest or royalty as is not an outgoing so incurred.

“(4) Where—

- (a) income to which this section applies is paid to the prescribed person by whom it is derived by a person who, or by persons each of whom, is a non-resident; and
- (b) the interest or royalty of which the income consists is, in part only, an outgoing incurred by the person or persons by whom it is paid in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia,

sub-section (2) has effect in relation to so much only of the income as is attributable to so much of the interest or royalty as is an outgoing so incurred.

“(5) In sub-sections (1), (3) and (4), ‘Australia’ (when used in a geographical sense), ‘resident’ and ‘non-resident’ have the meanings that those expressions would have if sub-section (2) of section 7A had not been enacted.

“(6) For the purposes of this section, interest or a royalty shall be deemed to have been paid by a person to another person although it is not actually paid over to the other person but is reinvested, accumulated, capitalized, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on behalf of the other person or as the other person directs.

“24M. (1) Income (not being a dividend) that would, but for this sub-section, be taken to be derived from a source in a prescribed Territory shall be deemed, for the purposes of this Division, not to be derived from such a source to the extent to which the income is received or accrues, directly or indirectly, in pursuance of an agreement or transaction that—

- (a) was not a genuine commercial or family agreement or transaction; or
- (b) was entered into for the purpose, or for purposes that included the purpose, of avoiding liability to taxation.

Certain income deemed not to be derived from sources in a prescribed Territory or outside Australia.

“(2) Income that would, but for this sub-section, be taken to be derived from a source outside Australia shall be deemed, for the purposes of this Division, not to be derived from such a source to the extent to which the income is received or accrues, directly or indirectly, in pursuance of an agreement or transaction that—

- (a) was not a genuine commercial or family agreement or transaction; or
- (b) was entered into for the purpose, or for purposes that included the purpose, of avoiding liability to taxation.

Transitional.

“ 24N. (1) In this section—

‘ prescribed company ’ means a company that would be a Territory company in relation to the period of six months ending on 30 June 1974 if that period were a year of income;

‘ year of income to which this section applies ’ means the year of income ending on 30 June 1974 or either of the two immediately preceding years of income.

“ (2) Where a prescribed company is not a Territory company in relation to a year of income to which this section applies, the Commissioner may, if he considers it reasonable in the circumstances to do so, treat the company, for the purposes of sections 24F, 24G, 24J and 24L, as being a Territory company in relation to that year of income, but, in that case, so much only of any income derived by the company during that year of income that is income to which section 24F or 24G applies is exempt from income tax as the Commissioner considers reasonable having regard to the extent to which Territory residents were the beneficial owners of shares in the company at the time when the income was derived.”.

Rates and taxes.

8. Section 72 of the Principal Act is amended by omitting from paragraph (b) of sub-section (1) the words “ the Commonwealth ” and substituting the word “ Australia ”.

9. Section 82AA of the Principal Act is repealed and the following section substituted:—

Definition.

“ 82AA. In this Subdivision, ‘ resident ’ includes a resident of Papua New Guinea.”.

House-keeper.

10. Section 82D of the Principal Act is amended by omitting from sub-section (1) the words “, the Territory of Papua and New Guinea, Norfolk Island, the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island ” and substituting the words “ or Papua New Guinea ”.

Interpretation.

11. Section 103 of the Principal Act is amended—

(a) by omitting from the definition of “ special fund dividends ” in sub-section (1) the words “ by virtue of ” and substituting the words “ by virtue of section 24F, section 24G,”; and

(b) by inserting in the definition of “ the undistributed amount ” in sub-section (1), after the words “ special fund dividends ”, the words “, prescribed dividends ”.

12. After section 103A of the Principal Act the following section is inserted:—

Prescribed dividends.

“ 103AA. (1) Subject to this section, a dividend is a prescribed dividend for the purposes of this Division if the dividend—

(a) was derived on or after 20 July 1972 by a company that—

(i) was a resident of Papua New Guinea and was not a resident of Australia; and

(ii) was a private company in relation to the year of income of that company in which the dividend was derived; and

(b) was paid by a company that—

(i) was a resident of Australia; and

(ii) was a private company in relation to the year of income of that company in respect of which the dividend would, but for this section, be taken into account in ascertaining whether the company had made a sufficient distribution.

“(2) Subject to this section, a dividend that—

(a) was derived on or after 20 July 1972 by a company that—

(i) was a resident of Papua New Guinea and was not a resident of Australia; and

(ii) was a private company in relation to the year of income of that company in which the dividend was derived; and

(b) was paid by a company that—

(i) was not a resident of Australia; and

(ii) was a private company in relation to the year of income of that company in respect of which the dividend would, but for this section, be taken into account in ascertaining whether the company had made a sufficient distribution,

is a prescribed dividend for the purposes of this Division to the extent to which the dividend was paid out of profits (excluding so much of those profits as consists of dividends to which sub-section (1) applies) derived by the company paying the dividend from sources in Australia.

“(3) Where sub-section (1) or (2) applies to a dividend or a part of a dividend (which dividend or part of a dividend is in the following provisions of this section referred to as a ‘relevant dividend’), so much of that relevant dividend as is required to be disregarded by virtue of sub-section (4) is not a prescribed dividend for the purposes of this Division.

“(4) For the purposes of the application of sub-section (3) in relation to a relevant dividend, there shall be disregarded—

(a) so much of the relevant dividend as the Commissioner is satisfied—

(i) will, by virtue of a distribution of a dividend by the company that derived the relevant dividend, or successive distributions of dividends by that company and another company or other companies, be derived (otherwise than as a trustee) by a non-resident, not being a company, or by a company that the Commissioner considers it is reasonable to assume will be a public company for the purposes of

section 103A in relation to the year of income of the company in which the Commissioner is satisfied that the pertinent part of the dividend will be derived by that company; and

- (ii) will not be applied (except in circumstances that are capable of explanation by reference to ordinary commercial or family dealing and are not attributable to an agreement or transaction that was entered into or effected for the purpose, or for purposes that included the purpose, of avoiding liability to taxation) for the benefit of a resident of Australia, not being a company, or for the benefit of a company that the Commissioner considers it is reasonable to assume will be a private company in relation to any relevant year of income;
- (b) so much of the relevant dividend as the Commissioner is satisfied will, by virtue of a distribution of a dividend by the company that derived the relevant dividend, or successive distributions of dividends by that company and another company or other companies, be derived (otherwise than as a trustee) by a resident of Australia, not being a company, before the expiration of ten months after the year of income of the company that derived the relevant dividend during which that company derived that dividend;
- (c) so much of the relevant dividend as the Commissioner is satisfied will be included in the undistributed amount upon which the company deriving the relevant dividend will be liable to pay additional tax under section 104;
- (d) so much of the relevant dividend as the Commissioner is satisfied will, by virtue of a distribution of a dividend by the company that derived the relevant dividend or successive distributions of dividends by that company and another company or other companies (being a distribution or distributions made before the expiration of ten months after the year of income of the company that derived the relevant dividend during which that company derived that dividend), be included in the undistributed amount upon which a company other than the company that derived the relevant dividend will be liable to pay additional tax under section 104; and
- (e) so much of the relevant dividend as the Commissioner is satisfied should be disregarded by reason of special circumstances.

“(5) In satisfying himself, in relation to a relevant dividend, as to a matter referred to in sub-paragraph (ii) of paragraph (a) of sub-section (4), the Commissioner shall have regard to the same considerations as those to which regard is required to be had by section 24H in determining for the purposes of Division 1A whether income may be applied for the benefit of a person.

“(6) No part of a relevant dividend shall be taken to be a prescribed dividend for the purposes of this Division if, by virtue of sub-section (4), more than ninety per centum of that relevant dividend is required to be disregarded.

“(7) Where—

(a) a part of a dividend is required by virtue of sub-section (4) to be disregarded by reason that the Commissioner was satisfied as to a matter in relation to that part of that dividend in accordance with that sub-section; and

(b) the Commissioner considers that, having regard to all the circumstances, he ought not to have been satisfied as to that matter,

sub-section (4) has effect as if the Commissioner had not been satisfied as to that matter.

“(8) Notwithstanding anything in any other provision of this Act, the Commissioner may amend an assessment for the purpose of giving effect to sub-section (7) if the amendment is made within six years after the date upon which the tax became due and payable under the assessment, but nothing in this sub-section limits the power of the Commissioner to amend an assessment in accordance with any other provision of this Act or any provision of any other Act.”

13. Section 105A of the Principal Act is amended by inserting in sub-section (1), after the words “special fund dividends”, the words “and prescribed dividends”. Sufficient distribution.

14. Section 106 of the Principal Act is amended by inserting in sub-section (1), after the words “special fund dividends”, the words “, prescribed dividends”. Excess distributions carried forward.

15. Section 128R of the Principal Act is amended by omitting the word “Act” and substituting the word “Division”. Informal arrangements.

16. Section 251B of the Principal Act is repealed and the following section substituted:—

“251B. For the purposes of this Part—

(a) the Australian Capital Territory and Norfolk Island shall each be deemed to be part of the State of New South Wales;

(b) Papua New Guinea shall be deemed to be part of the State of Queensland;

(c) the Northern Territory shall be deemed to be part of the State of South Australia; and

(d) the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands shall each be deemed to be part of the State of Western Australia.”

Territories.

Cancellation
of registra-
tion of tax
agents.

17. Section 251K of the Principal Act is amended by omitting from sub-section (5) the words " the Commonwealth " (wherever occurring) and substituting the word " Australia ".

Additional
amendments.

18. The Principal Act is amended as set out in the Schedule.

Territory
transitional
provisions—
trading
stock.

19. (1) This section applies to trading stock that was on hand on 20 July 1972, being trading stock that constituted the whole or part of the assets of a business carried on in a prescribed Territory on that date.

(2) For the purposes of section 28 of the Assessment Act, the value to be taken into account at the beginning of the first taxable year in respect of trading stock to which this section applies shall be, at the option of the taxpayer—

- (a) in the case of trading stock not being live stock—its cost price, its market selling value or the price at which it can be replaced; or
- (b) in the case of trading stock being live stock—its cost price or its market selling value.

(3) The option of the taxpayer under sub-section (2) shall be exercised by notice in writing lodged with the Commissioner before the expiration of sixty days after the commencement of this Act or before such later date as the Commissioner determines.

(4) If the taxpayer does not exercise his option in relation to particular trading stock within the time and in the manner specified in sub-section (3), the value to be taken into account in accordance with sub-section (2) in relation to that trading stock shall be the cost price.

(5) Notwithstanding section 33 of the Assessment Act, a taxpayer who has exercised his option in pursuance of sub-section (2) may, in respect of trading stock on hand at the end of the first taxable year (including trading stock other than trading stock to which this section applies) exercise—

- (a) in the case of trading stock not being live stock—a further option under section 31 of that Act; and
- (b) in the case of trading stock being live stock—a further option under section 32 of that Act.

(6) Where a taxpayer, in pursuance of sub-section (5), adopts cost price as the basis of valuation in relation to any trading stock, the cost price of so much of that trading stock as is trading stock to which this section applies shall be deemed to be the value at which that trading stock was taken into account in accordance with sub-section (2).

(7) For the purposes of this section and of subdivision B of Division 2 of Part III of the Assessment Act, the period that commenced on 20 July 1972 and ended on the last day of the year of income of the taxpayer in which that date occurred shall be deemed to have been a year of income.

(8) In this section—

“ Assessment Act ” means the *Income Tax Assessment Act 1936–1971* or that Act as amended;

“ first taxable year ” means the period that commenced on 20 July 1972 and ended on the last day of the year of income of the taxpayer in which that date occurred;

“ prescribed Territory ” has the same meaning as in Division 1A of Part III of the Principal Act as amended by this Act.

20. (1) This section applies to property in respect of which depreciation is allowable to a taxpayer, being a resident of a prescribed Territory, under section 54 of the Assessment Act, being property in a prescribed Territory which, on 20 July 1972, was owned by the taxpayer and used by him for the purpose of producing assessable income or installed ready for use for that purpose.

Territory
transitional
provisions—
depreciation.

(2) For the purposes of the provisions of the Assessment Act relating to depreciation, the cost of a unit of property to which this section applies shall be deemed to be the amount that would have been the depreciated value, ascertained in accordance with section 62 of that Act, of that unit on 20 July 1972 if the unit had, during the whole of the period from the time of its acquisition by the taxpayer to that date, been used by him wholly for the purpose of producing assessable income and depreciation had been allowed to him, during that period, by way of a percentage of the depreciated value of the unit at the beginning of each year of income.

(3) In this section—

“ Assessment Act ” means the *Income Tax Assessment Act 1936–1971* or that Act as amended;

“ prescribed Territory ” has the same meaning as in Division 1A of Part III of the Principal Act as amended by this Act.

21. Nothing in the Principal Act as amended by this Act prevents the amendment of an assessment that was made before the commencement of this Act if the purpose of the amendment is to give effect to the amendments of the Principal Act made by this Act but this section does not authorize the making of an amendment for the purpose of giving effect to sub-section 103AA (7) of the Principal Act as amended by this Act if that amendment would not be permitted by sub-section 103AA (8) of the Principal Act as amended by this Act.

Amendment
of
assessments.

22. (1) The amendments made by sections 5, 6, 7, 9 and 10 apply in relation to income derived on or after 20 July 1972.

Application
of amend-
ments.

(2) Notwithstanding the amendments made by this Act, section 160AC of the Principal Act has effect as if this Act had not been enacted.

SCHEDULE

Section 18

AMENDMENTS OF REFERENCES TO THE TERRITORY OF PAPUA AND
NEW GUINEA

The following provisions of the Principal Act are amended by omitting the words "the Territory of Papua and New Guinea" (wherever occurring) and substituting the words "Papua New Guinea":

Sections 6 (1) (definitions of "assessable income from petroleum", "exempt income from petroleum", "petroleum exploration company" and "the Income Tax Ordinances of the Territory of Papua and New Guinea"), 16 (4) (ca), 23 (c) (vi), 23 (h), 23 (n), 23 (o), 23 (p), 23 (q), 23A (1), 23c, 23D (1), 26B (1), 36 (3) (a), 36AAA (1) (a), 36AA (1) (a), 44 (2) (d), 44 (2c) (b), 44A, 45 (9) (b), 58 (1) (a), 72 (1), 72 (4) (definition of "sub-divided residence scheme"), 73A (6) (definition of "Australia"), 75 (1), 77 (1), 77c (1) (definition of "Australia"), 77D (1) (definitions of "Australia" and "resident"), 77E (1) (definition of "Australia"), 78 (2) (b), 79B (5), 80 (3) (a), 82AAA (1) (definition of "employee"), 88B (7) (definition of "land"), 103 (1) (definition of "the distributable income"), 122 (1) (definition of "Australia"), 123A (1A), 124DB (1) (definition of "prescribed petroleum operations"), 124DH (2), 124DH (3), 124DJ, 142 (3) and 157 (2), the heading to Division 18 of Part III, and sections 160AE (1) (definition of "the Territory"), 160AF (1), 160AF (1A), 160AH (definition of "non-Australian tax"), 160AI (1) (b) and 160AN (1A).
