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AUSTRALIAN INDUSTRY DEVELOPMENT

CORPORATION AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry,  
Technology and Commerce, Senator the Hon John N Button)



## AUSTRALIAN INDUSTRY DEVELOPMENT CORPORATION AMENDMENT BILL 1988

### OUTLINE

The principal aim of the Bill is to amend the Australian Industry Development Corporation Act 1970 (the Principal Act) so as to enable the re-organisation of the business of the Corporation. The re-organisation will take effect on a particular day ("the re-organisation day") when the business of the Corporation, other than nominated assets and liabilities, are transferred to a nominated wholly owned subsidiary of the Corporation ("the receiving subsidiary"). The subsidiary will then issue shares to the public (limited to 30% of its capital), be listed and use the capital raised to increase investment and financing of industry development, revitalisation and restructuring.

The Corporation is intended to remain the borrower under existing loans relating to the transferred business. The subsidiary will, however, be required to reimburse the Corporation for liabilities in relation to those loans. The transfer of the assets and liabilities is to be revenue neutral, that is no tax is to be paid in respect of the transfer and the receiving subsidiary is to be placed "in the shoes of" the Corporation for tax purposes in respect of the transferred assets and liabilities.

The Bill also makes other amendments to the Principal Act to further assist the Corporation in its role. These include increasing the capital of the Corporation from \$150,000,000 to \$200,000,000 and forgoing the 1987/88 dividend which will be counted towards the paid in capital of the Corporation. Also the remuneration of the Chief Executive, as with counterparts of other Government Business Enterprises, will be determined by the Board of the Corporation. Dividends, not exceeding the annual after tax profit of the Corporation, paid to the Commonwealth by the Corporation are to be determined by the Minister on recommendation from the Board, rather than be set at 50% of net profit after tax as is currently provided.

### Financial Impact

In the 1988/89 financial year the Bill provides for the Commonwealth to forgo the 1987/88 dividend from the Corporation. This amount will be announced in the Corporation's annual report which will be presented to Parliament this session.

### Definition of Terms

The following abbreviations are used in this Explanatory Memorandum.

"AIDC": means the Australian Industry Development Corporation

"CGT": means capital gains tax

"Corporation": means the Australian Industry Development Corporation

"Principal Act": means the Australian Industry Development Corporation Act 1970

"Board": means the Board of the Australian Industry Development Corporation

### NOTES ON CLAUSES

#### PART 1 - PRELIMINARY

Clause 1: Short title etc

Provides for the citation of the Act and defines that, for the purposes of this Act, the "Principal Act" means the Australian Industry Development Corporation Act 1970.

Clause 2: Commencement

Provides for the Act to come into operation on the day on which it receives Royal Assent.

Clause 3: Proposed sections

Inserts the following proposed sections in Part 1 of the Principal Act.

Proposed

Section 4A: External Territories

Extends the Act to external Territories.

Proposed

Section 4B: Application of Act

Provides for the Act to have effect both within and outside Australia.

Clause 4: Powers of Corporation

Sub-clause 4(a) amends paragraph 7(1)(f) of the Principal Act by adding "and indemnities", thus clarifying that the Corporation may, when providing this type of commercial facility, provide indemnities as well as guarantees which may not be suitable in all cases.

Sub-clause 4(b) provides for a new subsection 7(3) which limits the Corporation and its subsidiaries to borrowing no more than 15 times the consolidated capital, retained profits and other reserves less any accumulated losses, of the Corporation and its subsidiaries. Current subsection 7(3) only permits the capital of the Corporation and its accumulated reserves to be included for this purpose. The proposed borrowing limitation on a consolidated basis will be necessary when the proposed re-organisation takes effect to control borrowings of the group and to include the external capital in the calculation.

**Claus 5: Matters to be taken into account by the Corporation**

Repeals subsections 8(4) to 8(8) of the Principal Act which contain constraints on the acquisition and disposal by the Corporation of shares in Australian companies. With the growth and maturity of the market for development equity investment these are no longer considered appropriate or necessary in the Corporation's current role.

**Clause 6: Proposed Sections**

Repeals section 15 of the Principal Act which deals with the tenure of the Chief Executive and substitutes the following proposed sections.

**Proposed**

**Sections 13-15A: Appointment of Chief Executive etc**

In line with the Government's decision to allow Government Business Enterprises to determine the remuneration of their Chief Executives, these proposed sections provide that the Chief Executive of the Corporation is to be appointed by the Minister on recommendation of the Board (proposed section 13), that the Chief Executive holds office during the Board's pleasure (proposed section 14), that the terms and conditions of the Chief Executive shall, except as provided for by the Principal Act, be determined by the Board (proposed section 15) and that the Chief Executive must disclose all pecuniary interests (proposed section 15A). The determination of the remuneration of the Chief Executive is removed from the Remuneration Tribunal (see clause 9 and the Schedule to the Bill for the necessary consequential amendment to section 16 of the Principal Act) and will be determined by the Board in consultation with the Tribunal. Under these arrangements it is expected

that the Board will engage the Chief Executive on a service contract and, although the Board may terminate his services at any time, compensation may be payable to him in accordance with the terms and conditions provided for in the contract.

Claus 7: Proposed Sections

Sub-clause 7(1) repeals section 24 and 24A of the Principal Act, which deal with the Corporation's capital and the payment of dividends, and substitutes the following proposed sections.

Proposed

Section 24: Capital of Corporation

Proposed subsection 24(1) increases the capital payable to the Corporation from \$150,000,000 to \$200,000,000 (of which \$100,000,000 has been paid up). Proposed subsection 24(4) provides that further capital payments are to be appropriated by Parliament, and are to be paid in such instalments as determined by the Minister for Finance. This removes the current standing appropriation and the right of the Board to require capital instalments to be paid. Proposed subsection 24(6) provides that the Board may request any part of the remainder of the capital to be paid, but such request is still subject to the determination of the Minister for Finance.

Proposed subsection 24(3) provides that the dividend otherwise payable by the Corporation for the 1987-88 financial year shall be retained and be taken to have been paid to the Corporation as capital. This will go towards satisfying the Corporation's requirement for further capital, without the necessity for fresh funds to be paid from the Commonwealth budget.

Proposed subsection 24(5) provides that any of the capital amount that has not been paid to the Corporation is available to enable the Corporation to discharge its obligations. This is intended to be available only if the Corporation has exhausted all other options in discharging its obligations.

Proposed

Section 24A: Payment of dividends to Commonwealth

Section 24A currently provides that the Corporation shall each year pay half of its profit, after tax, to the Commonwealth. Proposed section 24A provides that the Board is to recommend a dividend to the Minister, who may approve that recommendation or direct the Corporation to pay a higher or lower dividend. In determining the dividend payment, regard must be had to both the policies of the Commonwealth Government and the Corporation and commercial considerations as either the Board or the Minister consider should be taken into account (proposed subsection 24A(3)). These considerations may include such things as the amount of the capital and reserves of the Corporation, the need to maintain the prescribed gearing ratio, the need to maintain reserves, the need for the Corporation to provide capital for its subsidiaries and the expectation that the Corporation will pay a reasonable dividend on its capital. The dividend for each year is to be paid from the Corporation's after tax profit of that year (subsection 24A(4)) and within 6 months after the end of that year (proposed subsection 24A(5)).

By virtue of sub-clause 7 (2) the proposed dividend arrangements are to apply from and including this financial year.



Clause 8: PROPOSED PART IVA - RE-ORGANISATION OF THE BUSINESS  
OF THE CORPORATION

Clause 8 adds a new Part to the Principal Act, the proposed sections of which are described below.

DIVISION 1 - INTERPRETATION

Proposed

Section 29A: Interpretation

Defines terms that are used in this Part.

DIVISION 2 - STEPS LEADING TO RE-ORGANISATION

Proposed

Section 29B: Nomination of subsidiary to which business or  
shares are to be transferred - the receiving  
subsidiary

Requires the Minister to nominate, by notice in the Gazette, the receiving subsidiary for the re-organisation. The receiving subsidiary will be the subsidiary to which the Corporation's business is transferred. The Corporation will make a recommendation to the Minister on this matter and in all matters where the Bill requires the Minister to make a determination or nomination in respect of the re-organisation.

Proposed subsection 29B(2) lists certain criteria which a subsidiary must meet if it is to be nominated as the receiving subsidiary, including a criterion that its Articles of Association must limit the proportion of voting shares held by the public to 30% of its expanded capital.

## Proposed

Section 29C: Specification of assets, instruments and liabilities not to be transferred etc - the non-transferring assets, instruments and liabilities, non re-imbursable liabilities and the joint instruments

Empowers the Minister to specify, by notice in the Gazette, assets, instruments and liabilities of the Corporation to be non-transferring assets, liabilities or instruments, joint instruments, or non-reimbursable liabilities. All other assets, liabilities and instruments will be transferred or, in the case of instruments, referenced, to the receiving subsidiary in the re-organisation. Other liabilities will remain with the Corporation but the receiving subsidiary will be responsible for meeting obligations under certain of those liabilities (see proposed section 29L).

## Proposed

Section 29D: Fixing of day on which re-organisation is to take place - the re-organisation day

Empowers the Minister to fix, by notice published in the Gazette, the re-organisation day. This is the day on which the business is to be transferred to the receiving subsidiary.

## Proposed

Section 29E: Notices not to be published after re-organisation day

Ensures that notices under this Division may not be published after the re-organisation day.

Proposed

Section 29F: Proof of notices

Provides that production of a copy of the Gazette in which a notice is published is to be taken as prima facie proof of that notice.

DIVISION 3 - THE RE-ORGANISATION

Proposed

Section 29G: Business of Corporation becomes business of receiving subsidiary

Provides for the business of the Corporation, other than its non-transferring assets and liabilities (see proposed section 29C) to cease to be the business of the Corporation on the re-organisation day (see proposed section 29D) and on that day to become business of the receiving subsidiary (see proposed section 29B).

It is the generic business of the Corporation which is transferred to the receiving subsidiary on the re-organisation day rather than simply the actual transactions, matters and activities in which the Corporation is involved or to which the Corporation is a party immediately before the re-organisation day and which become the transactions, matters and activities of the receiving subsidiary on the re-organisation day.

Proposed

Section 29H: Assets and liabilities of Corporation become assets and liabilities of receiving subsidiary

Specifically ensures that all assets and liabilities of the Corporation on the re-organisation day (other than the non-transferring assets and liabilities) become assets and liabilities of the receiving subsidiary and not of the Corporation.

Proposed

Section 29J: Instruments

Provides that instruments in which references are made to the Corporation continue to be in force on and after the re-organisation day and such that, apart from non-transferring instruments and joint instruments, references in such instruments to the Corporation are references to the receiving subsidiary. This deeming also applies to joint instruments in accordance with determinations made under proposed subsection 29C(2).

Proposed

Section 29K: Pending proceedings

Provides that the receiving subsidiary is to be put in place of the Corporation on and after the re-organisation day in respect of pending proceedings in respect of the transferred business.

Proposed

Section 29L: Receiving subsidiary to indemnify Corporation in relation to certain non-transferring liabilities

Provides that, after the re-organisation day, the receiving subsidiary will reimburse the Corporation for any amount paid under a non-transferred liability other than a non-reimbursable liability and that the receiving subsidiary will indemnify the Corporation against all expenses and costs incurred in relation to such a non-transferred liability. Indemnified non-transferred liabilities will essentially be the borrowings of the Corporation which is to remain the principal borrower for the group. However, as the bulk of the assets of the Corporation will be transferred to the receiving subsidiary, the Corporation will need the indemnity under proposed section 29L(1) to be able to meet its obligations in respect of those borrowings.

Proposed subsection (2) enables the terms and r which the indemnity will operate to be established by agreement between the Corporation and the receiving subsidiary.

Proposed

Section 29M: Valuation of transferred business

Enables the Minister to determine the net value of the transferred business within 7 days after the re-organisation day. A period of 7 days is allowed as it will not be possible to accurately calculate such value on or before the re-organisation day. This value will be used as the basis on which to issue shares to the Corporation.

Proposed

Section 29N: Issue of shares in receiving subsidiary to Corporation in relation to transferred business

Provides that the receiving subsidiary is to issue shares, the total nominal value of which is to be determined by the Minister, to the Corporation on the day on which the value of the transferred business is determined under proposed section 29M. Shares will be issued to the Corporation at above their par value, that is, at a premium. This will be necessary as it is not possible, in the normal course, to issue shares at below par value, and market forces at the time of issue of shares to the public (see Division 6) may dictate that the price paid for such shares will be below that paid by the Corporation at an earlier time, that is, the premium paid by the public may be less than that paid by the Corporation although the par value will be the same.

If shares were issued to the Corporation at par value only, it may then, for the reasons set out above, become impossible to issue shares to the public in the normal course.

Proposed

Section 29P: Authorised person may certify matters in relation to re-organisation

Provides that if an authorised person, defined in proposed section 29A as the Minister or a person authorised in writing by the Minister, issues a certificate in relation to a matter in this Division, that certificate is prima facie evidence of the matter certified.

Proposed

Section 29Q: Extraterritorial operation of Division

Extends the operation of this Division, as far as Parliament is able to, to jurisdictions outside Australia. This is to ensure, as far as is possible that the overseas business of the Corporation is treated similarly to its Australian business.

Proposed

Section 29R: Corporation to take steps necessary to carry out re-organisation

Places an onus on the Corporation to take all the steps necessary to ensure the Division is given effect to.

DIVISION 4: TRANSFER OF STAFF

Proposed

Section 29S: Determination of staff to be transferred to receiving subsidiary

Enables the Chief Executive to determine which staff members will transfer to the receiving subsidiary.

Proposed

Section 29T: Employment of nominated staff member to continue with receiving subsidiary

Provides that staff members who are nominated to transfer are employed on the same terms and conditions by the receiving subsidiary after their transfer.

Proposed

Section 29U: Act not to affect certain matters relating to transferred staff members

Provides that the contracts of employment and periods of employment of transferred staff members are not broken by the operation of this Act, and accrued rights are not affected.

Proposed

Section 29V: Variation of terms and conditions

Provides that the terms and conditions of employment of each transferred staff member may be varied by the receiving subsidiary in the same way as could be done by the Corporation immediately before the transfer day.

Proposed

Section 29W: Application of Part IV of the Public Service Act

Provides for transferred staff members who have mobility rights under Part IV of the Public Service Act 1922 to continue to have those rights.

DIVISION 5: TAXATION MATTERS

Proposed

Section 29X: Exemptions relating to tax exempt matters

This proposed section, together with proposed section 29Y, provides an exemption from taxation (other than Commonwealth income tax) in relation to various matters associated with business of the Corporation ceasing to be business of the Corporation and becoming business of the receiving subsidiary.

They also establish a certification procedure in relation to this exemption from taxation where such is considered necessary as an adjunct to the enactment of the exemption (eg for production to State and Territory authorities).

Proposed section 29X provides rollover relief from Commonwealth, State and Territory taxes, fees, duties, levies and charges other than Commonwealth income tax (as to which see proposed sections 29Z and 29ZA) in relation to the operation of and the giving effect to Part IVA (other than Division 6).

Proposed paragraph 29X(1)(a) provides that tax under a law of the Commonwealth or a State or a Territory is not payable in relation to a tax exempt matter.

"Tax exempt matter" is defined in proposed section 29A.

Proposed paragraph 29X(1)(b) provides that tax under a law of the Commonwealth or a State or a Territory is not payable in relation to anything done because of, or for a purpose connected with or arising out of, a tax exempt matter whether it be the entering into a transaction or the making, executing, lodging or giving of an instrument or otherwise.



Proposed subsection 29X(2) specifies the main types of taxes that proposed subsection 29X(1) applies to.

One of the major effects of proposed section 29X is its provision of an exemption from State and Territory stamp duties, especially in relation to those States which impose ad valorem stamp duty on the conveyance of any property (eg New South Wales).

For example, proposed paragraph 29X(1)(b) will exempt from State and Territory stamp duty any instrument created or required by any State or Territory stamp duty legislation to be created in relation to the vesting of the transferred assets in the receiving subsidiary under sections 29G and 29H.

Section 29X will also extend to exempt from State and Territory stamp duty any instruments to which the receiving subsidiary is a party if the instruments are entered into with the same parties (other than the Corporation) in substitution for substantially similar instruments to which the Corporation is a party and which are being concurrently cancelled, terminated or rescinded where this arises out of business of the Corporation becoming business of the receiving subsidiary.

Proposed

section 29Y: Authorised person may certify in relation to tax exempt matters

Proposed section 29Y provides a mechanism by which the entitlement to the exemption given by proposed section 29X can be established and evidenced to Commonwealth, State and Territory authorities in documentary form.

Proposed paragraph 29Y(1)(a) provides that an authorised person may certify in writing that a specified matter or thing is a tax exempt matter such that it will be entitled to the exemption from tax etc as provided by proposed section 29X.

Proposed paragraph 29Y(1)(b) provides for similar certification to achieve a similar result in relation to a specified thing done because of, or for a purpose connected with or arising out of, a specified tax exempt matter.

Proposed subsection 29Y(2) specifies that a certificate under subsection 29Y(1) is conclusiv evidence of the matters certified therein, except insofar as the contrary is established, and proposed subsection 29Y(3) further specifies that a document purporting to be a certificate under subsection 29Y(1) shall, except insofar as the contrary is established, be taken to be such a certificate and to have been properly given.

#### Proposed

section 29Z: Application of Income Tax Assessment Act to certain assets and liabilities

This clause sets out the intended application of the Income Tax Assessment Act in relation to the Corporation and the receiving subsidiary in respect of the transferred assets, the transferred liabilities and the non-transferring liabilities (other than the non-reimbursable liabilities), as to which see proposed section 29C.

Proposed paragraph 29Z(2)(a) puts the receiving subsidiary "in the shoes of" the Corporation, in respect of the assets and liabilities to which the section applies, for income tax purposes. The paragraph provides that it is the intention of Parliament that, on and after the re-organisation day (which is defined in proposed section 29A), the receiving subsidiary should for income tax purposes

be placed in the same position in relation to the transferred assets and transferred liabilities and the non-transferring liabilities (other than the non-reimbursable liabilities) as the Corporation would have been but for the enactment and operation of Part IVA. The paragraph gives the receiving subsidiary the Corporation's tax history in relation to the assets and liabilities to which the section applies.

Proposed paragraph 29Z(2)(b) deals with the transfer of the assets and liabilities to which the section applies and provides that the intention of Parliament is that the operation of Part IVA in relation to those assets and liabilities should be, for income tax purposes, revenue neutral in the year in which the re-organisation occurs. The paragraph specifies that revenue neutrality is where no assessable income, deduction, capital gain or capital loss is derived, allowed or incurred, or accrues, by or to the Corporation or the receiving subsidiary in relation to those assets and liabilities in that year of income merely because of the enactment and operation of Part IVA. Thus, for example, no capital gains tax shall be payable because of the transfer of assets as part of the re-organisation.

Proposed subsection 29Z(3) is the provision by which the intention of Parliament specified in subsection 29Z(2) is achieved. Paragraphs 29Z(3)(a) to 29Z(3)(c) permit alteration of circumstances applicable to the Corporation and the receiving subsidiary to achieve the stated intention of Parliament set out in subsection 29Z(2).

Proposed paragraph 29Z(3)(d) may be called upon to ensure attainment of the stated intention of Parliament in a different manner and may be applied if the other paragraphs of subsection 29Z(3) are too narrow or as an alternative way to achieve the objectives. The paragraph operates to permit the modification of the Income Tax Assessment Act itself rather than the circumstances relevant to the operation of the Act.

The opening words of proposed subsection 29Z(3) make it clear that whenever any paragraph of proposed subsection 29Z(3) is called upon to ensure attainment of the stated intention of Parliament, the circumstance is to be modified, or the Income Tax Assessment Act is to be applied as modified, only to the extent necessary to ensure the attainment of that intention.

Set out below are examples which illustrate the effect of the proposed section in relation to specific situations.

(a) Depreciation

(i) On-Going Basis

Paragraph 29Z(2)(a) states that it is the intention of Parliament that on and after the re-organisation day the receiving subsidiary is to be placed in the same position in relation to the transferred assets as the Corporation would have been but for the enactment and operation of Part IVA. Consequently, the depreciation to which the Corporation was entitled immediately before the re-organisation day in respect of the transferred assets will be the depreciation to which the receiving subsidiary on and after the re-organisation day will be entitled in respect of those assets.

This is achieved by the receiving subsidiary being taken to be and always to have been the Corporation, that is ignoring the fact of any transfer of ownership (proposed paragraph 29Z(3)(b)) and by the receiving subsidiary being entitled to the depreciation deduction which would otherwise have been allowable to the Corporation for the transferred assets (proposed paragraph 29Z(3)(c)) but only in respect of the period after the re-organisation.

(ii) Balancing charges

Similarly proposed paragraphs 29Z(2)(a) and 29Z(3)(b) will result in the tax written down value of the transferred assets as set out in the books of the Corporation being the tax written down value in the books of the receiving subsidiary for those assets. Thus no balancing charges will arise for the Corporation from the transferred assets becoming assets of the receiving subsidiary.

Those same paragraphs of proposed section 29Z will also ensure that when the transferred assets are ultimately sold by the receiving subsidiary any balancing charges which arise for the receiving subsidiary will be identical to the balancing charges which would have arisen for the Corporation under the same circumstances if the re-organisation had not occurred.

(b) Other Allowable Deductions

To the extent that any allowable deductions may be claimed by the Corporation which are referable to the transferred assets, transferred liabilities and the non-transferring liabilities (other than the non-reimbursable liabilities) after the re-organisation day, these will be allowable deductions to the receiving subsidiary (but not in such circumstances also to the Corporation) by operation of proposed paragraphs 29Z(2)(a) and 29Z(3)(c).

(c) Trading Stock

To the extent that the transferred assets include trading stock proposed paragraph 29Z(2)(b) with any of proposed paragraphs 29Z(3)(a), 29Z(3)(b) and 29Z(3)(d) will ensure that no amount is included in the assessable income of the Corporation as a result of the transferred assets becoming the assets of the receiving subsidiary (e.g. pursuant to section 36 of the Income Tax Assessment Act).

(d) Capital Gains Tax

Proposed paragraphs 29Z(2)(b) and 29Z(3)(b) will ensure that no capital gains tax will arise for the Corporation upon the transferred assets becoming the assets of the receiving subsidiary since they will nullify what would otherwise be a disposal of the transferred assets within the terms of section 160M of the Income tax Assessment Act.

Alternatively if there was a capital gains tax liability imposed on the Corporation by virtue of the transferred assets becoming the assets of the receiving subsidiary the operation of Part IVA in relation to the Corporation and the receiving subsidiary would not, for income tax purposes, be revenue neutral in relation to the financial year in which the re-organisation occurs (proposed paragraph 29Z(2)(b)). Consequently, proposed paragraph 29Z(3)(a) will apply to ensure no such capital gains tax liability will arise for the Corporation.

Applying similar reasoning, proposed subsection 29Z(2)(a) and proposed paragraph 29Z(3)(b) will result in the cost base or indexed cost base of each transferred asset being the same for the receiving subsidiary immediately after the re-organisation as it was for the Corporation immediately before the re-organisation. The Corporation's date of acquisition of a transferred

asset will become the receiving subsidiary's date of acquisition for that transferred asset.

Proposed

section 29ZA Application of Income Tax Assessment Act to partnerships

This provision will ensure that the tax position of members of partnerships in which the Corporation is a member are not altered by the substitution of the receiving subsidiary for the Corporation by the operation of Part IVA.

Proposed section 29ZA will operate to ensure that those specific provisions of the Income Tax Assessment Act that operate on a change in the constitution of a partnership will not apply merely because the Corporation ceases to be and the receiving subsidiary becomes a member of the partnership by the enactment and operation of Part IVA.

The exemption of section 92 of the Income tax Assessment Act from the scope of proposed section 29ZA is consistent with the intention of Parliament expressed in proposed paragraph 29Z(2)(a), the transferred asset being the relevant partnership interest of the Corporation.

In accordance with section 92 of the Income tax Assessment Act the Corporation will include in its assessable income its share of the net income (or be entitled to a deduction for its share of the loss, as the case may be) of the partnership prior to the re-organisation day and the receiving subsidiary will include in its assessable income its share of the net income (or be entitled to a deduction for its share of the loss, as the case may be) of the partnership on and after the re-organisation day.

## Proposed

section 29ZB Payments in relation to certain non-transferring liabilities

This provision will ensure that no more or less tax is paid by either the Corporation or the receiving subsidiary because of payments made under proposed section 29L. Proposed section 29L provides for the receiving subsidiary to indemnify the Corporation in relation to certain non-transferring liabilities which will principally be untransferred borrowings.

Proposed subsection 29ZB(1) provides that the receiving subsidiary is to be entitled to an allowable deduction under the Income Tax Assessment Act for payments it makes, or is required to make, under proposed section 29L to the extent to which a deduction would have been allowable to the Corporation under that Act in relation to the out-going to which the payment relates but for the enactment and operation of Part IVA. Proposed subsection 29ZB(2) provides that the Corporation is not entitled to a deduction for outgoings which are covered by payments under proposed section 29L and for which a deduction is allowable to the receiving subsidiary. Proposed section 29ZB(3) provides that payments under proposed section 29L are not assessable income of the Corporation.

Example1 Assumptions

- (a) The receiving subsidiary makes payments under proposed section 29L during the year of income of \$100 to or on behalf of the Corporation in relation to an outgoing incurred by the Corporation.
- (b) But for the enactment and operation of Part IVA the Corporation would have been entitled to an allowable deduction in the year of



income of the whole \$100.

2. Tax position of the Corporation and the receiving subsidiary

- (a) The payment under proposed section 29L and the incurring of the outgoing to which it relates have no effect on the tax position of the Corporation for the year of income;
- (b) The receiving subsidiary has an allowable deduction in the year of income of \$100 in respect of the payment under proposed section 29L.

3. Explanation

The \$100 paid by the receiving subsidiary to or on behalf of the Corporation could constitute assessable income of the Corporation for the year of income. Proposed subsection 29ZB(3) provides that such payment will never constitute assessable income of the Corporation.

The outgoing to which the payment by the receiving subsidiary relates would give rise to an allowable deduction for the Corporation for the year of income of \$100 but for proposed subsection 29ZB(2) which denies the whole of the deduction in the present circumstances since the receiving subsidiary is entitled to such deduction (see below).

Thus, the position of the Corporation for tax purposes in relation to the payment under proposed section 29L is that it has no effect on the assessable income or allowable deductions of the Corporation for the year of income.

Since the payment under proposed section 29L is in respect of a non-transferred liability it may not constitute an allowable deduction under the Income

Tax Assessment Act for the receiving subsidiary in any year of income. Proposed subsection 29ZB(1) provides that the receiving subsidiary will be entitled to an allowable deduction in the present circumstances (assumption (b) above) of the whole \$100 in the year of income.

Proposed

Section 29ZC Conversion to accruals basis for returning interest

Deals with the conversion to an accruals basis for income tax purposes for returning interest payable or receivable by the Corporation. "Interest" for this purpose is defined in proposed subsection 29ZC(7) to include an amount payable or receivable under an agreement of a kind known as an interest rate exchange agreement, or a similar agreement, being an amount that relates directly or indirectly to interest payable by the Corporation.

Proposed subsection 29ZC(1) requires the conversion to be effected in relation to the year of income commencing 1 July 1987 for the provision to apply.

Proposed subsection 29ZC(2) provides that the Corporation shall not be entitled, nor required, to convert to an accruals basis for returning interest in any year prior to the year commencing 1 July 1987.

Proposed subsection 29ZC(3) provides for a deduction to be allowable to the Corporation in respect of the difference between "undeducted interest" and "deducted interest" which results from the conversion by the Corporation to an accruals basis of returning interest payable for tax purposes and allows for that deduction to be amortised over five years by the Corporation or, after the re-organisation by virtue of proposed subsections (5) and (6), by the receiving subsidiary.

"Undeducted interest" is the total amount of interest payable which accrued prior to 1 July 1987 and for which a deduction has not yet been allowed.

"Deducted interest" is the total amount of interest payable which accrues after 30 June 1987 for which a deduction has been allowed prior to 1 July 1987.

Proposed subsection 292C(4) provides for an amount to be included in the assessable income of the Corporation equal to the difference between "unassessed interest" and "assessed interest" which results from the conversion by the Corporation to an accruals basis of returning interest receivable for tax purposes and allows for that amount of assessable income to be amortised over five years by the Corporation or, after the re-organisation by virtue of proposed subsections (5) and (6), by the receiving subsidiary.

"Unassessed interest" is the total amount of interest receivable by the Corporation which accrued prior to 1 July 1987 and which has not yet been included in assessable income.

"Assessed interest" is the total amount of interest receivable which accrues after 30 June 1987 which has been brought to account as assessable income prior to 1 July 1987.

Proposed subsections 29ZC(5) and 29ZC(6) deal with the transfer of the deduction or assessable income referred to in proposed subsections 29ZC(3) and 29ZC(4) from the Corporation to the receiving subsidiary. Proposed subsection 29ZC(5) provides for the situation if the re-organisation day is not 1 July and includes a formula for splitting on a proportional basis the deduction and assessable income between the Corporation and the receiving subsidiary for the financial year in which the re-organisation day occurs.

Proposed subsection 29ZC(6) provides for the allocation of the deduction or the assessable income otherwise allowable to, or derived by, the Corporation (as the case may be) under proposed subsections 29ZC(3) and 29ZC(4) to the receiving subsidiary for the financial years after the financial year in which the re-organisation day occurs and where the re-organisation day occurs on 1 July, the financial year in which the re-organisation day occurs.

#### Proposed

#### Section 29ZD: Treatment for capital gains tax purposes of shares issued to Corporation by receiving subsidiary

Proposed section 29ZD will extend rollover relief to the shares acquired by the Corporation in the receiving subsidiary to the extent that any of the transferred assets were acquired before 20 September 1985 (proposed section 29Z providing rollover relief in relation to the disposal of the transferred assets themselves).

Proposed subsection 29ZD(1) specifies the requirements which must be satisfied in order for the rollover relief to apply, which are:

- (a) transferred assets were acquired by the

Corporation before 20 September 1985;

(b) the Corporation, by written notice to the Commissioner of Taxation on or before the day on which it lodges its return of income for the year of income in which the re-organisation day occurs, or within such further period as the Commissioner allows, nominates as pre-CGT shares such of the shares issued to the Corporation in the receiving subsidiary under proposed section 29N as are specified in the notice;

(c) the number of shares nominated does not exceed the number calculated in accordance with the formula given in proposed paragraph 29ZD(1)(c).

Where these requirements are satisfied, the Corporation is deemed by virtue of proposed subsection 29ZD(2) to have acquired before 20 September 1985 the shares nominated under proposed paragraph 29ZD(1)(b).

By virtue of proposed subsection 29ZD(3) the rest of the issued shares acquired by the Corporation are deemed to be post-CGT shares for the purpose of proposed subsection 29ZD(4).

Proposed subsection 29ZD(4) establishes the consideration for which the Corporation is to be taken to have acquired the shares which are post-CGT shares by virtue of proposed subsection 29ZD(3). This is relevant for the purpose of calculating the capital gain or capital loss on a later disposal of those shares. The consideration for which the post-CGT shares are deemed to have been acquired is the amount calculated in accordance with the formula given in proposed subsection 29ZD(4).

Proposed subsection 29ZD(5) sets out the method of calculating the extent to which the transferred liabilities and the non-transferring liabilities which are not otherwise attributable to the transferred assets are to be taken to be attributable to the transferred assets. Non-transferring liabilities will not be otherwise attributable to transferred assets. This calculation is required for the purposes of proposed paragraph 29ZD(1)(c) to determine the number of shares which may be nominated as pre-CGT shares and, for proposed subsection 29ZD(4), to calculate the acquisition cost of the post-CGT shares for determining capital gains or capital losses on their later disposal.

The general liabilities will be attributed to particular transferred assets by the formula set out in proposed subsection 29ZD(5).

Example - Section 29ZD

A. Assumptions

1. One transferred asset acquired by the Corporation on 2/9/85, market value on re-organisation day	\$100
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2. One transferred asset acquired by the Corporation on 20/10/85, market value on re-organisation day	\$900
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3. Only two transferred assets

4 . Transferred liabilities:

- attributable to transferred asset acquired on 20/10/85	\$100
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- general liability	\$50
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5. Non-transferring liabilities (other than non-reimbursable liabilities)

- general liability \$60

6. Shares issued to the Corporation pursuant to Section 29N

50

7. Relevant Cost Base of transferred asset acquired on 20/10/85

\$400

#### B. Calculations

1. Attributing of general liabilities (subsection 29ZD(5):

General                      Market Value of Particular Asset  
liabilities x Market Value of Total Assets

(a) Pre-CGT Asset:

$$\begin{aligned} 110 \times \frac{100}{1000} &= 11 \\ &1000* \\ &*(100 + 900) \end{aligned}$$

(b) Post-CGT Asset:

$$\begin{aligned} 110 \times \frac{900}{1000} &= 99 \\ &1000 \end{aligned}$$

2. Maximum number of shares that can be nominated by the Corporation under subsection 29ZD(1):

Shares x Net Value of pre-CGT Assets\*  
Net Value of Total Assets\*\*

$$\begin{aligned} &* 100 \text{ in (1) less B(1)(a)} \\ &** 1,000 - (100 + 60 + 50) \end{aligned}$$

$$\begin{aligned} 50 \times \frac{89}{790} &= 5.6 \\ &790 \end{aligned}$$

round down to 5 shares

3.Consideration paid for each post-CGT share  
by the Corporation: (subsection 29ZD(4))

(a)Calculation of number of post-CGT shares:

Shares issued	50
<u>less</u> pre-CGT shares	<u>5</u>
post CGT shares	45

(b)Calculation of consideration for  
each post-CGT share:

Relevant Cost Bases - Attributable Liabilities

Post-CGT shares

$$\frac{400 - (100 + 99)}{45} = 4.47$$

Consequently, the cost base as at the  
reorganization day of each post-CGT share will be  
\$4.47.

DIVISION 6 - RAISING OF SHARE CAPITAL FROM PUBLIC

Proposed

Section 29ZE: Issue of shares to be public

Ensures that the receiving subsidiary may issue  
shares to the public only after shares have been  
issued to the Corporation under proposed section  
29N. The issue to the public may not take place  
until after the issue to the Corporation to ensure  
the taxation consequences of this Bill intended by  
Parliament are given effect to.



Proposed subsection 29ZE(2) gives the power to the Minister to issue directions in relation to the first issue to the public. This power would only be used if the Minister is not satisfied that the terms and conditions of this issue as set out in the prospectus are appropriate.

Proposed subsection 29ZE(3) clarifies that the preparatory steps required to issue shares may proceed before shares are issued to the Corporation. This will enable, if desired, the issue of shares to the public as soon as possible after the issue to the Corporation.

#### DIVISION 7 - MISCELLANEOUS

##### Proposed

##### Section 29ZF: Certificates in relation to land and interests in land

Provides for the method to register land or interests in the name of the receiving subsidiary of land transferred from the Corporation to the receiving subsidiary under this Part.

##### Proposed

##### Section 29ZG: Certificates in relation to charges

Provides for the method to register charges in the name of the receiving subsidiary transferred from the Corporation to the receiving subsidiary under this Part.

Proposed

Section 29ZH: Certificates in relation to shares etc

Provides for the method to register in the name of the receiving subsidiary shares, debentures and interests in a company transferred from the Corporation to the receiving subsidiary.

Proposed

Section 29ZI: Certificates in relation to other assets

Provides for the method to register in the name of the receiving subsidiary assets, other than land, interest in land, charges and shares (which are dealt with in sections 29ZF, G and H) transferred from the Corporation to the receiving subsidiary.

Proposed

Section 29ZJ: Part to have effect in spite of laws and agreements prohibiting transfer etc

Ensures that the effect of this Part is not frustrated by any other law and that the effect of the Part does not place the Corporation or any of its subsidiaries in breach of a law, contract, or confidence etc. Proposed subsection 29ZJ(3) provides that if the consent of a person is required to give effect to this Part that consent is to be taken to have been given.

Proposed

Section 29ZK: Compensation for acquisition of property

Provides for compensation to be paid if the operation of the Bill results in acquisition of property otherwise than on just terms.

Clause 9: Annual report

Omits current subsection 37(2) which is no longer required because subsection 24(5) has been omitted (see clause 7 above) and inserts new subsections to provide for the annual reporting of the Chief Executive's remuneration as is required of listed corporations under the Companies Act 1981.

Clause 10: Consequential and minor amendments

Provides for consequential and minor amendments to the Principal Act as set out in the Schedule to the Bill.









