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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 4) 1978

(Introduced as Income Tax Assessment Amendment Bill (No.2) 1978)

INCOME TAX (NON-RESIDENT COMPANIES) BILL 1978

INCOME TAX (COMPANIES AND SUPERANNUATION FUNDS) AMENDMENT BILL 1978

INCOME TAX (RATES) AMENDMENT BILL (NO. 2) 1978

(Introduced as Income Tax (Rates) Amendment Bill 1978)

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon. John Howard, M.P.)

Introductory Note

The main purpose of this supplementary memorandum, which is to be read in conjunction with the Explanatory Memorandum previously circulated, is to explain amendments that are proposed by the Government to be made to the Income Tax Assessment Amendment Bill (No. 2) 1978 as introduced into the House of Representatives. The Bill is now to be cited as the Income Tax Assessment Amendment Bill (No. 4) 1978, because an amending Act relating to Budget proposals and a further Bill to amend the Income Tax Assessment Act have overtaken it in numerical order.

The amendments to the original Bill are of a technical nature which, for the most part, were foreshadowed either on page 58 of the original Explanatory Memorandum or by way of an announcement by the Treasurer on 28 July 1978.

For ease of reference, explanations of the Government amendments are provided in a form that assumes that the Bill as originally introduced will be altered by adoption of these amendments. Thus, where the amendments are such that a varied explanation of the particular provision is required, a substitute explanation is provided.

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INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 4) 1978

Clause 1 : Short title, etc.

This clause, which formally provides for the short title and citation of the amending Act and the Income Tax Assessment Act 1936 (the "Principal Act"), is, for the reasons given above, to be amended by amendment number (1) to cite the amendingAct as the Income Tax Assessment Amendment Act (No. 4) 1978.

Clause 5 : Rebate on dividends paid as part of dividend stripping operation

Amendment number (2) has the purpose of achieving the original objective that, in a case where the "current year losses" amendments apply, the amount of rebate allowable under section 46A is to be calculated according to the rules contained in section 46A. To reflect this amendment the explanation of paragraph (b) of sub-clause (1) at pages 8 and 9 of the original explanatory memorandum should now read as follows -

"Paragraph (b) of sub-clause (1) proposes the insertion in section 46A of two new sub-sections - sub-sections (8A) and (8B) - that will govern the calculation of the amount of dividend income on which a rebate is to be allowed to a company where it has engaged in a dividend stripping operation and the proposed new Subdivision B of Division 2A of Part III relating to "current year losses" applies to that company in relation to a year of income (see notes on clause 9 - in particular, those relating to section 50N).

Sub-sections (8A) and (8B) are designed to perform the same function in relation to inter-company dividends received by a dividend stripping company to which the "current year losses" provisions apply in a year of income as is fulfilled by sub-sections (9) and (10) of section 46A of the Principal Act in relation to inter-company dividends received by other companies involved in a dividend stripping operation.

Broadly, the new sub-section (8A) will identify, for the purposes of sub-sections (5) and (6) of section 46A the amount of net income derived from dividends, the amount of net income derived from private company dividends and the amount of net income derived from dividends other than private company dividends, in relation to a company to which the "current year losses" provisions apply, that are to be taken into account in determining the amount of rebate allowable.

The sub-section will achieve this by picking up the relevant amounts of dividends specified in section 50N as being included in the taxable income of the company and authorising the reduction of those amounts by so much of any other deductions allowed or allowable, in

the year of income or any other year of income, as has not been taken into account for the purposes of section 50N, and which it is reasonable to attribute to the company's dividend income for the year.

Those other deductions will, by virtue of the proposed new sub-section (8B), include deductions that would have been allowed or allowable if the taxable income of the shareholder-company had been ascertained in the ordinary way (i.e., in accordance with section 48). They will also include amounts that might be applied in reduction of the dividend income for rebate purposes that are referred to in proposed new sub-sections (10A), (11) and (12). In this connection, the dividend income may be reduced, for example, by taking into account deductions relating to the purchase of shares acquired for dividend stripping purposes and as part of a profit-making undertaking or scheme.".

Paragraph (c) of sub-clause (1) of clause 5 is to be amended by amendments numbered (3) to (5) to insert appropriate references to the new sub-section (8A) in proposed new sub-sections (10A), (11) and (12) of section 46A. (Those proposed sub-sections are designed to clarify existing provisions of section 46A.) The notes on paragraph (c) at page 9 of the original explanatory memorandum should therefore read as follows:

"Paragraph (c) of sub-clause (1) omits sub-sections (11), (12), (12A) and (12B) of section 46A from the Principal Act and substitutes three sub-sections which substantially re-enact the provisions of sub-sections (12A), (11) and (12) respectively. The revised sub-sections reflect the changes made necessary as a result of the amendments to sub-section (2). Sub-section (12B) is re-enacted, with necessary changes, as sub-section (13B) by paragraph (d) of sub-clause (1).

Sub-section (10A), which replaces, in substantially the same form, sub-section (12A), is designed to make it clear that the Commissioner may, for the purposes of sub-section (8A) or (10), be satisfied that it is reasonable to offset against a dividend paid to a shareholder as part of a dividend stripping operation any deductions allowed or allowable to that shareholder, notwithstanding that those deductions might relate to the acquisition of relevant property other than the actual shares in respect of which the dividend was paid.

Sub-sections (11) and (12) which replace the existing sub-sections (11) and (12) - again substantially in the same form - are designed to bring within the

operation of section 46A a dividend received by a company from a dividend stripping operation where the relevant property acquired by the dividend stripper is not acquired as trading stock, but nevertheless is acquired as part of a profitmaking scheme. In these circumstances, if the acquisition of the relevant property were associated with the dividend stripping, the Commissioner would be entitled, in applying sub-section (8A) or sub-sections (10) and (10A), to take into consideration the expenditure incurred on that relevant property.".

Amendment number (6) will insert a reference to proposed sub-section (8A) in sub-section (13) of section 46A of the Principal Act. Accordingly, page 9 of the original explanatory memorandum should be read as including, after the notes on paragraph (c), the following paragraph -

"Paragraph (ca) of sub-clause (1) proposes the insertion of a reference to the proposed new sub-section (8A) in sub-section (13) of section 46A of the Principal Act, in addition to the existing reference to sub-section (10). This will have the effect of ensuring that the determination of the levels of rebates to be allowed under section 46A in dividend-stripping "current year losses" situations will not be restricted by the terms of section 50 of that Act. Section 50 prescribes the order in which deductions are to be made from various classes of income and has operated in the past to limit the types and amounts of deductions for set-off against dividends in determining rebate entitlements. Sub-section (13) already provides for a similar effect in relation to the application of sub-section (10) in dividend stripping operations that do not involve a "current year loss" situation.

To reflect amendments numbered (7) and (8) (which arise from the proposed insertion in section 46A of sub-section (8A)), the notes on paragraphs (e) and (f) of sub-clause (1) at page 10 of the original explanatory memorandum should read as follows -

"Paragraphs (e), (ea) and (f) of sub-clause (1) will amend existing sub-section 46A(14) in two respects. They will insert in paragraph (b) of that sub-section a reference to proposed new sub-section (8A), in addition to the existing references to sub-sections (9) and (10). That new reference will authorise an amendment of an assessment at any time to adjust a rebate by reference to deductions allowable in a subsequent year that, under sub-section (8A), are attributable to the dividends on which the rebate had been originally allowed.

The paragraphs will also insert in sub-section 46A(14) a power to amend assessments where a person acquires shares or a beneficial interest in a trust estate in pursuance of an agreement to do so, but that acquisition occurs after the end of the year of income in which the dividend stripping operation is carried out. The proposed paragraph (c) of sub-section (14) will authorise an amendment of an assessment at any time where, by virtue of sub-section (13C), an acquisition of shares or a beneficial interest in a trust estate by a person is deemed to have taken place before the end of the year of income to which the assessment relates.".

Amendment number (9) proposes the omission of sub-clause (2) of clause 5 and the insertion of three new sub-clauses - sub-clauses (2), (2A) and (2B) in its stead. These changes are consequential on the proposed inclusion in section 46A of new sub-section (8A). The notes in the original explanatory memorandum on sub-clause (2) at the top of page 11 should be replaced as follows -

"The amendments proposed to be made by clause 5, other than the amendment relating to "current year losses" (sub-sections (8A) and (8B)) and the associated amendments to sub-sections (13) and (14), will by virtue of sub-clause (2) of clause 5 apply in relation to dividends paid after 7 May 1978, other than dividends declared on or before that date.

Sub-clause (2A) is a transitional provision that will cause sub-sections (11) and (12) of section 46A of the Principal Act, that are to be omitted by this amending Act, to be read as if a reference to sub-section (8A) were contained in those provisions and hence cause those sub-sections to apply in relation to dividends paid on or before 7 May 1978 or dividends declared on or before that date and paid after that date to a company to which the "current year losses" provisions apply. This will enable sub-section (8A) to have effect in such a case where those provisions apply, i.e., where a disqualifying event occurs in relation to the company after 7 April 1978.

Sub-clause (2B) is also a transitional provision by which sub-section (12A) of section 46A of the Principal Act, which was inserted by the Income Tax Assessment Amendment Act 1978 and is to be omitted by this amending Act, is to be read as if it contained a reference to the proposed new sub-section (8A), thereby enabling the provisions of that sub-section to be applied in relation to dividends that were declared and paid between 7 April 1978 and 7 May 1978 or that were paid after 7 May 1978 (but declared after 7 April 1978 and on or before

7 May 1978) to a company affected by the "current year losses" amendments.".

Clause 9 : Current year losses
Subdivision B of Division 2A

Amendments numbered (10) and (11) will effect minor drafting amendments to proposed sub-sections (5) and (7) of section 50D that provides for the calculation of eligible notional (i.e., deductible) losses. As the changes merely provide for the removal of surplus words and do not affect the operation of those provisions in any material way, the original explanatory notes on that section do not require alteration.

Section 50F : Full year deductions and partnership deductions

Amendments numbered (13) to (19) represent amendments to sub-section (3) of proposed section 50F designed to give effect to the intention expressed in the original explanatory memorandum that where a partnership and a company that is a member of that partnership have identical accounting periods, the amount of a full-year partnership deduction will, in broad terms, be ascertained in accordance with the provisions of paragraphs (a), (b) and (c) of the sub-section. Where the accounting periods that constitute the years of income of the partnership and the company are not identical, the proposed new paragraph (d) will enable the Commissioner of Taxation to determine the appropriate amount to be allowed.

To reflect the amendments (13) to (19) the notes on sub-section (3) at pages 37 and 38 should now read as follows -

"Sub-section (3) is designed, for the purposes of Subdivision B, to take account of the full-year deductions of a partnership - of which the company concerned is a member - in calculating the taxable income of the company.

Paragraph (a) of the sub-section will apply where at any time during the year the company was a member of a partnership, a full-year deduction is allowed or allowable to the partnership, the company and the partnership have the same accounting period, and the partnership had a net income for that year. In this situation, so much of the full-year deduction as is proportionate to the company's individual interest in the net income will be a 'partnership deduction' in relation to the company. The effect of this is to include that partnership deduction in the "deductible amount" that is taken into account for purposes of sub-section 50C(2) in calculating the taxable income of the company for the year of income.

Paragraph (b) makes a similar provision where the partnership concerned suffers a partnership loss. It deems a proportionate part of any full-year deduction of the partnership to be a 'partnership deduction' in relation to the company for the year of income.

Paragraph (c) will apply in the same manner where the partnership does not derive a net income and does not sustain a partnership loss in a year of income that encompasses the same accounting period as the accounting period that constitutes the year of income of the company. In these circumstances, the Commissioner of Taxation is to be authorised to allow to the company, as a 'partnership deduction', a part of the full-year partnership deduction to the extent that he considers it fair and reasonable to do so having regard to the company's individual interest in the partnership.

Where a partnership's year of income and the year of income of a company that is a member of that partnership do not cover identical accounting periods paragraph (d) authorises the Commissioner of Taxation to allow a 'partnership deduction' of so much of the full-year partnership deduction as is fair and reasonable having regard to all the relevant circumstances.".

Section 50H : Occurrence of disqualifying event

Amendments numbered (20) to (22) will substitute, in relation to shares in a company, the words 'beneficially owned' for the word 'held' in each of paragraphs (a), (b) and (c) of sub-section (1) of proposed section 50H. The explanation of those paragraphs in the original explanatory memorandum at pages 43 and 44 correctly expresses the intended operation of those provisions.

Amendments numbered (23) and (24) will amend paragraph (d) of sub-section (1) of section 50H to replace the references to 'natural persons' with references to 'persons', and will insert additional words by which not only the situation where a person or persons acquired the control of the voting power of a company but also the situation where the person or persons became capable of acquiring that control for the purposes of gaining a taxation benefit or advantage will be fully covered.

The word 'person', in its ordinary meaning applies to a natural person and by virtue of the definition in section 6(1) of the Principal Act, includes a company. Accordingly, where control of the voting power in the taxpayer company is acquired by another company for the purpose of gaining a taxation advantage it will not be necessary in the application of paragraph (d) to trace the beneficial ownership of the shares in the taxpayer company through to the ultimate shareholders

(natural persons) and attribute that purpose to them.

In the light of these amendments the notes on paragraph (d) of sub-section (1) of proposed section 50H at page 44 of the original explanatory memorandum should read -

"Paragraph (d) of sub-section (1) is designed to ensure that, despite there being a sufficient beneficial ownership of shares in a company at any particular time during the year to satisfy the requirements of paragraphs (a), (b) and (c), nevertheless a disqualifying event will be deemed to have occurred where a person or persons control, or are capable of controlling, the company immediately after the relevant time and did not have similar powers of control immediately prior to the relevant time. The paragraph will apply where the control of the voting power was acquired or became capable of being acquired for the purpose of receiving or obtaining a taxation benefit or advantage either for those persons or for others. Paragraph (d) will therefore mean that persons who acquire "creeping" control of a company will not thereby be able to avoid the occurrence of a disqualifying event. Such an event will be deemed to have occurred once a point in time is reached when more than 50 per cent of the voting power in the company falls under the control (or capacity to control) of persons who did not control (or have the capacity to control) such voting power at any prior time during the year of income.".

Amendment number (25) proposes a drafting change to paragraph (h) of sub-section (1) of proposed section 50H. The explanation given at page 45 of the original explanatory memorandum does not need to be varied.

Amendment number (26) proposes the omission of sub-section (2) of section 50H and the insertion of a new sub-section in its place. The proposed sub-section in its original expression did not indicate adequately the nature of the income or the kinds of outgoings that were to be taken into account in ascertaining whether a taxpayer had an 'available loss' or an 'available profit'. The proposed new sub-section (2) will achieve the intended result, as described in the notes on sub-section (2) at page 46 of the original explanatory memorandum.

Amendments numbered (27) to (30) propose changes to sub-sections (3) and (4) of section 50H to refer to shareholding interests as well as to actual shareholdings. The notes on those sub-sections on pages 46 and 47 of the original explanatory memorandum do not require alteration.

Section 50M : Trading stock of winemakers

Amendments numbered (31) and (32) will amend sub-sections (1) and (2) of proposed section 50M to correct a drafting error that relates to the period of years for which the provisions of the section are to apply, and to make the necessary adjustments in the formula in sub-section (2).

Amendment number (31) causes the reference in sub-section (1) to '3 succeeding years of income' to read '4 succeeding years of income'. Amendment number (32) adjusts the formula in sub-section (2) so that in any case where the "current year losses" provisions apply, the final instalment of the wine stock valuation excess will be included in the year of income of a winemaker that commences on 1 July 1981. This result follows from the reduction of the value of stock on hand at 30 June 1980 which, by the operation of section 29 of the Principal Act, will represent the opening value of stock on hand at 1 July 1981.

The notes at pages 56 and 57 of the original explanatory memorandum correctly describe the intended operation of section 50M.

Section 50N : Composition of taxable income

Amendments numbered (33) to (42) will effect amendments to proposed section 50N that will correct the deficiencies referred to in the special note on page 58 of the original explanatory memorandum. Shortly stated, the amendments will -

(a) enable the relevant provisions of section 46A to apply appropriately in dividend stripping situations;

(b) bring to account full-year partnership deductions ("partnership deductions") in the calculation of the composition of taxable income etc. in sub-sections (12), (14), (16) and (18); and

(c) correctly define the amount of taxable income from private company dividends for the purposes of sections 46 and 46A by amending the provisions of proposed sub-section (22) and inserting a new sub-section (23) in section 50N.

To reflect these changes -

(i) the notes at pages 58 and 59 of the original explanatory memorandum should read as follows -

"Section 50N : Composition of taxable income

The broad purpose of this section is to set out

a basis on which deductions are to be set against dividend and other income in cases where there has been a "disqualifying event" in the year, e.g., a significant change in ownership of the company, and the taxable income of the company is to be calculated under the "current year losses" provisions.

The intention is that deductions should, in this particular context, be set against dividend and other income of each relevant period on the same basis as they would be set for purposes of relevant provisions of the Principal Act if there had been no disqualifying event and the taxable income had been calculated on the ordinary basis. In the case of section 46A, the objective is to be achieved by first applying section 50N and then the relevant parts of section 46A.

Section 50N is expressed to provide the method of calculating the amount of each of four classes of income included in the taxable income of a company which is assessed under the new Subdivision. The four classes of income are: private company dividends, dividends other than private company dividends, property income other than dividends and income from personal exertion.

Under various provisions of the Principal Act, for example, in the calculation of the retention allowance of a private company for the purposes of undistributed income tax, and in determining the rebate on inter-company dividends under sections 46 and 46A, it is necessary to ascertain to what extent the taxable income is composed of one or other of these classes of income. Where the taxable income is calculated in the ordinary way under Subdivision A of Division 2A (i.e., in the usual case where no disqualifying event is deemed to have occurred during the year of income) the general function of determining the composition of the taxable income is performed by sections 49 and 50 of that Subdivision. Sections 46 and 46A contain additional rules for the purposes of those sections.

As already mentioned in the notes on clauses 4 and 5, proposed amendments associated with the new section 50N will insert a new sub-section (6A) in section 46 and two new sub-sections - sub-sections (8A) and (8B) - in section 46A (see notes on clause 4 and paragraph (b) of sub-clause 5(1)). Sub-section 46(6A)

is to the effect that, where that section is applicable, the matter is to be dealt with under the rules in section 50N, but in a case where section 46A is relevant section 50N and then section 46A are to be applied.

Sub-section (1) of proposed section 50N is introductory and indicates that, notwithstanding the provisions of Subdivision A of the Principal Act, the new section will apply for the purpose of determining the extent to which the taxable income of a company to which the Subdivision applies consists of income from private company dividends, income from dividends other than private company dividends, income from property or income from personal exertion.

Sub-section (2) provides that where, in respect of a relevant period, a company derives income from more than one of the four classes of income referred to earlier, the allowable deductions of the company in respect of that relevant period are to be deducted from that income in the order provided in sub-sections (3), (4), (5) and (6).

Sub-sections (3), (4), (5) and (6) deal with the order in which allowable deductions or parts of allowable deductions are to be deducted from the various classes of income described above. This calculation is to be made in respect of each relevant period which occurs during the year of income and, in effect, applies the principles contained in section 50 of the Principal Act to the assessable income and allowable deductions which are taken into account in each relevant period. One effect of making a separate calculation in respect of each relevant period is that the inter-company dividend rebate allowable to a company under section 46 of the Principal Act is to be determined on the net dividend income received in each particular relevant period. A similar result occurs in relation to section 46A of the Principal Act, but the dividend income so ascertained may be reduced by deductions not otherwise taken into account under section 50N for the purpose of determining the rebate entitlement of the company in a dividend stripping situation. A notional loss incurred in respect of a relevant period will not be taken into account in determining the amount of net dividend income of a year unless that loss is to be taken into account in calculating the taxable income of the company of the year of income.

Another effect of making a separate calculation of the composition of the notional taxable income of each relevant period is that the retention allowance for the purposes of undistributed income tax on private companies which are assessed under the Subdivision will be determined on the basis of the net amount of each class of income derived in each relevant period and there will not be taken into account any income or deductions which occur in a loss period unless that loss forms part of the eligible notional loss of the company to be taken into account in calculating the taxable income."; and

(ii) the notes at pages 62 and 63 of the original explanatory memorandum should read as follows -

"(..... The calculation) performed by sub-section (12) aggregates the amount of income from private company dividends included in the notional taxable income of each relevant period and the amount of any income from private company dividends included in any full year amounts of income (i.e., income derived as a beneficiary in a trust estate) and from this figure there are to be deducted the allowable deductions or the parts of the allowable deductions that relate directly to income from private company dividends (whether of the year of income or of a previous year of income) included in the eligible notional loss of the company by reason of sub-sections (10) and (11) and the amount of any allowable deductions which are full-year deductions or (full-year) partnership deductions which relate directly to income from private company dividends.

Sub-section (13) continues this calculation where allowable deductions which relate directly to income from other sources exceed the income from those other sources and then fall to be deducted successively from private company dividends. Paragraph (a) provides that any allowable deductions that relate directly to income from dividends other than private company dividends which exceed the income from that source will next be deducted from any income from private company dividends which remains after having deducted allowable deductions which relate directly to income from that source. Paragraph (b) performs a similar function in relation to allowable deductions that relate directly to income from property other than dividends and which exceed

that income, while paragraph (c) does likewise in relation to allowable deductions that relate directly to income from personal exertion which exceed income from that source.

Sub-sections (14) and (15) provide for a similar calculation to be made in relation to income and allowable deductions from dividends other than private company dividends. However, the order of deductions is varied so that allowable deductions that relate directly to income from dividends other than private company dividends will be deducted in the first instance, while allowable deductions that relate directly to income from private company dividends, to income from property other than dividends and to income from personal exertion will be deducted successively where those allowable deductions exceed the income derived from those sources.

Proposed new sub-sections (16) and (17) contain rules for a similar calculation in relation to income and allowable deductions from property other than dividends, the order in which allowable deductions are to be deducted being from income from property other than dividends, from income from private company dividends, from income from dividends other than private company dividends and from income from personal exertion.

Sub-sections (18) and (19) will deal with allowable deductions included in the eligible notional loss or in any full year deductions or any (full-year) partnership deductions that relate directly to income from personal exertion. The calculation which is prescribed by those sub-sections again follows the pattern described above. Sub-sections (13), (15), (17) and (19) also apply in like manner in the application of allowable deductions against particular income in calculating a company's share of the net income of a partnership or of a partnership loss.

Sub-section (20) sets out the order in which allowable deductions are to be set off against income of particular classes where sub-sections (13), (15), (17) or (19) apply. The sub-section provides that any allowable deductions or parts of allowable deductions which are required to be set off under those sub-sections will firstly be deducted from income of the class first referred to in the sub-section and then against the next class of income specified

by the sub-section until either the allowable deductions are exhausted or the income from that class is exhausted.

Sub-section (21) authorises the Commissioner, where allowable deductions or parts of allowable deductions relate directly to income from dividends but do not relate specifically to either private company dividends or other dividends, to apportion those deductions between private company dividends and other dividends. Having made this apportionment, paragraph (a) provides that so much of the deductions as the Commissioner considers may be appropriately related to income from private company dividends shall, for the purposes of section 50N, be deemed to relate directly to income from that source and, under paragraph (b), the balance of the allowable deductions relating to dividends will be treated as relating directly to income from dividends other than private company dividends.

Sub-sections (22) and (23) will define for the purposes of the section, the expression "private company dividends". It is intended that a dividend will be deemed to be a private company dividend for the purposes of section 50N if it is a private company dividend for the purposes of sections 46 and 46A of the Principal Act. Taken together the sub-sections will mean that a dividend is a private company dividend if, in relation to the year of income in which the dividend is paid, both the recipient company and the paying company are private companies and, where a rebate entitlement is to be determined under section 46 or 46A, the dividend is not paid by a non-resident company out of profits derived from sources out of Australia.

Clause 9 also re-inserts in the Principal Act after section 50N the heading to Division 3 of the Principal Act which is proposed to be omitted by clause 8. The heading "Division 3 - Deductions" "Subdivision A - General" will, therefore, now appear immediately before section 51 of the Principal Act.".

Clause 12 : Additional period for distribution by liquidator

Amendment number (43), which does not relate to "current year losses", will omit the proposed sub-section (6) of new section 105AB and insert two new sub-sections - sub-sections (6) and (6A) - to make it clear that in referring to distributions by a liquidator, sub-section (6) is concerned only with so much of those distributions as are deemed by section 47 to be dividends paid out of profits derived by the company.

To reflect the terms of the re-expressed sub-section (6) the notes on that sub-section at page 69 of the original explanatory memorandum should read as follows -

"Sub-section (6) is the operative provision, which will deem the distribution made by the liquidator, to the extent to which it is deemed by section 47 to be a dividend and would not be taken into account in determining the sufficient distribution in relation to the preceding year of income of the company, to be made in the prescribed period in relation to the current year of income. This provision will operate to apply the liquidator's distribution, firstly in reducing any liability for undistributed income tax for the preceding year of income and secondly to reduce the liability for undistributed income tax in respect of the current year of income.

In cases where the distribution is comprised partly of capital and partly of income amounts sub-section (6A) will ensure that only such part of the liquidator's distribution as represents accumulated income of the company and is deemed to be a dividend paid by the company to its shareholders out of profits derived by it is to be taken into account for these purposes under sub-section (6).".

INCOME TAX (COMPANIES AND SUPERANNUATION FUNDS) AMENDMENT BILL 1978

INCOME TAX (RATES) AMENDMENT BILL (NO. 2) 1978

These Bills contain formal and technical provisions to make it clear that the tax that will be payable in accordance with proposed new section 128T of the Assessment Act, that is, the "branch profits tax", is to be imposed by the proposed Income Tax (Non-Resident Companies) Act 1978 and not by either of the Acts which these Bills propose to amend.

The Government amendments are consequential upon the passage of legislation to give effect to Budget income tax proposals.

The two references to the Income Tax (Companies and Superannuation Funds) Act 1977 in the original Income Tax (Companies and Superannuation Funds) Amendment Bill 1978 reflected the fact that, at the time when the Income Tax (Non-Resident Companies) Bill 1978 was introduced, that was the Act under the continuing provisions of which tax was levied on the 1977-78 incomes of companies and superannuation funds. The Income Tax (Companies and Superannuation Funds) Act 1978 has since been enacted and is now the Act levying tax on the 1977-78 incomes of companies and superannuation funds and which, following the enactment of the Income Tax (Non-Resident Companies) Bill 1978 will require to be amended.

The amendment to insert '(No. 2)' in the Income Tax (Rates) Amendment Bill 1978 is necessary following the enactment of the Income Tax (Rates) Amendment Act 1978 (No. 124 of 1978).

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