

1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO. 6) 1988

INCOME TAX RATES AMENDMENT BILL (NO. 2) 1988

INCOME TAX (FUND CONTRIBUTIONS) BILL 1988

INCOME TAX AMENDMENT BILL (NO. 2) 1988

EXPLANATORY MEMORANDUM
PART B

(Circulated by authority of the Treasurer,
the Hon P.J. Keating, MP)

FOREWORD

Part A of the Explanatory Memorandum, which contains an outline and broad explanation of each of the measures contained in the four Bills, was circulated on the introduction of the Bills into the House of Representatives.

This Part - Part B - contains a clause by clause explanation of the Bills.

PART 1 - PRELIMINARY

Clause 1 : Short Title

This clause provides for the amending Act to be cited as the Taxation Laws Amendment Act (No.6) 1988.

Clause 2 : Commencement

The amending Act is, by this clause, to come into operation on the day on which it receives the Royal Assent. But for the clause, the amending Act would, by reason of subsection 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of Assent.

PART II - AMENDMENT OF THE INCOME TAX
ASSESSMENT ACT 1936

Clause 3 : Principal Act

This clause facilitates reference to the Income Tax Assessment Act 1936 which, in this Part, is referred to as the "Principal Act".

Clause 4 : Expenditure on scientific research

Clause 4 will amend subsection 73A(6) of the Principal Act, which defines "an approved research institute", to alter the list of specified authorities which have the power to approve such institutes.

An "approved research institute" is, broadly, the CSIRO or any university, college, institute, association or organisation which is approved by one of a number of specified approving authorities, including the Secretaries to certain Commonwealth Government Departments.

This clause will :

- replace the reference to the Department of Health with a reference to the Department of Community Services and Health, to reflect the change made by Machinery of Government changes;
- replace the reference to the Department of Science and the Department of Employment and Industrial Relations with a reference to the Department of Employment, Education and Training. The Department of Employment, Education and Training has assumed responsibility for approving such institutes.

The amendments made by this clause will commence on the day on which the Bill receives the Royal Assent, but a transitional provision (clause 13) will preserve approvals made by approving authorities affected by the Machinery of Government changes made in July 1987.

Clause 5 : Repeal of sections 115 and 116

Clause 5 proposes the repeal of sections 115 and 116 of the Principal Act.

Section 115 of the Principal Act allows a life company to claim a special deduction determined by reference to its calculated liabilities. By virtue of section 114 of the Principal Act and the definition of the term "valuation of liabilities" in subsection 110(1), calculated liabilities means the present actuarial value of the company's expected future liabilities under life policies. The deduction available to a life company under section 115 is equal to 1 per cent of the company's calculated liabilities adjusted by the proportion that assets generating assessable income bears to total assets.

The principal effect of the section 115 deduction is to exempt from tax a portion of the investment income of life companies. The deduction is an arbitrary one, achieving a reduction in the effective rate of tax by excluding from assessable income a portion of the overall income of life companies, the size of which bears no immediate relationship to the income of the company.

Section 116 exempts from tax income earned by a life company in a year if at the end of that year its assets are insufficient to meet the expected (i.e. calculated) future claims arising from policies in force.

The section is effectively redundant because of the prudential controls applicable under the Life Insurance Act 1945 which are directed to maintaining a minimum degree of solvency of life companies and hence intended to prevent the situation to which section 116 is addressed. It is also inconsistent with the treatment of other taxpayers (including financial institutions) because a taxation debt is normally recoverable from a company even in the event of bankruptcy and is recoverable ahead of amounts owing to shareholders.

By subclause 5(2), the repeal of sections 115 and 116 will apply to assessments in respect of the year of income commencing on 1 July 1988 (or the period that substitutes for that year in the case of companies with a substituted accounting period) and all subsequent income years.

Clause 6Division 16J - Effect of Cancellation of
Subsidiary's Shares in Holding CompanyIntroductory note

Clause 6 proposes to insert new Division 16J in Part III of the Principal Act. The Division will prevent any benefit - i.e. broadly, a reduction in tax liability - accruing to the subsidiary company or to the holding company in respect of certain arrangements where a holding company cancels shares in itself that are held by a subsidiary company. The Division applies to a cancellation of shares confirmed by a court after 11 August 1988.

The new Division operates where a holding company cancels (or redeems) shares in itself that are held by a subsidiary company and the consideration for the cancellation of the shares is less than their market value. In these circumstances, the subsidiary company will be taken, for the purposes of the Principal Act, to have received as consideration for the cancellation, an amount equal to the market value of the shares. In addition, an adjustment will be made to an interest (i.e., shares or securities) held by the holding company in the subsidiary company, generally at the time when the holding company subsequently disposes of the interest. The adjustment will either reduce the acquisition cost, or increase the disposal proceeds, of the interest by an amount that ensures any assessable income (including any capital gain), or any deduction or capital loss to the holding company in respect of the acquisition or disposal of the interest is not reduced or increased because of the cancellation.

Adjustments similar to those which apply to the holding company will apply to a natural person associate of the holding company who holds an interest in the subsidiary, and also to the interposed entities through which the holding company or the associate indirectly hold their interest in the subsidiary.

Division 16J comprises new sections 159GZZZC to 159GZZZI and notes on the sections are set out below.

Section 159GZZZC - Interpretation - general

Proposed section 159GZZZC gives meanings to several terms and expressions used in Division 16J.

Subsection 159GZZZC(1) defines the following terms:

"associate" is defined to have the same meaning as it has in existing subsection 26AAB(14) of the Principal Act subject to two modifications set out in subsection 159GZZZC(2). Both modifications

concern references to the spouse of a person either in subsection 26AAB(14) itself or in any other provision of the Principal Act which has effect for the purposes of subsection 26AAB(14). (An example of a provision which can have effect for the purposes of subsection 26AAB(14) is the definition of "relative" in subsection 6(1) of the Principal Act.)

For the purposes of Division 16J a reference to the spouse of a person is to include someone living with that person as husband or wife on a genuine domestic basis, although they are not legally married to each other. A reference to the spouse of a person, however, will not include, for the purposes of Division 16J, someone legally married to the person but who is permanently living apart from him or her.

The definition of "associate" in subsection 26AAB(14) specifies who is an associate of a natural person, a company, a trustee of a trust estate or a partnership. In broad terms it refers to those persons who because of family or business connections might appropriately be regarded as being associated with a particular person.

The definition of associate is relevant for the purposes of Division 16J, in determining whether there are any natural person associates of the holding company to whom the Division may apply (see notes on 159GZZZ1).

"cancellation" is defined to include redemption.

"disposal" is defined to include cancellation.

The definition ensures that the term has the widest import, covering not only any form of alienation (that is, the transfer of ownership to another) but also any situation in which there is a cancellation. The word 'cancellation' itself would include any situation in which there is a surrender, forfeiture, expiry, nullification or any other means of going out of existence.

"entity" means a company, partnership or a trust estate.

"pre-cancellation period" means, in relation to a cancellation of shares to which Division 16J applies, the period beginning when the holding company concerned became a holding company of the relevant subsidiary and ending at the time of the cancellation.

"security" means stock, a bond or debenture, or any other document evidencing the indebtedness of a person, whether or not the debt is secured.

The definition of security is very wide and covers a loan agreement, whether or not the debt under the agreement is secured.

Subsection 159GZZZC(2), as indicated, qualifies the definition of associate in subsection (1) (see notes on the definition of "associate" in that subsection).

Subsection 159GZZZC(3) defines, for the purposes of Division 16J, the circumstances in which a company is a subsidiary of another company (paragraph (a)) or the holding company of another company (paragraph (b)). A company is a subsidiary or holding company of another company if it is such a company for the purposes of the Companies Act 1981 or a corresponding law in force in a State or Territory.

Subsection 159GZZZC(4) is an interpretative provision and defines the meaning of a reference to an interest in an entity for the purposes of Division 16J. If the entity is a company, such a reference is to a legal or equitable interest in shares in the company (paragraph (a)). Where the entity is a partnership, such a reference is to a legal or equitable interest in the capital or profits of the partnership (paragraph (b)); this wording reflects the interests in a partnership according to partnership law. Paragraph (c) provides that, if the entity is a trust estate, such a reference is to a legal or equitable interest in the corpus or income of the trust estate; this wording reflects interests in a trust estate according to trust law.

Paragraph (d) provides that - irrespective of whether the entity is a company, partnership or trust estate - such a reference includes a reference to a legal or equitable interest in securities issued by the entity. In conjunction with the definition of a security in subsection (1), paragraph (d) ensures that an interest in a debt of the entity - whether it be an interest in stocks, bonds, debentures, etc. issued by the entity or in an ordinary loan held by the entity - is taken to be an interest in the entity for the purposes of Division 16J.

Section 159GZZZD : Meaning of "eligible entity", "eligible interest" and "eligible proportion"

Section 159GZZZD contains the definitions of three key concepts which have general use in Division 16J. The section establishes the entities to which the Division applies and the interests held by those entities (for example, shares or securities) which are affected by the operation of the Division. The section also defines the

phrase "the eligible proportion", a concept used to determine the adjustment made to the interests held by entities in accordance with section 159GZZZH of the Division.

Section 159GZZZD sets the context in which the terms have their meaning - that is to say, in the situation where a holding company holds an interest or interests in a subsidiary company directly, or indirectly through interposed entities. A holding company will be taken to have an indirect interest in a subsidiary where the holding company holds an interest directly in an interposed entity (or in a chain of interposed entities) which, in turn, holds an interest directly in the subsidiary. Against that background the particular terms are defined as follows :

"eligible entity" - an eligible entity in relation to the holding company and subsidiary company concerned is the holding company or any of the interposed entities (paragraph (a));

"eligible interest" - an eligible interest of an eligible entity is any interest held by the eligible entity directly in the subsidiary or directly in any other eligible entity in relation to the holding company and the subsidiary (paragraph (b));

"eligible proportion" - the eligible proportion in relation to an eligible interest of an eligible entity is :

- .. where the eligible interest is held directly in the subsidiary - the proportion that that eligible interest represents of the total interests held by all persons directly in the subsidiary (subparagraph (c)(i)); or
- .. where, by virtue of holding the eligible interest, the eligible entity holds an interest in the subsidiary indirectly through one or more other eligible entities - the proportion that that interest held in the subsidiary indirectly represents of the total interests held by all persons directly in the subsidiary (subparagraph (c)(ii)).

The calculation of the eligible proportion in the case covered by subparagraph (c)(ii), that is where the eligible interest is not held directly in the subsidiary, is determined by reference to the indirect interest in the subsidiary which the eligible entity holds by virtue of the eligible interest.

The following example illustrates the terms and the way in which the eligible proportion is determined:

Example :

Companies A, B and C each have an issued share capital of 100 shares (and there are no securities). Company A owns 75 shares in Company B which, in turn, owns 80 shares in Company C. Company A is a holding company of both Companies B and C, which are its subsidiaries.

In relation to the holding company, Company A, and the subsidiary company, Company C, :

- Company B is an eligible entity and its 80 shares in Company C are an eligible interest. In this case, the eligible interest is held directly in the subsidiary so, in accordance with subparagraph 159GZZZD(c)(i), the eligible proportion is the eligible interest as a proportion of the total interests in the subsidiary -

$$\frac{80 \text{ shares in Company C}}{100 \text{ shares in Company C}}$$

- Company A is also an eligible entity and its 75 shares in Company B are an eligible interest. The eligible interest is not held directly in the subsidiary. However, by virtue of holding the eligible interest in Company B, Company A has an indirect interest in the subsidiary company. Therefore, in determining the eligible proportion, subparagraph 159GZZZD(c)(ii) applies. The eligible proportion is the indirect interest of Company A in the subsidiary, by virtue of its eligible interest in Company B, as a proportion of the total interests in the subsidiary -

$$\frac{75 \text{ shares in Company B}}{100 \text{ shares in Company B}} \times \frac{80 \text{ shares in Company C}}{100 \text{ shares in Company C}}$$

The eligible proportion is determined at the time of the cancellation of the shares. It is used to apportion the "cancellation adjustment amount" (which represents the fall in value of the subsidiary due to the share cancellation) across those interests in the subsidiary which are consequently reduced in value.

Paragraph 159GZZZD(c) establishes how the eligible proportion is determined. While the paragraph sets out the interests included in the numerator and the denominator of the eligible proportion, it does not attempt to provide precise details of how the figure will be calculated in every case; it is intended that that calculation will be made having regard to the purpose for which the eligible proportion is used.

This will mean, for example, that where the interests held in the subsidiary company comprise different kinds of interests, such as ordinary shares, preference

shares, debentures, loans, etc., and all the interests are affected equally by the reduction in value of the subsidiary, generally the respective market values of the interests concerned will be an appropriate basis for calculating the eligible proportion figure. However, to the extent that an interest is not affected by the cancellation, less weight would be attached to that interest in the calculation of the eligible proportion figure.

Section 159GZZZE : Share cancellations to which this Division applies

Section 159GZZZE is the operative provision which establishes the circumstance in which Division 16J will operate. That is, where a holding company cancels shares in itself that are held by a subsidiary of the holding company - the holding company to subsidiary company relationship is determined according to company law. The Division will then apply to the cancellation of the shares by the holding company.

Section 159GZZZF : Effect on subsidiary of share cancellations to which this Division applies

Where there is a cancellation by the holding company of its own shares held by the subsidiary company, section 159GZZZF outlines the effect on the subsidiary company. Broadly, the section proposes that if the consideration the subsidiary receives (or is entitled to receive) for the cancellation is nil or is less than the adjusted market value of the shares, then the subsidiary will be taken, for the purposes of the Principal Act, to have received as consideration for the cancellation an amount equal to the adjusted market value of the shares. The "adjusted market value of the shares" is the amount that would have been their market value at the time of the cancellation if the cancellation did not occur and was never proposed to occur.

In essence, proposed section 159GZZZF ensures that the income tax position of the subsidiary is the same as it would have been had the shares been cancelled, or otherwise disposed of, for an arm's length consideration.

Subsection 159GZZZF(1) will apply where a holding company cancels shares in itself that are held by a subsidiary of the holding company (paragraph (1)(a)) and in respect of the cancellation either :

- no consideration is receivable by the subsidiary (subparagraph (b)(i)); or

the consideration receivable by the subsidiary is less than the amount that would have been the market value of the shares held in the holding company, if the proposed cancellation had not occurred (subparagraph (b)(ii)).

Where subparagraph (b)(i) is applicable, paragraph (1)(c) provides that the consideration to which the subsidiary is entitled in respect of the cancellation is to be the adjusted market value of the shares. Where paragraph (b)(ii) applies to the subsidiary, then by the operation of paragraph (1)(d) the consideration in respect of the cancellation is to be increased so that it is equal to the adjusted market value of the shares.

Subsection 159GZZZF(2) sets out the meaning of the term "adjusted market value of the shares", which is used in subsection (1). The term means the amount that would have been the market value of the shares at the time of their cancellation if the share cancellation did not occur and was never intended to occur.

Section 159GZZZG : Pre-cancellation disposals of eligible interests

Proposed section 159GZZZG applies on the disposal of an eligible interest (see notes on proposed section 159GZZZD) during the period prior to the cancellation of shares held by the subsidiary in the holding company, but after the time when the holding company became the holding company of the subsidiary. Its broad effect is that, notwithstanding the actual amount (if any) received by an eligible entity on the disposal of its eligible interest, the amount taken to have been received in respect of that disposal will be adjusted (where necessary) to equal what would have been the market value of the eligible interest at the time of the disposal if the share cancellation had not been proposed.

Subsection 159GZZZG(1) will apply where :

- Division 16J applies to a share cancellation (paragraph (1)(a));
- an eligible interest held by an eligible entity is disposed of during the pre-cancellation period, as defined in subsection 159GZZZC(1) (see notes above) (paragraph (1)(b)); and
- either no consideration is received (or receivable) by the eligible entity in respect of the disposal of the eligible interest (subparagraph (c)(i)) or, the consideration received (or receivable) is less than the eligible interest's adjusted market value (subparagraph (c)(ii)).

In these circumstances, the effect of the proposed subsection is :

- . where subparagraph (c)(i) applies - that is, where no consideration is received (or receivable) - the consideration for the disposal of the eligible interest is taken to be its adjusted market value (paragraph (1)(d)); or
- . where subparagraph (c)(ii) applies - that is, where the consideration received (or receivable) is less than the eligible interest's adjusted market value - the consideration for the disposal of the eligible interest is taken to have been increased so that it equals its adjusted market value (paragraph (1)(e)).

The meaning of the term "adjusted market value of the eligible interest" used in subsection 159GZZZG(1) is described in subsection 159GZZZG(2). It means the amount that would have been the market value of the eligible interest if, at the time of disposal of that interest, the cancellation of shares held by the subsidiary in the holding company did not occur and was never intended to occur. In effect, the consideration on disposal of an eligible interest during the pre-cancellation period will be adjusted so that it equals what would have been the market value of the eligible interest if the share cancellation had not been proposed.

Section 159GZZZH : Post-cancellation disposals of eligible interests etc.

Section 159GZZZH is an operative provision whereby adjustments are made in respect of the eligible interests held by the holding company and interposed entities (i.e., the eligible entities) in the subsidiary so that the reduction in value of these eligible interests resulting from a share cancellation does not give rise to tax consequences.

By subsection 159GZZZH(1), the section will apply in relation to an eligible interest where the following conditions are satisfied :

- . a subsidiary company is taken to have received an amount, or an increased amount, of consideration (which is called the "cancellation adjustment amount") in relation to the share cancellation by the operation of section 159GZZZF (paragraph (1)(a)); and
- . an eligible entity in relation to the holding company and subsidiary concerned holds an eligible interest at the time of the cancellation (paragraph (1)(b)).

Where these conditions are satisfied, subsection 159GZZZH(2) applies in respect of the eligible interest for the purposes of the Principal Act, other than Part IIIA (the capital gains and capital losses provisions). If the eligible interest is not trading stock, paragraph (2)(a) provides that in determining :

- the amount of any deduction allowed or allowable to the eligible entity in respect of the acquisition of the eligible interest (subparagraph (i)); or
- the amount of any profit included in assessable income (that is, a net amount that is included in assessable income) or the loss allowable as a deduction from the assessable income of the eligible entity in respect of the acquisition or subsequent disposal of the eligible interest (subparagraph (ii));

the consideration for the acquisition of the eligible interest shall be taken to be reduced by the eligible interest's eligible proportion of the cancellation adjustment amount.

Subparagraph (2)(a)(ii) ensures that if a profit is brought to account as assessable income - for example, under section 25A or former section 26AAA, or under subsection 25(1) - then the amount of the profit will be adjusted in accordance with the subsection.

If the eligible interest is trading stock of the eligible entity, the effect of paragraph (2)(b) is to increase the consideration on disposal of the eligible interest by its eligible proportion of the cancellation adjustment amount.

Subsection 159GZZZH(3) applies, where the conditions of subsection (1) of the section have been satisfied, for the purposes of Part IIIA (capital gains and capital losses) of the Principal Act. Paragraph (3)(a) provides that in ascertaining whether a capital gain accrues to the eligible entity on a subsequent disposal of the eligible interest, the eligible entity is to be taken to have:

- disposed of the eligible interest at the time of the cancellation of the shares held by the subsidiary for a consideration equal to the indexed cost base of the eligible interest (or cost base, if the cancellation takes place within 12 months of the acquisition of the eligible interest), as determined by section 160ZH (subparagraph (i)); and

- immediately re-acquired the eligible interest for a consideration equal to the indexed cost base, or cost base, reduced by the eligible interest's eligible proportion of the cancellation adjustment amount (subparagraph (ii)).

Paragraph (3)(b) applies for the purposes of determining an allowable capital loss on a subsequent disposal of the eligible interest. It provides that the eligible entity is to be taken to have :

- disposed of the eligible interest at the time of the cancellation of the shares held by the subsidiary for a consideration equal to the reduced cost base to the eligible entity in relation to the eligible interest, as determined by section 160ZH (subparagraph (i)); and
- immediately re-acquired the eligible interest for a consideration equal to the reduced cost base reduced by the eligible interest's eligible proportion of the cancellation adjustment amount (subparagraph (ii)).

Paragraph (3)(c) ensures that in applying subsection 160Z(3) of Part IIIA to the disposal of an eligible interest within 12 months of its acquisition, the date of acquisition of the eligible interest will continue to be the date of actual acquisition by the eligible entity and not the date on which the asset is deemed to have been re-acquired by the eligible entity by the operation of subsection 159GZZZH(3).

The eligible proportion of the cancellation adjustment amount referred to in subsections 159GZZZH(2) and (3) is determined by reference to section 159GZZZD and, by subsection (1) of this section, by reference to section 159GZZZF (see notes above on those sections). Broadly, it is determined by first calculating the increase in the amount of consideration deemed to have been received by the subsidiary on cancellation of the shares in accordance with section 159GZZZF, and then determining what proportion of that amount can be related to the eligible interest held by the eligible entity.

Broadly the effect of subsections 159GZZZH (2) and (3), therefore, is to reduce the cost of the eligible interest both for the purposes of the capital gains and capital losses provisions and the other provisions of the Principal Act which may bring to account income and allowable deductions in relation to the eligible interest, to reflect the reduction in the value of the eligible interest resulting from the cancellation of the shares held by the subsidiary.

By subsection 159GZZZH(4) the expressions used in subsection (3), for example, "indexed cost base", have the same meaning as in Part IIIA of the Principal Act.

Subsection 159GZZZH(5) makes it clear that the section applies to the acquisition or disposal of any eligible interest held by the eligible entity at the time of the cancellation of the shares held by the subsidiary. Notwithstanding that the entity or interest may not be an eligible entity or an eligible interest (respectively) at the time of its acquisition or disposal, section 159GZZZH will nevertheless apply. In effect, subsection (5) ensures that section 159GZZZH will apply to interests acquired before the date of commencement of the Division. Additionally, it ensures that the section will apply to a subsequent disposal of the eligible interest even if, at the time of disposal of the interest, the entity is no longer an "eligible entity" or the interest is no longer an "eligible interest" as defined by section 159GZZD.

Section 159GZZZI - Additional application of sections 159GZZZG and 159GZZZH to associates

This section extends the application of the main operational provisions of the Division, sections 159GZZZG and 159GZZZH, to a natural person who is an associate of the holding company and who holds an interest in the subsidiary either directly, or indirectly through one or more interposed entities. (For the meaning of associate see notes on subsection 159GZZZC(1)). The provision will ensure that the associate does not obtain any benefit, i.e., a reduction in tax liability, due to the cancellation by the holding company of its own shares for less than their market value. Essentially, this measure is required to ensure the effective operation of the Division - without it an associate could be used to circumvent the provisions.

To this end, sections 159GZZZG and 159GZZZH will apply separately (and in addition to their application to the actual holding company) to the natural person associate as if he or she were the holding company. In effect, the associate will be placed in the same position as the holding company and, therefore, the provisions applicable to the holding company and the interposed entities through which it holds interests in the subsidiary company will also apply to the natural person associate and the entities interposed between that person and the subsidiary.

The approach used in section 159GZZZI to achieve this end is to effectively apply the definition of "eligible entity" so that the natural person associate is substituted for the holding company. Consequently, the natural person and any interposed entities through which the natural person holds interests indirectly in the subsidiary are treated as eligible entities. The determination of the eligible interests and the eligible proportions follows accordingly.

Subsection 159GZZZI(1) outlines the circumstances in which the section applies, that is, where a natural person is an associate of a holding company (otherwise than solely because the person is the trustee of a trust estate). Its effect is that section 159GZZZG, which applies to pre-cancellation disposals of eligible interests, and section 159GZZZH, which applies to post-cancellation disposals of eligible interests, will apply to the natural person associate. This application to the natural person associate is in addition to the application of the sections to the holding company and the interposed entities. That is to say, sections 159GZZZG and 159GZZZH are first applied to the holding company (and interposed entities), and then applied separately by virtue of 159GZZZI to the natural person associate (and interposed entities).

This is achieved by placing the natural person associate in the position of the holding company, and then providing that references in sections 159GZZZG and 159GZZZH to :

- . an eligible entity in relation to the holding company and the subsidiary (paragraph (1)(a));
- . an eligible interest of such an entity (paragraph (1)(b)); or
- . the eligible proportion in relation to such an interest (paragraph (1)(c)),

are references to what would, if the natural person were a holding company in relation to the subsidiary, be :

- . an eligible entity in relation to the natural person and the subsidiary (paragraph (1)(d));
- . an eligible interest of such an entity (paragraph (1)(e)); or
- . the eligible proportion in relation to such an interest (paragraph (1)(f)).

Subsection 159GZZZI(2) excludes certain interests which would otherwise be "eligible interests" from the operation of the Division. Where sections 159GZZZG and 159GZZZH apply to a natural person associate in accordance with section 159GZZZI, the effect of paragraph (2)(a) is that any interest which would be treated as an eligible interest as a result of that application, but which has already been taken into account as an eligible interest under the original application of sections 159GZZZG and 159GZZZH, will not be treated as an eligible interest in applying section 159GZZZI. This is necessary to ensure that where the holding company and the natural person

associate hold an interest in the subsidiary through the same interposed entity, that entity's eligible interest is not adjusted twice.

Paragraph (2)(b) operates in a similar fashion to ensure that an eligible interest of an eligible entity (including a natural person associate) held in the actual holding company, or in any eligible entity interposed between the natural person and the holding company, will not be treated as an eligible interest by the application of those sections in accordance with section 159GZZZI. In other words, if the natural person associate holds an interest in the holding company itself, either directly or indirectly through an interposed entity, no adjustment is made in respect of that interest, i.e., it does not qualify as an eligible interest for the purposes of this Division.

Clause 7 : Consideration in respect of disposal

Section 160ZD of the Principal Act determines the amount of consideration taken into account in calculating any capital gain or capital loss on the disposal of an asset. Clause 7 amends that section to ensure that it operates subject to the proposed new Division 16J.

Clause 8 : Amendment of assessments

Clause 8 gives the Commissioner of Taxation authority to re-open an income tax assessment at any time should this be necessary to give effect to the amendments contained in proposed subsection 159GZZZH(2) of the Bill.

Clause 9 : Taxation of superannuation business and related business

Introductory note

Clause 9 inserts Part IX in the Principal Act. The new Part contains an exclusive legislative regime for determining the taxable income of complying and non-complying superannuation funds, complying and non-complying approved deposit funds (ADFs) and pooled superannuation trusts. These entities are collectively termed "eligible entities" for the purposes of Part IX. A fund is complying or non-complying according to whether it complies with standards prescribed in regulations under the Occupational Superannuation Standards Act 1987 (OSS Act)).

Complying funds and pooled superannuation trusts are to be taxed at a rate of 15 per cent on all of their taxable income other than certain non-arm's length income. The latter class of taxable income is to be taxed at 49 per cent. Non-complying funds are to be taxable at 49 per cent on the whole of their taxable income. The assessable income of superannuation funds (both complying and non-complying) is to include superannuation contributions made by employers for the benefit of employees.

The associated clause 10 of the Bill, which makes consequential amendments of the Principal Act as set out in Schedule 1 to the Bill, repeals sections 23FC and 23FD of the Principal Act, which formerly conferred exemption from tax on complying superannuation funds and ADFs. Schedule 1 also repeals Division 9B of Part III of the Act, which taxed the income of non-complying superannuation funds and ADFs. That Division also taxed certain non-arm's length income of otherwise exempt funds.

Schedule 1 also repeals the provisions of Subdivision AA of Division 3 of Part III of the Principal Act which limited the deductibility of contributions to superannuation funds by employers for the benefit of employees. Those limitations are no longer needed because Part IX includes all employer contributions in the assessable income of superannuation funds. The rate of tax which those contributions attract (15 per cent or 49 per cent) depends on whether the fund obtains a notice of compliance, under the OSS Act, from the Insurance and Superannuation Commissioner.

Eight Divisions constitute Part IX. Division 1 defines terms used in the Part and clarifies its scope. Division 2 defines taxable contributions to funds and contains provision for the giving of notices identifying non-taxable contributions and transferring liability on taxable contributions to pooled superannuation trusts, life assurance companies and other registered organisations.

Divisions 3 to 7 of Part IX, respectively, will specify rules for ascertaining the taxable income, and (where relevant) the parts thereof to which different rates of tax apply, of the five different classes of entity to which the Part applies -

Division 3 - Complying Superannuation Funds

Division 4 - Non-complying Superannuation Funds

Division 5 - Complying Approved Deposit Funds

Division 6 - Non-complying Approved Deposit Funds

Division 7 - Pooled Superannuation Trusts

Division 8 essentially carries over some rules concerning rebates and provisional tax from the repealed Division 9B.

Associated clauses 12 and 14 of the Bill ensure that, among other things, Part IX and the amendments set out in Schedule 1 apply in respect of the 1988-89 year of income and later years but that, where the eligible entity has an approved substituted accounting period, the changes will still apply only from 1 July 1988. Clause 14 will also ensure that, notwithstanding the repeal of paragraph 23(jaa) of the Principal Act (which gave tax exemption to

the income of many public sector funds), those funds will be treated as complying superannuation funds for the purposes of proposed Part IX until they are brought within the jurisdiction of the OSS Act from the 1990-91 year of income. From then on, complying status will be able to be obtained under the OSS Act in the same way as for other superannuation funds.

PART IX - TAXATION OF SUPERANNUATION BUSINESS AND
RELATED BUSINESS

Division 1 - Preliminary

Section 267 : Interpretation

Subsection 267(1) sets out the meanings of terms that are used in Part IX. Many of the definitions are self-explanatory. This note accordingly deals only with those definitions that warrant further explanation.

'approved person' is a term used in proposed subsection 274(4) to describe persons who may be approved by the Commissioner of Taxation as entitled to notify the trustee of a complying superannuation fund that a person who makes personal contributions to the fund is ineligible for a tax deduction. The effect of a notice is that the fund is not taxed on the contributions. As explained in the note on that subsection, classes of persons to be approved by the Commissioner for this purpose could be expected to include -

- the person making the contributions; and
- the employer of the person making the contributions.

'complying ADF' is defined in the terms previously used in section 23FD (being repealed by this Bill) to describe ADFs that were exempt from tax. Complying ADFs are to be subjected to tax under Division 5 of Part IX at the rate of 15 per cent.

'complying superannuation fund' is defined in the terms previously used in section 23FC (being repealed by this Bill) to describe superannuation funds that were exempt from tax. Complying superannuation funds are also to be subjected to tax under Division 3 of Part IX at the 15 per cent rate.

'death or disability benefit' is defined for the purposes of the deduction allowed to complying superannuation funds under section 279.

Paragraphs (a) and (b) of the definition include in the term benefits paid on death or permanent disability. Paragraph (c) extends the deduction to include the cost of providing temporary disability benefits. Temporary disability will usually mean disability for up to two years, but the Commissioner of Taxation is given authority by this definition to approve a longer period. By subsection 267(2) the Commissioner, in giving an approval, is to have regard to any approval, given to the fund by the Insurance and Superannuation Commissioner, of the provision of temporary disablement benefits as ancillary purposes of the fund. In considering "other relevant circumstances" under that subsection the Commissioner of Taxation might be expected to have regard to matters referred to in similar approvals given generally by way of, for example, information circulars from the Insurance and Superannuation Commission, together with the fact of a notice of compliance having been obtained by the fund.

'non-complying superannuation fund' is defined to mean all superannuation funds - other than funds to which section 23FC applied - to which Division 9B of Part III of the Principal Act applied before its repeal by this Bill.

'pooled superannuation trust' or 'PST' is defined in a similar way to complying superannuation fund, but by reference to the trust obtaining a notice under proposed new section 15B or 15C of the OSS Act (being inserted by Schedule 2 of this Bill). The pooled superannuation trust conditions referred to in the definition are set out in new section 6A of the OSS Act, also being inserted by Schedule 2. See also the note on the definition of "unit trust".

'specified roll-over amount' means any part of the post-30 June 1983 component of an eligible termination payment (ETP) that is rolled-over into the eligible entity concerned, being an ETP that is either -

- (a) a payment made in consequence of the termination of employment, not being a payment from a superannuation fund (that is, a so-called "golden handshake"); or
- (b) a payment from a superannuation fund that is not subject to tax under Part IX by virtue of proposed section 271 (against the eventuality that section 114 of the Constitution would otherwise be infringed).

Such a rolled-over amount is subject to tax in the hands of the eligible entity at the appropriate rate (15 per cent for complying entities and 49 per cent for non-complying entities) - see the note on proposed section 274.

'unit trust' is a term used in the definition of "PST" (pooled superannuation trust). It has been given the meaning the term has in Division 6C of Part III of the Principal Act. As a result, the meaning given to the term "unit" in section 102M is also adopted for the purposes of Part IX. "Unit" includes a beneficial interest, however described, in any of the income or property of the relevant trust.

Subsection 267(2) is explained in the note above on the definition of 'death or disability benefit'.

Section 268 : Trustees of funds not constituted as trusts

Where a fund does not have a trustee, this provision deems the manager to be the trustee. The section will deal with the possibility that one or more of the many public sector funds that are to be made subject to tax by Part IX does not have a trustee, notwithstanding the wide meaning given to the term "trustee" under section 6 of the Principal Act, including, in particular, every person acting in any fiduciary capacity.

Section 269 : Issue, revocation etc of OSS notices

For the purposes of Part IX, the status of a fund as a complying ADF, and the status of a trust as a pooled superannuation trust, is endowed in relation to a year of income according to whether a notice has been obtained under the OSS Act - see the notes on section 267.

Section 269 replaces subsection 6E(2) of the Principal Act. Paragraph (a) of section 269 will ensure that that status is taken to have been possessed at all times during the year of income even though the OSS notice will typically not be given until after the end of the year of income. Thus, the entity concerned will be brought within the operation of the appropriate provisions of the Part where those provisions apply according to the status of an entity at a particular point in time - for example, section 279.

Similarly, by paragraph (b) of the section, loss of status previously awarded is lost for the whole year. Proposed section 301 will take the place of subsection 6E(3) and authorise any necessary amendment of an assessment.

Section 270 : Part to apply to government funds etc.

It is an established rule of statutory construction that an Act does not bind the Crown except by express provision or necessary implication. This section will ensure that government funds and trusts are not shielded by that principle from tax under Part IX.

Section 271 : Part has effect subject to the Constitution

By subsection 271(1) the Part will not apply to a fund or trust if its application would infringe section 114 of the Constitution. Such a fund is described in subsection (2) as a constitutionally protected fund. Certain parts of ETPs rolled over from such funds (see the note on paragraph (b) of the definition of "specified roll-over amount") are treated as taxable contributions under section 274.

Section 272 : Assumption to be made in calculating taxable income

This provision, like the definition of "net income" in relation to a trust estate in section 95 of the Principal Act, ensures that income derived by a fund or trust from sources outside Australia is not excluded from tax by the device of installing a non-resident as trustee.

Section 273 : Special income

This section describes the same class of income, derived by a complying superannuation fund, complying ADF or PST, as was excluded from exemption under sections 23FC (superannuation funds) and 23FD (ADFs) of the Principal Act. Those sections are being repealed by Schedule 1 of this Bill. The income in question - certain private company dividends and other non-arm's length income - is to be taxed at 49 per cent after being reduced to the special component of the taxable income of the entities concerned under sections 284, 292 and 298 respectively.

Division 2 - Taxable Contributions

Division 2 is the first of the operative Divisions of the new Part IX. It consists of new sections 274 to 277 of the Principal Act and provides details of the circumstances under which certain amounts (referred to as "taxable contributions" even though some would not be considered as a superannuation contribution in the technical sense) are to be included in assessable income. The Division allows for the transfer of assessable income where those amounts are used to purchase benefits under a superannuation policy issued by a life assurance company or registered organisation, or to purchase units in a pooled superannuation trust.

Amounts which are taxable contributions of an eligible entity are included in its assessable income under specific provisions in the relevant Divisions of Part IX, e.g., in Division 3 under section 281.

Section 274 : Taxable contributions

New subsection 274(1) provides that certain amounts are taxable contributions for the purposes of Part IX where they are paid to an eligible entity other than a PST.

Paragraph 274(1)(a) relates to amounts paid to an eligible superannuation fund and, subject to other provisions in Division 2, the following amounts are taxable contributions:

- an amount paid to the fund by an employer who is entitled to a tax deduction for contributions to a superannuation fund for the benefit of his or her employees. That tax deduction would usually be provided under section 82AAC of the Principal Act, but where those contributions form part of "salary expenditure" for the purposes of section 73B of that Act, deductibility is, by virtue of subsection 73B(20) provided only under section 73B (sub-subparagraph 274(1)(a)(i) refers);
- an amount which is paid to the fund by a member of the fund (referred to as a "contributor") to provide superannuation benefits for that person or, in the event of his or her death, for the person's dependants (that is, an amount of a kind referred to in subsection 82AAT(1)). Expressly excluded, however, is so much of an amount paid into the fund as is the roll-over of an amount of an eligible termination payment - being an amount that is not allowable as a deduction under subsection 82AAT(3) (sub-subparagraph (ii) refers);
- an amount paid to the fund to provide superannuation benefits by an entity which is an "exempt entity" for the purposes of Division 6C of Part III of the Principal Act. These are listed in section 102M of that Act and include government authorities and tax-exempt bodies such as public hospitals (sub-subparagraph (iii) refers); and
- a "specified roll-over amount" - as described in the definition discussed above in the notes to subsection 267(1) - (sub-subparagraph 274(1)(a)(iv) refers).

Paragraph 274(1)(b) concerns the case of an eligible entity which is an eligible ADF. Taxable contributions for such an entity are restricted to any specified roll-over amounts (also see the notes to subsection 267(1)) paid to the fund.

Subsection 274(2) covers the first of the notices by reason of which an amount received by a complying superannuation fund from a member or contributor (contributions to which subparagraph 274(1)(a)(ii) applies) will not be taxable contributions for the purposes of the new Part IX. The member or contributor may give the trustee of the fund a notice under subsection 82AAT(1A) (see further explanation under the notes to Schedule 1 of this Bill) and that notice will have the effect that the contributions covered by it will not be taxable contributions for the purposes of the new Part IX. The notice under subsection 82AAT(1A) must be given to the trustee of the fund before the date on which the trustee lodges the fund's return of income for the year in which the contributions are received if subsection (2) is to prevent the contributions from being included in the fund's assessable income.

The second way in which personal contributions (those to which subparagraph (1)(a)(ii) applies) may be removed from inclusion in assessable income of a complying superannuation fund is by virtue of a notice given under subsection (4) to the trustee of the fund by an "approved person" - see notes to that definition under Division 1. Under subsection 274(3) contributions made by a person to whom such a notice refers are not taxable contributions if a notice stating the matters specified in subsection (4) is given to the trustee of the fund before the trustee has lodged the fund's return of income for the year in which the contributions were received.

Subsection 274(4) states the matters as to which an approved person must be satisfied in order to give a notice under the subsection. In order to give such a notice the person must be able to be satisfied that the person or persons in respect of whom the notice is given would not be an "eligible person" for the purposes of Subdivision AB of Division 3 of Part III - that is, that the person would not be eligible for tax deductions under section 82AAT for his or her personal contributions to the superannuation fund. Broadly, that Subdivision precludes from eligibility someone for whom employer-sponsored provision of superannuation is made other than superannuation benefits provided under certain ratified industrial agreements ("superannuation agreement contributions" in section 82AAS of the Principal Act). An employer, therefore, who is providing superannuation arrangements for an employee which exceed mere superannuation agreement contributions could, as an approved person, provide a certificate under subsection 274(4). If the employer did not provide the certificate, the employee could. An employer is, however, not expected to have knowledge of any application of the Commissioner's discretion under subsection 82AAS(3) and subsection (4) recognises this.

An employee, who is in receipt of employer-sponsored superannuation support other than under a superannuation agreement of the kind just discussed and who may also make private contributions to a separate superannuation fund, may also give the trustee of that fund a notice under subsection 274(4) based on knowledge of his or her own ineligibility for tax deductions.

Subsection 274(5), which is self explanatory, requires that the notice be in the prescribed form and be given in the prescribed manner. The form and manner will, in due course, be prescribed under the Income Tax Regulations. A notice given by an approved person is irrevocable.

Section 275 : Transfer of taxable contributions

Section 275 facilitates the transfer of liability for an amount to be included in assessable income where taxable contributions, as described in the notes to section 274, are received by a complying superannuation fund or a complying ADF, but the amount of the contributions is used, in whole or in part, to purchase benefits under a superannuation policy issued by a life assurance company or registered organisation, or is used to purchase units in a pooled superannuation trust (PST).

Subsection 275(1) is the operative provision and paragraph 275(1)(a) sets out the first of the basic requirements for the operation of the section. Sub-subparagraph 275(1)(a)(i) refers to the application by the trustee of a complying superannuation fund or complying ADF of the whole or a part of a taxable contribution received by the fund during the year of income in the "purchase of a superannuation policy" from a life assurance company or registered organisation. Included in the concept of purchasing a superannuation policy is the payment of premiums in respect of a superannuation policy and the payment of amounts to secure benefits under a superannuation policy. Subsection 267(1) gives the term "superannuation policy" the meaning it has under Division 8 of the Principal Act.

Sub-subparagraph 275(1)(a)(ii) provides the alternative ground for the application of section 275, that is, that the trustee of the fund has applied all or part of a taxable contribution received by the fund during the year of income in the purchase of units in a PST. The reference to the purchase of units is also to include the purchase of a beneficial interest, however described, in any of the income or property of the trust (cf the notes on the definitions of "PST" and "unit trust" in subsection 267(1)).

In both of these two sub-subparagraphs, the life assurance company, the registered organisation or the PST, as the case may be, is called for the purposes of the subsection the "transferee".

The second requirement for the operation of section 275 is set out in paragraph 275(1)(b). This requires that the trustee of the fund, with the consent of the transferee (see above), gives the Commissioner of Taxation a notice that section 275 is to apply to the whole, or part specified in the notice, of the contribution applied in the relevant way indicated in paragraph (a).

The effects of the notice referred to in paragraph (b) are provided in paragraphs 275(1)(c) and (d). By paragraph 275(1)(c) the amount to which the notice relates is to be included as assessable income of the transferee of the year of income in which the last day of the relevant fund's year of income occurs. The other effect of a paragraph (b) notice is that the amount of taxable contributions specified in the notice is, by paragraph 275(1)(d), excluded from the assessable income of the fund of the year of income in which the amount would otherwise have been included.

Subsection 275(2) provides the formal requirements of a notice referred to in paragraph 275(1)(b). These are that the notice is in the prescribed form, is given in the prescribed manner, that it must be given to the transferee on or before the date of lodgment of the fund's return of income for the year in which the amount of the taxable contribution was applied in a way indicated by paragraph 275(1)(a). The notice once given is irrevocable.

Regulations under the Principal Act will, in due course, prescribe the form and manner of giving of a paragraph 275(1)(b) notice.

Section 276 : Contribution notices given after return lodgment date

The purpose of section 276 is to facilitate the adjustment of the taxable income of a superannuation fund where a notice under subsection 82AAT(1A) (see notes to Schedule 1) in relation to a contribution is given to the trustee of the fund after the date of lodgment of the fund's tax return for the year in which the contribution was treated as assessable income. Generally, that adjustment is to be effected by allowing a deduction in the year in which the notice is received. However, the Commissioner may amend the earlier assessment instead, where a deduction would be ineffective - for example, where the fund would have insufficient taxable income to fully utilise the deduction or where the fund would lose the benefit of franking rebates.

Paragraph 276(1)(a) relates to the circumstance where a notice under subsection 82AAT(1A) is given in relation to a contribution to the trustee in a year of income (referred to in the section as the "notice year") after the year of income in which the contribution was

received (the "contribution year") and after the date on which the trustee has lodged the fund's return of income for the contribution year. That circumstance is the first pre-requisite for the application of subsection 276(1).

The second pre-requisite for the application of subsection 276(1) is contained in paragraph 276(1)(b) and is that the assessable income of the fund of the contribution year included an amount (referred to as the "clawback amount") which would not have been included in the fund's assessable income had the notice been given prior to the date on which the trustee lodged the fund's tax return (because of the operation of subsection 274(2)).

If both of these pre-requisites are fulfilled then the clawback amount is allowable as a deduction from the fund's assessable income for the notice year.

There is no time limit upon when a notice under subsection 82AAT(1A) may be given and the deduction is allowable in whatever year the notice is given to the trustee of the fund.

Subsection 276(2) ensures that the deduction is available even where the amount of the contribution to which the subsection 82AAT(1A) notice relates was, technically, not included in the assessable income of the fund because the fund transferred the contributions in accordance with section 275 (see the notes on that section).

To overcome the situation where a fund is unable to gain any benefit from the tax deduction provided by subsection 276(1), the new subsection 276(3) will provide the Commissioner of Taxation with a discretion to exclude an amount (the clawback amount previously referred to) from assessable income in the contribution year if he is satisfied, having had regard to the matters contained in subsection (4), that it is appropriate for that to occur instead of the deduction allowable under subsection (1).

Where the Commissioner is so satisfied then an amount equal to the clawback amount is to be taken never to have been a taxable contribution - paragraph 276(3)(a). There are two consequences that would flow from this event. The first is that, if that amount had been included in the fund's assessable income of the contribution year, the Commissioner would amend the fund's assessment for the contribution year to exclude that amount from assessable income. If, on the other hand, a notice for the purpose of paragraph 275(1)(b) - see notes above - had been given in respect of the relevant contribution or of an amount which included all or part of the relevant contribution, then because so much of that contribution as is equal to the clawback amount is taken never to have been a taxable contribution, no paragraph 275(1)(b) notice in respect of that amount of contribution could have been effective. The

assessment of the transferee of the year of income in which the amount was included in the transferee's assessable income would then be amended to exclude that amount from assessable income.

Where an assessment is amended to give effect to subsection 276(3) then, under paragraph 3(b), no deduction is allowable for the clawback amount.

Subsection 276(4) lists the matters to which the Commissioner of Taxation is to have regard in exercising his discretion under subsection (3). These are:

- whether the clawback amount exceeds the amount of the fund's taxable income before any application of the section. This could be a relevant circumstance if, say, the fund was being wound-up in the notice year (paragraph 276(4)(a));
- the amount of franking rebates that might be available to the trustee of the fund from franked dividends received by the fund in the notice year (paragraph 276(4)(b)); and
- such other matters as the Commissioner considers relevant (paragraph 276(4)(c)).

Subsection 276(5) is a safeguarding provision to ensure that a notice under subsection 82AAT(1A) can be given only once in respect of a particular contribution or part of a contribution.

Section 277 : Contributions treated as assessable in determining deductions

Under the ordinary operation of the income tax law, deductions for expenditure are allowable only to the extent that the expenditure is incurred in the gaining or producing of assessable income. Under the new Part IX, not all contributions received by an eligible entity will be taxable contributions which are included in assessable income. For example, employee contributions will not be taxable contributions if an employer is also contributing to provide superannuation benefits for the employee in excess of those under a superannuation industrial agreement (see notes to section 274 for further discussion) and a notice has been given under subsection 274(4).

Section 277 will give effect to the announcement of 20 June 1988 that the receipt of non-taxable contributions will not reduce the extent of the deductibility of expenditure incurred in gaining contributions.

Division 3 - Complying Superannuation Funds

This Division contains a comprehensive code for the assessment of complying superannuation funds, that is, those which have been given notices under either section 12 or 13 of the Occupational Superannuation Standards Act (OSS Act). In summary, the Division contains provisions :

- restricting a complying superannuation fund's liability to tax to that provided by the new Part IX (section 278);
- enabling a deduction for the cost of providing death and disability cover for the members of the fund (section 279);
- denying deductibility for benefits paid by a fund (section 280);
- including in assessable income taxable contributions - as described in the notes on Division 2 (section 281);
- excluding from assessability under Part IX income accrued before 1 July 1988 (section 282);
- exempting the part of a complying superannuation fund's income that is attributable to current pension obligations (section 283);
- where excessive private dividends and other non-arm's length income is received, dealing with the taxable income so generated as a "special component" of taxable income (section 284); and
- dealing with all other taxable income of a complying superannuation fund as the "standard component" of taxable income (section 285).

Section 278 : Liability to taxation

Section 278 provides that the trustee of a complying superannuation fund is liable to pay tax on the taxable income of the fund of the year of income (subsection (1)) and, except as provided by Division 11A of Part III - the withholding tax provisions - is not subject to tax except under the new Part IX (Subsection (2)).

Section 279 : Deduction for premiums for death or disability cover

Under subsection 279(1), the trustee of a complying superannuation fund is entitled to a deduction for premiums paid on an insurance policy that is, in whole or in part, to provide cover for current or contingent liabilities to provide death or disability (including

temporary disability) benefits for members of the fund to the extent that the premiums are attributable to those liabilities.

Where a complying superannuation fund carries, in whole or in part, the risk for the provision of death or disability benefits - that is, the liability to provide those benefits is not insured against - subsection 279(2) allows the fund to receive a tax deduction for an amount equal to the lowest arm's length premium that could be expected to be paid for the year on an insurance policy to cover so much of the risk as is not insured outside the funds. The term "arm's length premium" is defined in subsection 267(1).

In order for a deduction to be allowable under subsection (2) it is necessary for an actuary's certificate to be furnished, in the prescribed form, with the return of income in which the deduction is claimed - Subsection 279(3). "Actuary" is a defined term.

Section 280 : No deduction in respect of benefits

Section 280 denies a complying superannuation fund any deduction in respect of benefits. Benefits would include all payments made to members by way of eligible termination payments, pensions and disability benefits. This section continues the effect of provisions of section 121B of the Principal Act which is repealed under Schedule 1 by clause 10.

Section 281 : Assessable income to include taxable Contributions

Taxable contributions made to a fund are defined in Division 2 and described in the notes to that Division. Section 281 provides for the inclusion in the assessable income of a complying superannuation fund of the taxable contributions it receives during the year of income, except where, under paragraph 275(1)(d), the contributions are not to be included in the assessable income.

Section 282 : Exclusion from assessable income of amounts that accrued before 1 July 1988

Superannuation funds usually derive their income on a due and payable basis, that is, as a general rule, a fund does not derive its income as it accrues, but when it is received. If it were not for this section, a complying superannuation fund which receives an amount of income after 30 June 1988 would be assessable on the full amount even though part of it may have accrued up to that date. Accordingly, section 282 excludes from the assessable income of a complying superannuation fund so much of any amount derived after that date as accrued to the fund before 1 July 1988.

Section 283 : Exemption of income attributable
to current pensions

Subsection 283(1) applies to exempt the percentage of the "normal assessable income" of a complying superannuation fund that is attributable to the liability of the fund to pay current pensions. Normal assessable income is defined in subsection 267(1) as assessable income other than taxable contributions (Division 2) and special income (section 273).

The percentage which is exempt is calculated under a formula which is contained in subsection 283(2) and is equal to the fraction of "total liabilities" which is "current pension liabilities". Both of these terms are defined in subsection (2) by reference to the average liabilities of the fund of the year of income. No amount is exempt from tax, however, unless (in terms of subsection (3)) the return of income in which the exemption is claimed is accompanied by an actuary's (a defined term) certificate, in a form to be prescribed, which provides the information for the Commissioner to reach the opinion necessary to ascertain the liabilities to pay pensions during the year of income. Included in that information, for the purposes of establishing the "average liabilities" mentioned in both parts of the formula in subsection (2), would be details of how the actuary has calculated the average liabilities for the purposes of the certificate. For example, the average may have been calculated by a simple process of dividing the aggregate of the liabilities at the commencement and end of the year of income by two. On the other hand, and consistent with the size of the fund, the actuary may use a more frequent sampling of the liabilities of the fund during the year of income. A weighted average of the liabilities during the year of income is also acceptable.

Section 284 : Special component of taxable income

This section establishes the calculation of the special component of a complying superannuation fund's taxable income. The special component is, under the amended paragraph 26(1)(b) introduced by the Income Tax Rates Amendment Bill (No. 2) 1988 (refer to the notes to that Bill later in this memorandum) to be taxed at the rate of 49 per cent.

The special component of the taxable income is the amount (if any) remaining after deducting from the special income (as defined in section 273) the following amounts:

- any allowable deductions that relate exclusively to the special income (paragraph (a)); and

- so much of any other allowable deductions as, in the opinion of the Commissioner, may appropriately be related to the special income (paragraph (b)).

Section 285 : Standard component of taxable income

The standard component of the taxable income of a complying superannuation fund is what remains of the taxable income after any special component is deducted. For funds which have no excessive private company dividends or other non-arm's length income the standard component will be the whole of the taxable income. It will be taxable at the rate of 15 per cent under the amended paragraph 26(1)(a) inserted by the Income Tax Rates Amendment Bill (No. 2) 1988.

Division 4 - Non-complying Superannuation Funds

This Division contains a comprehensive code for the assessment of non-complying superannuation funds (those without notices under section 12 or 13 of the OSS Act). In contrast to Division 3, non-complying funds are not to be entitled to the concessions given to complying funds under sections 279 (death and disability cover), 282 (pre-1 July accrued income) and 283 (exemption for current pension liabilities).

Section 286 : Liability to taxation

This section provides, in the same form as section 278 (see above), that the trustee of a non-complying superannuation fund is liable to pay tax on the taxable income of the fund of the year of income (subsection (1)) and, except for the withholding tax provisions of Division 11A of Part III, is liable to tax only as provided under Part IX (subsection (2)).

Section 287 : No deduction in respect of benefits

Similarly to the operation of section 280 (see the note on that section), section 287 denies a non-complying fund any deductions in respect of benefits paid out.

Section 288 : Assessable income to include taxable contributions

Taxable contributions made to a fund are defined in Division 2 and described in the notes to that Division. Section 288 includes in the assessable income of a non-complying superannuation fund the taxable contributions it receives during the year of income. A non-complying superannuation fund cannot transfer its liability in respect of taxable contributions under section 275.

Division 5 - Complying Approved Deposit Funds

This Division, consisting of sections 289 to 293, provides a comprehensive code for the assessment of complying ADFs - that is, those with notices under either section 14 or 15 of the OSS Act. Its provisions are similar to those in Division 3, except that the concessions provided under sections 279 and 283 are not relevant to ADFs.

Section 289 : Liability to taxation

Section 289 is a provision which is similar in form and effect to sections 278 and 286 (discussed above). Its effect is that the trustee of a complying ADF is liable to pay tax on the taxable income of the fund of the year of income (subsection (1)) and, except for the application of the withholding tax provisions of Division 11A of Part III, is liable to tax only as provided under Part IX (subsection (2)).

Section 290 : Assessable income to include taxable contributions

A complying ADF may be the recipient of a specified roll-over amount (paragraph 274(1)(b) refers) and such an amount is a taxable contribution which, under section 290, is to be included in the assessable income of the ADF of the year of income. Where, however, the ADF has transferred the contribution and section 275 applies, the amount is then not included in assessable income.

Section 291 : Exclusion from assessable income of amounts that accrued before 1 July 1988

This section has the same purpose and effect for a complying ADF as section 282 has in respect of a complying superannuation fund - see notes to that section.

Section 292 : Special component of taxable income

This section applies to a complying ADF which receives any amount of excessive private company dividend or other non-arm's length income (the "special income" of the fund - cf. notes to section 273). Under section 292, the special component of the taxable income of such an ADF is calculated by deducting from the special income:

- any allowable deductions that relate exclusively to the special income (paragraph (a)); and
- so much of any other allowable deductions as, in the opinion of the Commissioner of Taxation, may appropriately be related to the special income (paragraph (b)).

The special component is, under the amended paragraph 27(1)(b) inserted into the Rates Act by Income Tax Rates Amendment Bill (No. 2) 1988 - see later notes in this memorandum - taxed at the rate of 49 per cent.

Section 293 : Standard component of taxable income

Under section 293, the standard component of the taxable income of a complying ADF is the amount of its taxable income remaining after deducting any special component (cf. section 292). It is taxed at the rate of 15 per cent under the amended paragraph 27(1)(a) of the Rates Act (see notes to the Income Tax Rates Amendment Bill (No. 2) 1988 later in this memorandum).

Division 6 - Non-complying Approved Deposit Funds

This Division is the fourth of the five comprehensive code Divisions providing for the assessment of each of the eligible entities (refer to section 267). It deals with the assessment of non-complying ADFs (those without notices under section 14 or 15 of the OSS Act) and it has provisions substantially similar to those in Division 4.

Section 294 : Liability to taxation

This section also follows the model in section 278 (see above) that the trustee of a non-complying ADF is liable to pay tax on the taxable income of the fund of the year of income (subsection (1)) and, except for the withholding tax provisions of Division 11A of Part III, is liable to tax only as provided under Part IX (subsection (2)).

Section 295 : Assessable income to include taxable contributions

Where a non-complying ADF is the recipient of a specified roll-over amount (defined in subsection 267(1)) such an amount is a taxable contribution to which paragraph 274(1)(b) refers and under section 295 is to be included in the assessable income of the ADF of the year of income. A non-complying ADF cannot transfer its liability in respect of taxable contributions under section 275.

Division 7 - Pooled Superannuation Trusts

Division 7, which taxes PSTs, completes the table of Divisions each of which contains a comprehensive code for the assessment of one of the five classes of eligible entity for the purposes of the new Part IX. The term "PST" is defined in subsection 267(1) (see the note on the definition). This Division has provisions substantially the same as those in Division 5, except that a PST does not

receive taxable contributions (as defined in section 274) and its income receives special treatment under subsection 296(3).

Section 296 : Liability to taxation

Subsections (1) and (2) follow the precedent set in section 278 (see above) that the trustee of a PST is liable to pay tax on the taxable income of the trust of the year of income and, except for the withholding tax provisions of Division 11A of Part III, is liable to pay tax only as provided under Part IX.

It is expected that the regulations under proposed section 8A of the OSS Act, being inserted by clause 16 and Schedule 2 of the Bill, prescribing PST standards will require that the ownership of a PST be in the hands of complying superannuation funds, complying ADFs or other PSTs. Where an entity of those kinds disposes of units in a PST or receives a distribution from a PST, it is not subject to any further tax liability, the underlying income having been taxed in the hands of the PST. If, for some reason, a PST retains its status notwithstanding that units are temporarily owned by entities other than those mentioned, that concession does not extend to those other entities. The purpose of subsection 296(3) is, therefore, to ensure that subsection (2) does not affect the liability of other entities to tax on distributions and accretions of income in the trust which are assessable income under the trust provisions of the Principal Act (Division 6 of Part III) or the provisions of paragraph 26(b) of that Act (which includes in a taxpayer's assessable income beneficial interests in the income of a trust).

Section 297 : Exclusion from assessable income of amounts that accrued before 1 July 1988

This section has the same purpose and effect for a PST as section 291 has in respect of complying ADFs - see the notes on that section.

Section 298 : Special component of taxable income

This section applies to a PST which receives an amount of excessive private company dividend or other non-arm's length income (the "special income" of the trust - cf. notes to section 273). Section 298 reflects the approach in sections 284 and 292 and an explanation of the operation of these sections is given in the notes to those sections. The special component of a PST will also be taxed at the rate of 49 per cent - see the new paragraph 27A(b) of the Rates Act and notes thereto later in this memorandum.

Section 299 : Standard component of taxable income

Under section 299, the standard component of the taxable income of a PST is the amount of its taxable income remaining after deducting any special component (cf. section 298). It is taxed at the rate of 15 per cent under the new paragraph 27A(a) of the Rates Act - see the notes to the Income Tax Rates Amendment Bill (No. 2) 1988 later in this memorandum.

Division 8 - Miscellaneous

Section 300 : Rebates and provisional tax

New section 300 serves essentially the same purpose as section 121DD of the Principal Act which, with the rest of Division 9B, is being repealed by this Bill.

Section 121DD of the Principal Act provides that the trustee of a taxable superannuation fund or ADF is entitled to a rebate in respect of interest derived from certain public securities issued before 1 November 1968 but not to the inter-company dividend rebate. It also provides that non-complying superannuation funds to which sections 121DA and 121DAB apply and ineligible ADFs, are liable to pay provisional tax under Division 3 of Part VI of the Principal Act.

Section 300 will apply not only to superannuation funds and ADFs, but also to PSTs. Complying superannuation funds, ADFs and PSTs will not be required to pay provisional tax. Non-complying superannuation funds and ADFs will, however, continue to be liable for provisional tax.

Section 301 : Amendment of assessments

The general rules governing the amendment of income tax assessments are laid down in section 170 of the Principal Act, which places certain limitations on the power of the Commissioner of Taxation to amend assessments.

New section 301 will override the limitations in section 170 in two particular sets of circumstances. First, section 301 will allow amendments of assessments provided for by new subsection 276(3) (see the notes on that subsection) where a notice affecting the assessment of a superannuation fund for a year of income is not given until a later year of income. Secondly, section 301 will allow for amendments of assessments of superannuation funds, ADFs and PSTs which have received concessional taxing treatment on the basis of a notice given by the Insurance and Superannuation Commissioner, where the notice is later revoked or the decision to give the notice is set aside. In this latter respect, new section 301 will serve the purpose of existing subsection 6E(3) of the Principal Act which is repealed by Schedule 1 of this Bill.

Clause 10 : Other amendments relating to superannuation business and related business

Clause 10 provides that the Principal Act is to be amended as set out in Schedule 1. Most of the amendments are consequential on the insertion of new Part IX. Detailed notes on those amendments are contained in the notes on Schedule 1.

Clause 11 : Application - Division 16J of Part III

This clause specifies the date on which the amendments proposed by clause 6 in relation to a cancellation of shares held by a subsidiary in its holding company will apply.

Where the cancellation of shares is by a resolution that is subject to confirmation by a court, the amendments will apply where the court order confirming the resolution is made after 11 August 1988, whether or not the cancellation is effective from an earlier date.

In cases where the cancellation of shares is not subject to confirmation by a court, the amendments will apply where the cancellation is made after 11 August 1988.

Clause 12 : Application of superannuation and related amendments

This clause facilitates and clarifies the application of the superannuation and related amendments being made by clauses 9 and 10 of this Bill.

Subclause 12(1) defines, for the purposes of this clause of the Bill, the meaning of "1 July 1988 year", a term which is used to mean the year of income of a taxpayer in which 1 July 1988 occurred. For most taxpayers this means the year which will end on 30 June 1989, but, for example, in the case of a taxpayer with a substituted accounting period ending on 31 December, the "1 July 1988 year" will be the year of income which ends on 31 December 1988. In these latter cases, clause 14 effectively limits the application of the amendments in the "1 July 1988" year to the period after 30 June 1988 (see the notes on clause 14).

Subclause 12(2) provides for the application of certain amendments made under the Bill to assessments in respect of income of the 1 July 1988 year (see above) and of all subsequent years of income. Under paragraph (2)(a) the new Part IX to be inserted into the Principal Act by clause 9 of the Bill will apply to assessments of the 1 July 1988 year while (paragraph (2)(b)) the exemption provisions of paragraphs 23(jaa) and sections 23FC and 23FD, and the assessment provisions of Division 9B of

Part III of the Principal Act, which formally applied to superannuation funds and ADFs, will be repealed in respect of those assessments.

Under paragraph 12(2)(c), the extension to eligible entities of the rebate available under section 160AAB of the Principal Act in respect of amounts assessable under section 26AH of that Act will apply to assessments of the 1 July 1988 year (see above) and of all subsequent years of income.

Subclause 12(3) lists various sections of the Principal Act amended by clause 10 of this Bill through Schedule 1. Each of the amended sections applies in relation to a fund (of the relevant kind) in relation to the 1 July 1988 year of the fund and in relation to all subsequent years of income. The amended sections are:

- . section 102M - paragraph (b) of the definition of "exempt entity" reflects the new tax status of complying superannuation funds and complying ADFs;
- . section 110 - the definition of "exempt superannuation fund" reflects the new tax status of superannuation funds;
- . section 121G - certain subsections are changed in the light of the repeal of section 121CC;
- . section 121H - the amendment reflects the repeal of section 121DB; and
- . section 124ZA - the definition of "exempt body" reflects the repeal of paragraph 23(jaa) and sections 23FC and 23FD.

Subclause 12(4) provides for the application of amendments made by this Bill to section 73B (the research and development concession) and Subdivision AA of Division 3 of Part III (the general provisions providing for the deductibility of employer superannuation contributions).

- . Under paragraph (a), where those provisions relate to contributions paid by employers to superannuation funds for the benefit of their employees and dependants of employees the amendments made by this Bill which (inter alia) remove the limitation on the deductibility of such contributions apply to contributions paid by an employer on or after 1 July 1988.
- . Under paragraph (b), where those provisions relate to amounts set apart by employers for the purpose of making provision for superannuation benefits for their employees and dependants of employees

the amendments made by this Bill apply to deny deductibility for such amounts set apart after 30 November 1988.

Subclause 12(5) provides for the application of the amendments made to Subdivision AB of Division 3 of Part III, which provides for the deductibility of contributions to superannuation funds by self-employed persons and employees with no, or restricted, employer-provided superannuation support. Those amendments will apply in relation to contributions made on or after 1 July 1988.

Subclause 12(6) provides for the application of the amendments made by this Bill to certain provisions relating to franked dividends. The amendments apply in relation to dividends paid on or after 1 July 1988. The amended sections are (paragraph (a)):

- section 160AQT - the new section 283 inserted by this Bill is disregarded in the application of section 160AQT to dividends paid on or after 1 July 1988;
- section 160AQU - the provision relating to the availability of franking rebates acknowledges the changed tax status of superannuation funds from 1 July 1988 and also that section 283 inserted by this Bill is to be disregarded in determining the amount of dividends included in the assessable income of a shareholder in relation to dividends paid on or after 1 July 1988;
- section 221YDA - paragraph 221YDA(1)(da) includes references to the new section 160AQYA in relation to franking rebates for eligible entities (within the meaning of the new Part IX) in respect of dividends paid on or after 1 July 1988.

Under paragraph 12(6)(b) of the Bill, the amendment to the Principal Act which inserts the new section 160AQYA will apply in relation to dividends paid on or after 1 July 1988.

Clause 13 - Transitional - section 73A

This clause is a special transitional provision consequent upon the changes made by clause 4 to subsection 73A(6) of the Principal Act.

The provision will ensure the continuation of approvals made, since July 1987, by approving authorities affected by the Machinery of Government changes implemented at that time.

Clause 14 : Transitional - superannuation and related amendments

The main function of this clause is to ensure that Part IX (being inserted in the Principal Act by clause 9) and the amendments being made by clause 10 and Schedule 1 apply only from 1 July 1988 in circumstances where the fund or trust in question has a substituted accounting period which included 1 July 1988 but commenced before 1 July 1988. The need for the clause arises essentially from the competing demands of the Principal Act (that amendments of these kinds apply in respect of income of a year of income, as reflected by clause 12 of this Bill) and the requirement that the changes as announced apply from 1 July 1988.

Subclause 14(1) sets out the meanings of terms that are used in the clause. The definitions are self-explanatory.

Subclause 14(2) contains the details of the function referred to in the introduction to the note on this clause. Paragraph (a) states that the subclause applies only in respect of the first year of operation of Part IX (see also the matching definition of "1 July 1988 year" in clause 12 of the Bill, which sets down application provisions for the new Part). Paragraph (b) limits the subclause's operation to cases where the year of a fund or trust to which Part IX applies commenced before 1 July 1988 under a substituted accounting period approved by the Commissioner of Taxation.

Once the conditions in paragraphs (a) and (b) are met, paragraphs (c) to (q) of subclause 14(2) apply. Paragraphs (c) and (d) are complementary. Paragraph (c) limits the operation of the new provisions to income derived on or after 1 July 1988. Paragraph (d) keeps the repealed provisions on foot in respect of pre-1 July 1988 income. Paragraph (e) complements the limited preservation of the operation of Division 9B by paragraph (d) by restricting references in Division 9B that cause a fund to be taxed according to its status in respect of a year of income (including, by necessary inference, references in the OSS Act) to the pre-1 July 1988 period. Paragraphs (f) and (g) allow for apportionment of deductions in the first year of operation of Part IX between the new taxing regime and the old. Paragraphs (h) to (q) of the subclause preserve to 30 June 1988 the effect on various other sections of the Principal Act of references in those other sections to provisions being repealed by this Bill.

Subclause 14(3) requires the Commissioner to decide the time at which certain income is derived in the first year of operation of Part IX by a fund or trust that has a substituted accounting period. Where the income is derived as a share of the net income of a partnership or trust estate (paragraph (a)) the Commissioner is able, for

example, to treat a fund that is a partner in a partnership as having derived its share of the partnership net income of that commencing year at the same rate throughout the partnership year as the partnership derived its income, notwithstanding that the law might otherwise have regarded it as having been wholly derived at the time partnership accounts were taken (paragraph (c)). In the case of both that kind of income and income without an identifiable time of derivation (paragraph (b)), the Commissioner is to have regard to other relevant matters (paragraph (d)) in making his decision. For example, it may be appropriate that an amount included in assessable income under subsection 28(2) of the Principal Act be allocated evenly over the year.

Subclause 14(4) has the effect that, despite the proposed repeal of paragraph 23(jaa) of the Principal Act, the funds to which that provision gave tax exemption will be treated as complying superannuation funds for the purposes of Part IX (and, therefore, subject to tax) immediately notwithstanding that they will not be brought under the OSS Act until the 1990-91 year of income.

Clause 15 : Amendment of assessments

Clause 15 will allow the Commissioner of Taxation to amend an assessment made before the amendments of the Income Tax Assessment Act 1936 proposed by Part II of the Bill, to give effect to those amendments.

PART III - AMENDMENT OF OTHER ACTS

Clause 16 : Amendment of other Acts

Clause 16 formally provides for Schedule 2 to amend a number of other Acts. The amendments either are consequential on, or complement, amendments being made to the Income Tax Assessment Act by the Bill. Detailed notes on the amendments are contained in the notes on Schedule 2.

Clause 17 : Application of amendment of the Fringe Benefits Tax Assessment Act 1986

The described amendment of the Fringe Benefits Tax Assessment Act made by Schedule 2 applies to a fund in relation to the year of income in which 1 July 1988 occurred and all subsequent years. The explanation in the note on clause 12 is relevant.

Clause 18 : Application of amendments of the Superannuation Act 1976

By clause 18, the amendment of the Superannuation Act to make the Superannuation Fund established by that Act subject to income tax has effect for the year of income in which 1 July 1988 occurred and all subsequent years (see the note on clause 12).

SCHEDULE 1 : OTHER AMENDMENTS OF THE INCOME TAX
ASSESSMENT ACT 1936 RELATING TO SUPERANNUATION
BUSINESS AND RELATED BUSINESS

As mentioned in the notes on clause 10, that clause provides for various amendments of the Principal Act as set out in Schedule 1 of this Bill. An explanation of the amendments follows.

Definition of superannuation fund - section 6

Subsection 6(1) of the Principal Act has a definition of "superannuation fund" that applies throughout the Act unless a definition in a particular Part or Division overrides the subsection 6(1) definition. The present definition, which is being omitted by this Bill, includes a superannuation fund within the meaning of the OSS Act and any fund that is exempt from tax under section 23FC of the Principal Act, which is also being repealed by this Bill.

Schedule 1 will insert a new definition of "superannuation fund" which will include any fund that is an eligible superannuation fund within the meaning of new Part IX, being inserted by clause 9. As a result, the definition will continue to encompass formerly exempt funds (now complying funds) and funds that are superannuation funds within the meaning in the OSS Act.

OSS notices and tax exemption provisions

Schedule 1 will repeal section 6E of the Principal Act which deals with notices given by the Insurance and Superannuation Commissioner to superannuation funds and ADFs stating that such funds have, or are to be treated as having, satisfied certain standards prescribed in regulations under the OSS Act. Superannuation funds and ADFs require a standards notice in order to obtain exemption from tax for their income under sections 23FC and 23FD of the Principal Act. Sections 23FC and 23FD are also being repealed by Schedule 1, with effect from 1 July 1988, since relevant funds are to lose their tax exemption from that date.

A superannuation fund or ADF will still require a notice of compliance with the OSS Act if it is to be taxed concessionally (i.e., at the rate of 15 per cent) as a complying superannuation fund or ADF under Part IX. The purposes of section 6E concerning the granting, variation and revocation of notices by the Insurance and Superannuation Commissioner are now to be served by new sections 269 and 301 (see the notes on those sections) in Part IX.

Paragraph 23(jaa) of the Principal Act, which exempts from tax the income of certain statutory superannuation funds, is also being omitted by Schedule 1. Statutory superannuation funds, like other superannuation funds, will be taxable from 1 July 1988 in accordance with the terms of new Part IX being inserted by this Bill.

Definition of exempt fund - section 26AFB

Schedule 1 will omit the present definition of "exempt fund" in subsection 26AFB(1) and insert a new definition that takes into account the operation of new Part IX.

Section 26AFB is designed to prevent abuse of the concessions available to complying superannuation funds by payment of excessive or unauthorised benefits. Section 26AFB generally subjects such payments to tax in full if they are made from an "exempt fund", i.e., one that has at any time been exempt from tax under section 23FC.

The new definition of "exempt fund" being inserted by this Bill will extend the application of section 26AFB to benefits paid from a fund that at any time has been treated as a complying fund under new Part IX and that has, therefore, received concessional taxing treatment.

Definition of eligible termination payment - section 27A

Schedule 1 will amend paragraphs (a) and (aa) of the definition of "eligible termination payment" in subsection 27A(1). Paragraph (a) of the definition encompasses payments made to a person in consequence of retirement while paragraph (aa) includes as eligible termination payments, termination payments made as a result of the death of a person to someone who is not a dependant of the deceased person. Both paragraphs exclude payments that are made from a non-complying section 121DA superannuation fund.

The amendments to paragraphs (a) and (aa) made by Schedule 1 recognise that section 121DA, along with the rest of Division 9B, is being repealed by this Bill and that, in future, payments from non-complying superannuation funds within the meaning in Part IX are not generally to be taxed as eligible termination payments.

New subparagraph (a)(iia) and sub-subparagraph (aa)(iv)(D) will ensure that payments from non-complying superannuation funds are not brought within the scope of paragraphs (a) and (aa).

Definition of superannuation fund - section 27A

Subsection 27A(1) defines "superannuation fund" for the purposes of Subdivision AA in Division 2 of Part III of the Principal Act. The definition is relevant for

two main purposes. First, it defines the types of funds payments out of which are taxed as eligible termination payments. Secondly, it defines the types of funds into which eligible termination payments may be rolled over, thus deferring the tax otherwise payable in respect of such a payment.

The present definition of "superannuation fund" includes any fund that is or has been at any time exempt from tax on all or part of its income, including foreign superannuation funds. It also includes a fund that is, or has ever been, a section 121DAB superannuation fund, i.e., one that has been a genuine retirement fund but that for any reason has not satisfied the tests for exemption of its income. The definition also covers superannuation funds taxable under section 121CC because, while they meet the other operational standards of the OSS Act, they fail the loan-back or in-house investment standard.

Schedule 1 will amend the definition of superannuation fund in line with the insertion of new Part IX dealing with the taxation of superannuation funds generally. New subparagraph (a)(ia) of the definition will continue the reference to foreign superannuation funds which are to remain exempt from tax, under paragraph 23(jb), on their Australian source interest and dividend income. New subparagraph (a)(iaa) will include in the definition any fund that is, or has ever been, a complying fund within the meaning in new Part IX. Schedule 1 will also omit the present subparagraph (a)(i) and insert a new subparagraph. The new subparagraph will maintain a reference to superannuation funds, apart from foreign superannuation funds (covered by new subparagraph (a)(ia)), that were covered by the definition before commencement of the legislation being put in place by this Bill.

Contributions to superannuation funds for benefit of employees

Subdivision AA of Division 3 of Part III (comprising sections 82AAA to 82AAR) of the Principal Act governs the availability of deductions to employers in respect of contributions to a superannuation fund for the benefit of their employees or those employees' dependants.

Subdivision AA regulates the deductions available to employers in three ways. First, it defines the employees in respect of whom tax deductible contributions may be made. Secondly, it denies deductions for contributions to certain superannuation funds, i.e., funds which are taxable under section 121CC and those taxable under section 121DA. Thirdly, it controls the amounts of deductible contributions. The parts of Subdivision AA that perform the second and third roles just mentioned are to be repealed by Schedule 1 with effect from 1 July 1988. New section 82AAC will have the effect that, after 30 June

1988, any contributions made to an eligible superannuation fund (including a non-complying fund) within the meaning in Part IX, for the purpose of making provision for superannuation benefits for eligible employees or their dependants, will be tax deductible.

The Bill will also amend sections 82AAC and 82AAR, with effect from 30 November 1988, to deny deductions for amounts set apart by an employer but not actually paid to a superannuation fund. After 30 November 1988 only amounts paid to a fund as a contribution will be tax deductible. This amendment is consistent with the policy evident in new Part IX of bringing forward tax on superannuation end benefits to the time when contributions are made to a superannuation fund.

Contributions to superannuation funds by eligible persons

Sections 82AAS and 82AAT make up Subdivision AB of Division 3 of Part III of the Principal Act which allows deductions for certain superannuation contributions made by persons who generally do not receive superannuation support from an employer, i.e., self-employed persons and certain eligible employees. Schedule 1 will make a number of amendments to sections 82AAS and 82AAT consequential on other amendments being made by the Bill, in particular, the introduction of new Part IX. The Bill will also amend subsection 82AAT(2) to increase the maximum annual deduction available to eligible persons from \$1,500 to \$3,000. That amendment first has effect for contributions made in the income year ending on 30 June 1989.

Schedule 1 will omit the definition of "eligible superannuation fund" in subsection 82AAS(1). An eligible superannuation fund is one to which paragraph 23(jaa) or section 23FC of the Principal Act applies. The term eligible superannuation fund is referred to in the definition, also in subsection 82AAS(1), of "superannuation contributions" which itself is a term used in another definition in the subsection, i.e., "superannuation agreement contributions". Superannuation agreement contributions are a limited class of contributions that may be made on behalf of an employee by an employer without negating the employee's entitlement to a deduction under section 82AAT. Through the indirect use of the term eligible superannuation fund, such contributions, apart from other restrictions, can only be contributions that are made to a paragraph 23(jaa) or section 23FC superannuation fund. Both paragraph 23(jaa) and section 23FC are being repealed by this Bill so that the definition of "eligible superannuation fund" is redundant.

There are still to be restrictions on the types of superannuation fund to which superannuation agreement contributions may be made. From 1 July 1988 only contributions made to a complying superannuation fund

within the meaning of new Part IX may constitute superannuation agreement contributions. Schedule 1 will insert a definition of "complying superannuation fund" to replace the definition of "eligible superannuation fund". In addition, Schedule 1 will omit the reference in the definition of "superannuation contributions" to an eligible superannuation fund and replace it with a reference to a complying fund.

Section 82AAT is the operative provision of Subdivision AB. It is the section that allows a deduction for superannuation contributions by eligible persons. At present, paragraph 82AAT(1)(b) has the effect of allowing deductions only for contributions to a section 23FC superannuation fund. The reference in paragraph 82AAT(1)(b) to a section 23FC fund is to be replaced by a reference to a complying superannuation fund within the meaning in new Part IX.

Schedule 1 will also amend section 82AAT by inserting new subsections 82AAT(1A) to (1D). New subsection 82AAT(1A) will deny a deduction under subsection 82AAT(1) for a contribution to a superannuation fund to the extent that the contribution has been specified in a notice to which subsection 82AAT(1B) refers. Subsection 82AAT(1B) allows a taxpayer, when making a contribution to a superannuation fund or at a later time, to give the trustee of the fund a notice in relation to all or a part of the contribution. By new subsection 82AAT(1C) the notice must be in the prescribed form and given in the prescribed manner. These matters will be prescribed in Regulations as soon as possible. These new subsections are intended to allow a person to ensure that his or her personal superannuation contributions, or a specified part of them, are not treated as taxable contributions in the hands of the relevant superannuation fund where that would be inappropriate, i.e., where the person did not obtain a deduction for the relevant amount. The insertion of new subsections 82AAT(1A) to (1D) is directly related to the operation of new sections 274 and 276 (see more detailed notes on those sections) which determine which contributions received by a superannuation fund are to be taxable contributions.

An eligible person within the meaning in section 82AAS may ensure that his or her contributions to a superannuation fund are not treated as taxable contributions by giving a subsection (1B) notice to the trustee of the fund. The notice may be given because the person is not entitled to a deduction (e.g., for contributions in excess of \$3,000 in a year of income), or will not be claiming a deduction in respect of some or all of the contributions specified in the notice. As a complement to not taxing the contributions, subsection 82AAT(1A) will deny a deduction in respect of any contributions specified in the notice. By virtue of new subsection 82AAT(1C) such a notice is irrevocable.

New subsection 82AAT(1D) overrides the operation of section 170 of the Principal Act to enable an assessment to be amended at any time to give effect to subsection (1A), i.e., to disallow a deduction. That recognises that an eligible person may not give a notice to the trustee of a superannuation fund until after the person has already been allowed a section 82AAT deduction in a year of income. Amendments being made by clause 9 to insert new sections 276 and 301 will allow for an appropriate adjustment to the taxable income of a superannuation fund in such a case (see notes on those sections).

Amendment of definition of "exempt superannuation fund"

The existing definition of "exempt superannuation fund" in section 110 of the Principal Act will be omitted by Schedule 1 and a new definition inserted in its place. The present definition refers to superannuation funds exempt from tax under paragraph 23(jaa) or section 23FC, both of which provisions are being repealed by the Bill. The definition is relevant for the purposes of the definition, also in section 110 of the Principal Act, of "superannuation policy".

A superannuation policy is a life assurance policy that is vested in the trustee of an exempt superannuation fund. The income derived by life assurance companies and registered organisations from the investment of premiums for superannuation policies is exempt from tax. That is consistent with the exemption given to paragraph 23(ja) and section 23FC superannuation funds which derive their investment income direct.

From 1 July 1988 complying superannuation funds within the meaning in new Part IX will be taxed on their income at a rate of 15 per cent. The income derived by life offices and registered organisations from life policies sold to complying superannuation funds is to be taxed at the same rate. The new definition of "exempt superannuation fund" being inserted by Schedule 1 therefore refers to funds that are complying superannuation funds within the meaning in new Part IX. A life assurance policy purchased by the trustee of such a fund will be a superannuation policy.

This particular amendment is also relevant for the purposes of section 26AH of the Principal Act which may include an amount in a taxpayer's assessable income following the surrender of a life assurance policy. By virtue of the operation of subsection 26AH(7), section 26AH does not apply in respect of superannuation policies. Therefore, where a life office or registered organisation has paid tax on the income derived from its complying superannuation fund business, no further tax liability will accrue to the trustee of a complying superannuation fund on surrender of a superannuation policy.

Miscellaneous amendments of definitions

Schedule 1 will also amend several definitions in various sections of the Act to remove references to paragraph 23(jaa), section 23FC and section 23FD which are being omitted or repealed (see earlier notes) by the Bill. The definitions are -

- the definition of "exempt entity" in section 102M;
- the definition of "relevant exempting provision" in subsection 121F(1); and
- the definition of "exempt body" in subsection 124ZA(1).

Where relevant, the references to funds exempt under paragraph 23(jaa) and sections 23FC and 23FD are to be replaced by references to complying superannuation funds and/or ADFs and PSTs within the meaning in new Part IX. The definition of "relevant exempting provision" in subsection 121F(1) will also include a reference to paragraph 23(jaa) and sections 23FC and 23FD as in force before the amendments made by the Bill.

Repeal of Division 9B

As mentioned earlier in these notes, with effect from 1 July 1988, Schedule 1 will repeal Division 9B of Part III of the Principal Act which taxed the income of non-complying superannuation funds and ADFs. The Bill will also remove references in sections 121G and 121H to funds taxable under Division 9B. From 1 July 1988 all superannuation funds and ADFs will fall to be taxed under new Part IX.

Rebate in respect of amount assessable under section 26AH

Schedule 1 will omit the present subsection 160AAB(5A) of the Act and insert a new subsection (5A). The present subsection provides a rebate for superannuation funds and ADFs taxable under Division 9B of Part III of 29 per cent of any amount included in a fund's taxable income by virtue of the operation of section 26AH. Since Division 9B is being repealed by the Bill, existing subsection 160AAB(5A) is obsolete. New subsection 160AAB(5A) will provide an equivalent rebate to superannuation funds, ADFs and PSTs taxable under new Part IX.

Imputation credits

Schedule 1 will amend section 160AQU to ensure that superannuation funds, ADFs and PSTs which are taxable under new Part IX are entitled to franking rebates in respect of their franked dividend income. Section 160AQU

describes certain classes of taxpayers who are entitled to franking rebates. By virtue of subparagraph 160AQU(b)(ii), that includes trustees of superannuation funds or ADFs taxable under Division 9B, which is being repealed by this Bill. Schedule 1 will omit the present subparagraph 160AQU(b)(ii) and insert a new subparagraph in its place. New subparagraph 160AQU(b)(ii) inserts a reference to a new class of taxpayers, i.e., trustees of superannuation funds, ADFs and PSTs taxable under new Part IX.

Schedule 1 will also amend sections 160AQT and 160AQU to provide special treatment for superannuation funds which have current pension liabilities. The income of such funds referable to current pension liabilities is to be exempt from tax under new section 283 (see notes on that section). As a result, some part of a taxable fund's franked dividend income may be exempt from tax. At present, the combined operation of sections 160AQT and 160AQU would have the effect of denying a franking rebate in respect of any franked dividends that are exempt income. The franking rebate available under section 160AQU is the amount included in assessable income by section 160AQT. By virtue of paragraph 160AQT(1)(c) no amount is included in a taxpayer's assessable income in respect of a dividend that is exempt income.

The amendments to sections 160AQT and 160AQU will ensure that superannuation funds receive franking rebates in respect of franked dividends made exempt by section 283. Schedule 1 will insert new subsection 160AQT(4) which provides that section 283 is to be disregarded in determining whether, for the purposes of subsection 160AQT(1), a dividend is exempt income. That will have the effect of including an amount in respect of the exempt dividend, calculated under the formula in subsection (1), in a relevant fund's assessable income. Where section 283 applies it will then exempt from tax the otherwise assessable section 160AQT amount notwithstanding that the amount is allowable as a rebate (see below).

The franking rebate to be allowed to the fund is, under section 160AQU, the amount included in the fund's assessable income under section 160AQT. Schedule 1 will insert new subsection 160AQU(2) which provides that in determining the amount included under section 160AQT, section 283 is once again to be disregarded. That is to avoid any suggestion that the fact that the amount originally included in assessable income by section 160AQT is then excluded by the operation of section 283, would reduce the rebate available under section 160AQU.

An example of the operation of the amended sections is:

A superannuation fund has current pension liabilities making up 50 per cent of its total liabilities. The fund receives a \$51 franked dividend in

the year of income. Section 160AQT would include in the fund's assessable income an amount of \$49. Subject to section 283, the total amount included in assessable income in respect of the franked dividend would be \$100 (i.e., \$51 plus \$49).

Section 283 would then exempt from tax 50 per cent of the fund's income, including \$50 of the amount just referred to. Section 160AQU, notwithstanding the effect of section 283, would allow a rebate of \$49, i.e., the amount included in assessable income by section 160AQT.

Franking rebate for trustees of superannuation funds, ADFs and PSTs

Existing sections 160AQX, 160AQY and 160AQZ ensure that a partner, beneficiary or trustee in receipt of franked dividends through a partnership or trust is entitled to a franking rebate in respect of the dividend. The rebate is undiminished by expenses borne by the partnership or trust in relation to that dividend.

Schedule 1 will insert new section 160AQYA which will have the same effect as sections 160AQX, 160AQY and 160AQZ where a superannuation fund, ADF or PST receives franked dividends through a partnership or trust.

Schedule 1 will insert a reference to new section 160AQYA in paragraph 221YDA(1)(da) and subparagraph 221YDA(2)(a)(ii) of the Principal Act. The paragraph and subparagraph list rebates which may be taken into account by a taxpayer in making an estimate of tax payable for the purpose of obtaining a variation of provisional tax payable by the taxpayer.

SCHEDULE 2 : AMENDMENTS OF OTHER ACTS IN CONNECTION
WITH THE AMENDMENTS OF THE INCOME TAX ASSESSMENT
ACT 1936 RELATING TO SUPERANNUATION BUSINESS
AND RELATED BUSINESS

Clause 16 (see notes on that clause) provides for Schedule 2 to amend a number of other Acts in consequence of the amendment being made by this Bill to insert new Part IX in the Income Tax Assessment Act.

Amendments of Fringe Benefits Tax Assessment Act 1986

Schedule 2 will amend subparagraphs (k)(i) and (k)(ii) of the definition of "fringe benefit" in subsection 136(1) of the Principal Act.

Paragraph (k) of the definition of "fringe benefit" excludes from the definition payments that are eligible termination payments and certain other payments that would be eligible termination payments if they were not expressly excluded from the definition of "eligible

termination payment" in section 27A(1) of the Income Tax Assessment Act. Included among these other payments are certain payments from section 121DA superannuation funds.

The amendments of subparagraphs (k)(i) and (k)(ii) of the definition of "fringe benefit" are related to the amendments made by Schedule 1 of the Bill to insert new subparagraph (a)(iia) of the definition of "eligible termination payment". The subparagraph (k)(i) and (k)(ii) amendments will ensure that payments from a superannuation fund that is or has been a non-complying superannuation fund within the meaning in new Part IX of the Income Tax Assessment Act, and which are not eligible termination payments, will nonetheless not constitute fringe benefits.

Reflecting the repeal of Division 9B of Part III of the Income Tax Assessment Act, Schedule 2 will also amend the definition of "superannuation fund" in subsection 136(1) of the Principal Act to replace the reference to a Division 9B fund with a reference to a fund that is an eligible superannuation fund within the meaning in new Part IX of the Income Tax Assessment Act.

Amendments of Occupational Superannuation Standards Act 1987

Through Schedule 2, clause 16 will also make a number of amendments of the OSS Act which are related to the insertion of new Part IX in the Income Tax Assessment Act.

References to pooled superannuation trusts

The long title of the OSS Act, the Heading to Part II and a number of the Act's sections will be amended by Schedule 2 to recognise that pooled superannuation trusts, like superannuation funds and ADFs, will come under the supervision of the Insurance and Superannuation Commissioner. The sections affected are :

- . subsection 3(1) - definitions of "protected document", "protected information" and "year of income";
- . subsection 10(2);
- . subsections 11(2), (3) and (4);
- . subsection 16(1);
- . subsections 17(1) and (2); and
- . subsections 19(1) and (2).

Schedule 2 will also omit the definition of "fund affected by a reviewable decision" and insert in its place a definition of "fund or unit trust affected by a reviewable

decision". That recognises that a PST may be affected by a reviewable decision (see also notes on definition of "reviewable decision"). As well, Schedule 2 will insert three new definitions in subsection 3(1) that are relevant to the inclusion of PST standards in the OSS Act. Those definitions are self explanatory.

Definition of "reviewable decision"

Schedule 2 will omit the definition of "reviewable decision" and put in its place a new definition of that term. The new definition will add a reference to a decision by the Insurance and Superannuation Commissioner to give notice to a unit trust that he is not satisfied that a trust met the PST conditions in relation to a year of income. The definition will continue to refer to similar decisions in respect of superannuation funds and ADFs that have, in the Commissioner's view, not complied with the relevant OSS Act standards.

The significance of a decision being a reviewable decision is that a fund or PST may ask the Commissioner to reconsider such a decision. If not satisfied with the Commissioner's review, a fund or PST may seek a further review by the Administrative Appeals Tribunal.

Crown to be bound

Schedule 2 inserts new section 3A which will ensure that trustees of public sector superannuation funds that would otherwise be within the "shield of the Crown" are subjected to the obligations set down in the OSS Act in the same way as other trustees.

Commencement of regulations

Schedule 2 will insert new subsection 4(5) governing the commencement of regulations to be made for the purposes of the definition of a PST in subsection 3(1) or for the purposes of the PST standards mentioned in proposed subsection 8A(1). By new subsection 4(5) the regulations may specify a date of commencement that is earlier than the day when the regulations are notified in the Gazette provided it is not earlier than 1 July 1988 .

Satisfaction of pooled superannuation trust conditions

Schedule 2 will insert new section 6A in the OSS Act. New section 6A sets down conditions to be met by a PST if it is to receive a notice of compliance from the Insurance and Superannuation Commissioner (under new section 15B or 15C). A unit trust that obtains a notice of compliance will qualify as a PST for the purposes of the Income Tax Assessment Act (see notes on new section 267) and be entitled to be taxed on its income in the same way as complying superannuation funds and ADFs.

The PST conditions are :

- the unit trust must be a PST at all times during the year of income when the unit trust was in existence, or if part of the year of income occurred before 1 July 1988, at all times after 30 June 1988;
- the unit trust must comply with the prescribed PST standards referred to in subsection 8A(1);
- the trustees of the unit trust must comply with any requests by the Insurance and Superannuation Commissioner, under section 10 or 11, to provide information or documents.

References to repealed sections

Schedule 2 will omit references in subsection 7(3) and 8(3) to sections of the Income Tax Assessment Act being repealed by this Bill.

Operating standards for pooled superannuation trusts

New section 8A, being inserted by Schedule 2, will authorise the making of regulations to govern the operation of PSTs. The regulations will be introduced at a later time. The matters which may be covered by regulations include those listed in subsection 8A(2). The listed matters are similar to those in sections 7 and 8, relating to prescribed standards for superannuation funds and ADFs.

Information requirements

Schedule 2 will amend sections 10 and 11 of the Principal Act to ensure those sections apply to PSTs as well as to superannuation funds and ADFs. These sections allow the Insurance and Superannuation Commissioner to seek information and documents to enable him to administer the OSS Act.

Notices as to satisfaction of pooled superannuation trust conditions

Schedule 2 will insert new section 15B in the Principal Act. New section 15B has a similar role to existing sections 12 and 14 in relation to superannuation funds and ADFs but applies to PSTs. The section will require a unit trust seeking PST status to lodge an annual return with the Insurance and Superannuation Commissioner, along with certificates from the trustee of the trust and an approved auditor. The Commissioner is required by section 15B to give notice to the unit trust stating whether, on the basis of the return, certificates and any other information available, he is satisfied that the trust met the PST conditions in relation to the relevant year of

income. Section 15B also allows the Commissioner to revoke a notice after considering information not previously available to him.

A unit trust that receives a notice of compliance with the PST conditions will qualify as a PST within the meaning in new Part IX of the Income Tax Assessment Act, being inserted by clause 9 of this Bill (see notes on that clause). PSTs are to be taxed in the same concessional manner as complying superannuation funds and ADFs and, under section 275 of that Act, will be able to take on some or all of the contributions tax liability of such a fund that owns units in the PST.

Discretion to treat unit trusts as satisfying the pooled superannuation trust conditions

Schedule 2 will also insert new section 15C of the Principal Act. This section mirrors the provisions of existing sections 13 and 15 which relate to superannuation funds and ADFs. New section 15C will allow the Insurance and Superannuation Commissioner to treat a unit trust as having met the PST conditions, even though the trust failed to obtain a notice of compliance under section 15B, if he considers it would be reasonable to do so. In such a case the unit trust will still qualify as a PST for the purposes of the Income Tax Assessment Act.

Amendments of Superannuation Act 1976

Existing sections 42(5) and (5A) of the Principal Act generally have the effect that the Superannuation Fund established by the Act, for the purposes of the Commonwealth Superannuation Scheme, is not subject to tax, on its income or otherwise. Schedule 2 will amend the Principal Act by inserting new subsection 42(5C) which will override sections (5) and (5A) to the extent that a liability to taxation arises under the Income Tax Assessment Act 1936. The amendment will ensure that, like other superannuation funds, the Superannuation Fund is subject to tax under new Part IX of the Income Tax Assessment Act being inserted by clause 9 of the Bill.

Amendment of Taxation Administration Act 1953

Existing section 8W of the Principal Act enables a court, where it is satisfied that a false or misleading statement, or incorrectly kept records of account, caused a taxpayer's assessed liability to tax to be less than it should have been, to order the taxpayer to pay an additional amount of tax to the Commissioner of Taxation.

Under subsection 8W(1A) the court may have regard to a decision of the Insurance and Superannuation Commissioner made under section 12, 13, 14 or 15 of the OSS Act, as if that decision were a part of the process of

making an assessment of income tax for a superannuation fund or ADF. Schedule 2 will amend subsection 8W(1A) to enable a similar decision under section 15B or 15C of the OSS Act, in relation to a PST, to be taken account of by a court.

INCOME TAX RATES AMENDMENT BILL (No.2) 1988

This Bill will amend the Income Tax Rates Act 1986 which declares the rates of tax payable by taxpayers generally, including the trustees of non-complying superannuation funds and ineligible ADFs.

Complementary to amendments being made by the Taxation Laws Amendment Bill (No.6) 1988 to insert new Part IX of the Income Tax Assessment Act, this Bill will declare and impose the new rates of tax applicable to superannuation funds, ADFs and PSTs, which are taxable under Part IX.

Clause 1 : Short title, etc.

The proposed Act is to be cited as the Income Tax Rates Amendment Act (No.2) 1988. Clause 1 also provides for the Income Tax Rates Act 1986 to be referred to in the amending Act as "the Principal Act".

Clause 2 : Commencement

Clause 2 simply provides for the Bill to come into operation on the day it receives the Royal Assent.

Clause 3 : Interpretation

Paragraph (a) will amend subsection 3(1) of the Principal Act by omitting certain definitions that, consequent on the insertion of new Part IX and repeal of Division 9B of Part III of the Income Tax Assessment Act, are no longer relevant. The definitions are the definitions of "approved deposit fund" "ineligible approved deposit fund", "investment income" and "superannuation fund". Paragraph 3(c) will omit references in section 3 of the Principal Act to "investment income" since the definition of that term is being omitted by paragraph (a) of this clause.

Paragraph 3(b) will insert definitions of the entities and the components of their income which are being made taxable by new Part IX of the Income Tax Assessment Act. All of the definitions are by way of reference to the meanings of those terms in Part IX. Where necessary an explanation of those definitions may be found in the clause notes on the amendments being made by the Taxation Laws Amendment Bill (No.6) 1988.

Clause 4 : Interpretation

Clause 4 will amend section 5 of the Principal Act to remove outdated references to terms being omitted by clause 3 and insert references to the new definitions inserted by that clause.

Clause 5 : Rates of tax payable by trustees of superannuation funds, ADFs and PSTs

Clause 5 will insert new sections 26, 27 and 27A in the Principal Act. Under new subsection 26(1) the rates of tax payable by the trustee of a complying superannuation fund will be :

- 15% in respect of the standard component of the fund's taxable income; and
- 49% in respect of the special component of the fund's taxable income.

Subsection 26(2) will declare a rate of tax of 49% payable by the trustee of a non-complying superannuation fund on the whole of the fund's taxable income.

Section 27 will declare the rates of tax payable by the trustees of complying and non-complying ADFs. The rates are the same as those payable by the trustees of complying and non-complying superannuation funds. Section 27A will declare rates of tax for trustees of PSTs of 15% and 49% on the standard and special components, respectively, of a PST's taxable income.

Clause 6 : Application of amendments

By clause 6 the amendments made by the Bill will first apply in relation to the year of income in which 1 July 1988 occurred. Where a part of a taxable entity's year of income occurred before 1 July 1988, transitional measures in clause 14 of the Taxation Laws Amendment Bill (No.6) 1988 will ensure that the new rates of tax declared by this Bill apply only in respect of the part of the year of income that occurred after 30 June 1988.

Clause 7 : Transitional

As explained in the note on clause 6, the new rates of tax declared by the Bill only apply in respect of that part of a taxable entity's year of income that occurred after 30 June 1988. The provisions of Division 9B of Part III of the Assessment Act (being repealed by the Taxation Laws Amendment Bill (No. 6) 1988) which make taxable some or all of the income of certain superannuation funds and ADFs will continue to apply in respect of that part of a relevant fund's year of income that occurred before 1 July 1988. Clause 7 will ensure that the

Principal Act will continue to apply the existing rates of tax to superannuation funds and ADFs assessed on the former basis for the period up to 30 June 1988.

INCOME TAX (FUND CONTRIBUTIONS) BILL 1988

If the proposed amendment to be made by the Income Tax Amendment Bill (No. 2) 1988 is required to be given effect to, this Bill will impose tax on contributions to superannuation funds and ADFs.

Clause 1 : Short title etc.

The proposed Act is to be cited as the Income Tax (Fund Contributions) Act 1988.

Clause 2 : Commencement

By clause 2 the Act will come into effect on the day on which it receives the Royal Assent.

Clause 3 : Imposition of tax

Clause 3 is the operative provision of the Bill. If new subsection 5(4) of the Income Tax Act 1986 (see the introductory note above) has the effect that that Act does not apply to impose tax on contributions to superannuation funds and ADFs, then this Bill will impose that tax.

Clause 4 : Financial years for which tax payable

Clause 4 links this Bill to existing section 7 of the Income Tax Act 1986 and levies tax for the financial years for which that Act levies tax.

INCOME TAX AMENDMENT BILL (NO. 2) 1988

The Bill will amend the Income Tax Act 1986. The amendment is a precautionary measure against the possibility that the proposal to tax both contributions to superannuation funds and ADFs and the other income of those funds would be found in breach of the Constitution. In that event, the Income Tax Act would tax only that other income and the related Income Tax (Fund Contributions) Bill 1988 (see notes following) would operate to impose tax on contributions to funds. No implication is to be drawn from this Bill as to the possibility of such a finding.

Clause 1 : Short title

The proposed Act is to be cited as the Income Tax Amendment Act (No. 2) 1988. This clause provides for the Income Tax Act 1986 to be referred to in the amending Act as "the Principal Act".

Clause 2 : Commencement

The Act will commence on the day it receives the Royal Assent.

Clause 3 : Imposition of income tax

Clause 3 will insert new subsection 5(4) in the Principal Act. The subsection will provide that, if the Principal Act would purport to deal with 2 subjects of taxation (by taxing contributions to superannuation funds and ADFs and the other income of such funds) and, therefore, be in breach of the Constitution, the Principal Act will only tax that income other than contributions.