TAXATION CONSIDERATIONS FOR INVESTORS IN AUSTRALIA

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OF

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A general outline of the Australian taxation system as at 7 November 1985 with special reference to foreign investors.

Outline of Paper

1. GENERAL BACKGROUND

1.1 INTRODUCTION

1.2 COMMONWEALTH AND STATES

1.3 OUTLINE OF FEDERAL TAXES

1.31 Income Tax
1.32 Customs Duty
1.33 Sales Tax
1.34 Estate and Gift Duties

1.4 OUTLINE OF STATE TAXES

1.41 Payroll Taxes
1.42 Stamp Duties
1.43 Death and Gift Duties
1.44 Land Taxes

1.5 OUTLINE OF MUNICIPAL TAXES

2. FEDERAL INCOME TAX

2.1 GENERAL OUTLINE

2.11 The Basis of the Tax
2.12 Residence of Individuals
2.13 Residence of Corporations
2.14 Nature of Income
2.15 Source of Income
2.16 Taxable Income
2.17 Withholding Taxes
2.18 Branch Profits Tax
2.19 Undistributed Profits Tax on Private Companies
2.110 Unilateral Double Taxation Relief
2.111 Double Tax Treaties

2.2 RATES OF TAX

2.21 Individuals
2.22 Companies
2.23 Withholding Taxes

2.3 ASSESSABLE INCOME

- 2.31 Generally
- 2.32 Business Income
- 2.33 Dividends
- 2.34 Interest
- 2.35 Royalties
- 2.36 Salaries and Wages
- 2.37 Capital Gains
- 2.38 Capital Gains in respect of Property acquired after 19 September 1985
- 2.39 Trading Stock
- 2.310 Exempt Income

2.4 ALLOWABLE DEDUCTIONS

- 2.41 Losses and outgoings incurred in gaining or producing the Assessable Income
- 2.42 Losses of a Capital Nature
- 2.43 Repairs
- 2.44 Depreciation
  - 2.441 Depreciation Generally
  - 2.442 Rates of Depreciation
  - 2.443 Sales of Depreciated Assets
- 2.45 Bad Debts
- 2.46 Losses of Previous Years
- 2.47 Group Losses
- 2.48 Gifts and Donations

2.5 PARTICULAR PROVISIONS AFFECTING SPECIFIC BUSINESSES

- 2.51 General Mining Operations
- 2.52 Petroleum Mining Operations
- 2.53 Timber Operations
- 2.54 Primary Production (Farming) Operations
- 2.55 Films
- 2.56 Notional Profit Assessments
  - 2.561 Film Business Controlled Abroad
  - 2.562 Non-resident Insurers
  - 2.563 Non-resident Ship Owners
- 2.57 Life Assurance Companies
- 2.58 Pension and Superannuation Funds
- 2.59 Australian Businesses Controlled Abroad
- 2.510 Businesses carried on partly in and partly out of Australia

2.6 TAXATION TREATMENT OF PARTICULAR ENTITIES

- 2.61 Individuals
  - 2.611 Salary and Personal Services Income
  - 2.612 Pay as you earn tax collections and provisional tax
  - 2.613 Concessional Allowances
- 2.62 Partnerships
- 2.63 Trusts
- 2.64 Companies
  - 2.641 Public and Private Companies
  - 2.642 Private Company Undistributed Profits Tax
  - 2.643 Inter-company Dividend Rebates
  - 2.644 Operation of the Imputation System

2.7 WITHHOLDING TAXES ON PAYMENTS TO NON-RESIDENTS AND BRANCH PROFITS TAX

2.71 Withholding Taxes on Dividends
2.72 Withholding Taxes on Interest
2.721 Withholding Tax
2.722 Exclusion for Bearer Debentures
2.723 Exclusion for Borrowings by Governments or Government Authorities
2.73 Withholding Tax on Royalties
2.731 General Principles
2.732 Definition of Royalties
2.733 Effect of Treaties
2.74 Branch Profits Tax

2.8 TAX RETURNS, PAYMENT OF TAXES, OBJECTIONS AND APPEALS

2.81 Fiscal Year
2.82 Tax Returns
2.83 Assessment of Tax
2.84 Payment of Taxes
2.85 Individual P.A.Y.E. Instalments and Provisional Tax
2.86 Quarterly Instalments of Company Taxes
2.87 Objections and Appeals
2.88 Anti-Avoidance Provisions

2.9 TAX INCENTIVES

2.91 General Outline
2.92 Research and Development
2.93 Investment Allowance
2.94 Scientific Research
2.95 Other Tax and non-Tax incentives

3. OTHER FEDERAL TAXES

3.1 CUSTOMS DUTIES

3.11 General Outline
3.12 Basis of Valuation
3.13 Brussels Classification of Goods
3.14 Rates of Duty
3.15 Economic and Tariff Policies

3.2 SALES TAX

3.21 General Outline
3.22 Classes of Taxpayer
3.23 Classification and Rates
3.24 Exemptions
3.25 Economic Policies

3.3 ESTATE AND GIFT DUTIES

4. STATE TAXES

4.1 PAYROLL TAXES

4.11 General Outline
4.12 Collection
4.13 Incentives through Pay-roll Tax Rebates

4.2 STAMP DUTIES

4.21 General Outline
4.22 Traditional Taxes on Documents
4.23 Transaction Taxes

4.3 FINANCIAL INSTITUTIONS DUTY

4.31 General Outline

4.4 DEATH AND GIFT DUTIES

4.41 State Death Duties
4.42 State Gift Duties

4.5 LAND TAX

4.51 General Outline
4.52 Foreign Land Holders

5. MUNICIPAL TAXES

1. GENERAL BACKGROUND

1.1 INTRODUCTION

This paper is intended as a very general outline of the Australian taxation system with an emphasis on those provisions affecting foreign entities carrying on business or investing in Australia.

1.2 COMMONWEALTH AND STATES

Australia is a federation of six states and two internal territories. There are three levels of government, the Commonwealth or Federal government, the State or Territory governments and Local or Municipal government. Taxes are imposed by each level of government. By far the most significant taxes, particularly to foreign enterprises, are those imposed by the Federal government.

The Federal government raises some 80% of the total revenue raised by Australian governments, principally through Income Tax, Customs and Excise Duties, and Sales Tax.

The States raise revenue mainly through Payroll Taxes, Stamp Duties and Land Taxes. Before 1942 the States and the Federal governments each levied their own income tax but by an agreement in that year the States ceded to the Commonwealth their right to impose income tax and received in return a proportion of the revenue raised by the Federal government, broadly in proportion to the population of each State. This agreement between the Commonwealth and the States was revised in 1976. By arrangements made in that year, the States received a specific proportion of the net income tax collected from individuals resident in each state and in 1977 the States were granted the power to levy their own income tax or to grant a rebate of a proportion of the federal income tax to residents of their State. None of the States have shown any enthusiasm for levying their own income tax in addition to the federal income tax and it seems unlikely to be levied in the near future. Such additional State income tax may only be levied on the income of individuals and not on that of companies.

The Municipal authorities (town and rural district councils) levy a property tax (known usually as municipal rates) based on the value of properties within their municipality.

1.3 OUTLINE OF FEDERAL TAXES

1.31 Income Tax

The principal Federal tax is income tax which raises approximately 70% of the total revenue raisings of the Federal government and approximately 60% of the total of all revenue raised by governments at all levels in Australia.

The tax is imposed on the worldwide income of individuals and corporations who are residents of Australia and on the income of non-residents having an Australian source.

The rate of tax for individuals rises on a five step scale from zero to 25%, then to 30%, to 46%, to 48% and thence to a maximum marginal rate of 60%. In addition, a 1% Medicare Levy is imposed with no upper limit. The proposed new rate structure is set out in Annexure One. The income tax of corporations is at a flat rate of 46%. This is to rise to 49% in the income year 1986-87.

Withholding taxes are payable on interest and dividends paid by residents to non-residents and a quasi-withholding tax is payable in respect of royalties paid to non-residents.

1.32 Customs and Excise Duties

Customs duties are levied on goods imported into Australia and account for about 5% of the Federal government's revenue. Excise duties are charged on the production of alcoholic liquor and tobacco and, including the crude oil and L.P.G. duties, account for 14% of the Federal government revenue.

Customs duties in particular, as well as providing a means of raising revenue, are extensively used as a means of protection for Australian manufacturing industries and as a means of economic management.

1.33 Sales Tax

Sales tax is a wholesale sales tax, a single stage tax designed substantially to fall on sales to retailers by manufacturers and wholesalers. It is imposed on the last wholesale sale in the distribution chain which is usually the sale from wholesaler to retailer. It is currently proposed that the standard rate of tax be 20% with a rate of 30% applying to luxury goods, and a rate of 10% or zero rate for more essential goods. Currently the upper rate is 32.5%.

The tax accounts for some 9% of all Australian government revenue raisings.

1.34 Estate and Gift Duties

The Federal Government no longer levies these duties.

These duties were formerly levied but their imposition ceased on 1 July, 1979.

1.4 STATE TAXES

1.41 Payroll Taxes

This is a tax of 5% on salaries and wages paid above a specified exemption level which ensures that the tax is payable by all employers having more than 6 to 8 employees. It accounts for approximately half of the State revenue raisings.

1.42 Stamp Duties

Stamp duty is imposed by the States both on the traditional basis of a duty on documents such as property transfers, cheques and agreements and in addition on transactions such as loan securities and rental and instalment payments, whether or not a basic document exists in respect of such transactions. The stamp duty accounts for about one-quarter of State revenue raisings.

1.43 Death Duty

The states traditionally imposed death duties or probate duties at rates rising to about 27% on the estates of deceased persons dying domiciled in a particular state or owning property situated in a particular state.

However, no State currently imposes death duty.

1.44 Land Taxes

This is a tax levied by State governments at rates of up to 3% on the unimproved capital value of land, with exemptions for land used in primary production and for all but the most expensive homes. In substance, therefore, it is a tax on commercial and industrial real estate and rental housing. It accounts for only about 10% of state revenue receipts, or in all some 2% of total Australian revenue raisings.

1.5 OUTLINE OF MUNICIPAL TAXES

Local government or Municipal authorities, i.e. city, town, shire or rural district councils, charge a property tax calculated at a set percentage of the value of all properties within the council's area. As a general indication of the level of rates, they range from 0.5% to 3% annually of the value of the property, although there can be substantial variations of this figure. The rates will generally be at a lower percentage figure in cities and more highly developed areas.

2. FEDERAL INCOME TAX

2.1 GENERAL OUTLINE

2.11 The basis of the tax

Income tax is imposed under the provisions of the Income Tax Assessment Act 1936 (the "I.T.A.A.") and the rates of tax are fixed by the annual Income Tax Acts. The Acts are administered by the Commissioner of Taxation.

Under these Acts four separate taxes are imposed:

(a) an income tax levied on the income of individuals and companies;

(b) a withholding tax deducted from dividends and interest paid by residents to non-residents;

(c) an undistributed profits tax levied on part of the undistributed income of private (closely held) companies; and

(d) a branch profits tax levied on all Australians incomes of non-resident companies in addition to the basic income tax.

Under the current proposals to be implemented there will be a Fringe Benefits Tax with operation from 1 July, 1986 and the Undistributed Profits Tax is expected to be removed with the introduction of the company imputation system on 1 July, 1987.

Of the above taxes the one of overwhelming significance is the Income Tax. Income tax levied against individuals accounts for approximately 51% of all Australian revenue raisings and income tax levied on companies accounts for approximately 10% of total Australian revenue raisings. Withholding tax on dividends and interest account for about 0.7% of revenue raisings. Undistributed profits tax on companies raises very little revenue. It is mainly a device to ensure that private companies distribute dividends to individual shareholders who in turn will bear income tax on that distribution. The branch profits tax also contributes relatively little revenue.

Income tax is imposed on the worldwide income of residents, both companies and individuals, but is subject to unilateral and treaty provisions for double taxation relief. Non-residents are liable to tax only on income having an Australian source.

The critical concepts involved in the imposition of the income tax are therefore:

1. The principles determining the residence of individuals and corporations.

2. The extent of the concept of income.

3. The principles involved in determining what income has an Australian source.

We will consider each of these elements in turn.

2.12 Residence of Individuals

A resident individual is a person who resides in Australia and is deemed to also include:

(a) a person whose domicile is in Australia unless the Commissioner is satisfied that his permanent place of abode is outside Australia; and

(b) a person who has actually been in Australia continuously or intermittently during more than one half year of income unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia.

The general meaning of the word "resident of Australia" is to be determined from decided cases. The following basic principles emerge from the cases:

1. A person resides where he has his usual or settled place of abode.

2. A person may reside in more than one place.

3. It is not necessary to intend to remain in a place permanently to be a resident.

4. If a person maintains a home in Australia and spends some significant part of the year here he may be regarded as a resident.

5. The whole of the surrounding circumstances and the person's manner of life and conduct of his business are relevant in

determining whether as a matter of fact he is a resident of Australia.

In addition to the general meaning of the term, a person may be a resident by falling within one of the two statutory extensions of the term.

Under the first of these, resident includes a person who is domiciled in Australia unless the Commissioner is satisfied that his permanent place of abode is outside Australia. It has recently been held that "permanent" in this context means something less than that sufficient to indicate a change of domicile and indicates an intention, for the time being, to reside in a place for an indefinite period.

The second of the statutory extensions automatically deems a person who has been in Australia for more than half the year of income to be resident of Australia unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia.

The extent of these definitions gives rise to problems of dual residence which are only in part resolved by the double tax treaties to which Australia is a party.

2.13 Residence of Corporations

By the statutory definition a corporation is a resident of Australia in one of three circumstances:

(a) if it is incorporated in Australia;

(b) if it has its central management and control in Australia;

(c) if it carries on business in Australia and has its voting power controlled by shareholders who are residents of Australia.

The question of "central management and control" is determined by the general law and follows general English law principles. These indicate that:

1. A company's business is carried on where the central management and control actually abides, which is a question of fact to be determined by the course of the company's management, business and trade.

2. The conduct of substantial business on the company's behalf is not enough if the control of those operations and of general affairs of the company is to be found elsewhere.

3. A significant part of the central management and control may be located in more than one country.

4. The most significant single factor is where the board of directors meets and actually takes the decisions relating to the central management and control of the company's business.

Again it is clear that situations of dual residence can readily occur.

2.14 Nature of Income

There is no statutory definition of the term "income" and its meaning must be determined by the general law. The concept of income clearly includes:-

(a) income by way of remuneration for personal services, salary and wages;

(b) income from the carrying on of a business; and

(c) income from capital invested such as rents, interest, dividends and royalties.

Income will not include receipts of a capital nature. In determining the question of what constitutes income the cases indicate that regard should be had to business usages and concepts.

Regard is often had to English court decisions on the same issue and Australian court decisions on the concept of income are generally in accordance with the English decisions.

2.15 Source of Income

For income of a non-resident to be subject to Australia tax it must have a source in Australia.

The term "source of income" is not defined and its meaning must be deduced from the cases. Generally speaking the determination of the source of income is a pure question of fact. In Nathan's case it was said:

> "the Legislature in using the word 'source' meant not a legal concept but something which a practical man would regard as a real source of income ... the ascertaining of the actual source is a practical hard matter of fact".

These fine words do not greatly help in determining the source of any particular item of income.

General business activities, trading in goods or commodities, the provision of services and the like may be regarded from the point of view of the economic activities which lead to the derivation of the income or from the point of view of the legal documents or agreements giving rise to the immediate rights to receive the income. The decided cases are largely examples of the weighing up of the relevant importance of the places where the actual activities are carried on, the place where any relevant contracts are made and the place where contracts are performed, and result in either the exclusive attribution of the income to one country or the apportionment of the income between the countries having the most relevant connection with the generation of that income.

Little significance is attached to the U.S. concept of the place of passage of title to goods sold.

In addition to the general law provisions relating to the source of business income specific provisions extend the general concept of source in relation to dividend, interest and royalty income and these will be dealt with in considering these forms of income later in this paper.

2.16 Taxable Income

In Australia, income tax is levied not on a net profit concept but on the "taxable income" which is the amount remaining after deducting from the "assessable income" all "allowable deductions".

Assessable income includes all gross income according to ordinary concepts and in addition certain items which would otherwise be capital such as profits arising from the sale of property which is sold within 12 months of acquisition or the capital gain arising from the sale of property acquired after 19 September 1985.

Allowable deductions include general business outgoings, depreciation, certain incentive deductions including investment allowance, charitable gifts, and deductions for certain capital investments in agriculture and extractive industries such as mining and petroleum.

Although the net profit of an enterprise calculated by ordinary accounting principles is not the determinant of taxable income, the taxable income in most cases is close to the accounting net profit figure adjusted for specific items which are specifically included in or excluded from the tax concept of assessable income or included in or excluded from the tax concept of allowable deductions.

2.17 Withholding Taxes

A withholding tax strictly so called applies to payments by Australian residents to non-residents of corporate dividends and interest, and a quasi withholding tax applies in relation to payments of royalties.

Dividends paid by a resident to a non-resident corporation are subject to withholding tax at the general rate of 30% reduced to 15% in the case of countries with which Australia has a comprehensive double tax treaty, unless the non-resident company receiving the dividend also carries on business at or through a permanent establishment in Australia in which case the dividend income is subject to tax on an assessment basis at ordinary corporate rates.

Interest paid by residents to a non-resident corporation is subject to withholding tax at the general rate of 10% (which applies to payments to residents of both treaty and non-treaty countries) subject to a similar exception for non-resident companies having a permanent establishment in Australia.

Royalties are taxed on a quasi withholding basis. They are subject to tax on an assessment basis at the corporate rate of 46% (but see paragraph 2.18 below as to the operation of the branch profits tax). Australian residents paying royalties to non-resident corporations are required to retain from the amount due to the non-resident and to pay to the Australian revenue authorities 46% of the gross amount of the royalty payment or such lesser amount as the revenue authorities determine. The non-resident recipient is then entitled to file an income tax return and have the actual amount of tax payable determined on an assessment basis. This is advantageous if the expenses of earning the royalty income would reduce the net tax below the amount paid to the revenue authorities. The authorities in determining the amount to be retained will often receive evidence as to the expenses involved in earning the royalty income, with a view to agreeing on a retention of less than 46% of the gross amount of the royalty payment to be made.

2.18 Branch Profits Tax

Since 1 July, 1976 an additional tax has been imposed on the income of non-resident companies. In government statements this has been called a "branch profits tax" although it is not actually restricted to profits arising from the operation of a branch. The declared object of the tax was to impose a tax on branch profits which would offset the advantage enjoyed by foreign companies carrying on business through a branch in Australia rather than through an Australian incorporated subsidiary in not being liable for dividend withholding tax on the remission of branch profits to their home country. The tax is imposed at a rate of 5% on the reduced taxable income of the non-resident company.

The reduced taxable income is its taxable income calculated on ordinary principles, less income arising from certain businesses (where the taxable income is deemed to be a proportion of the gross income, namely film businesses and non-resident ship operations), net dividends received and less certain adjustments in relation to life assurance companies.

In respect of most non-resident companies the effect is to increase the corporate tax rate from 46% to 51%. It is not yet clear what will happen in 1986-87 when the company tax rate increases to 49%. Probably this will depend upon the changes that are made to the dividend withholding tax system and the manner in which the imputation system is to apply to non-residents.

2.19 Undistributed Profits Tax on Private Companies

For tax purposes corporations are either private companies or public companies. A public company is generally one which is listed on a stock exchange either in Australia or overseas and meets certain tests requiring a broad spread of shareholding. A subsidiary of a public company is itself a public company. Other corporations (which are generally more closely held) are classified as private companies.

With a view to avoiding what is regarded as an undesirable accumulation of income in the hands of private companies, private companies are obliged to make a distribution to shareholders of a required proportion of the net income after tax. The proportion required to be distributed is 20% of net general business income, 90% of net interest, rent or public company dividends and 100% of all private company dividends.

With the introduction of the imputation system, it is likely that the undistributed profits tax will be abolished.

2.110 Unilateral Double Taxation Relief

Australia currently grants an exemption for foreign source income received by residents in respect of which tax has been paid in the foreign country of source. This exemption does not apply to foreign source dividends and, in addition, interest and royalties received from countries with which Australia has a comprehensive double tax treaty where the interest or royalties (as the case may be) are subject to rate limitation under the relevant treaty. These items are dealt with on a foreign tax credit basis.

In determining whether particular items of income have a foreign source, Australian domestic law is applied rather than the law of the other country in which the income is taxed.

The Government currently proposes to abandon this system of exemption in favour of a foreign tax credit system with operation in respect of all income derived on or after 1 July, 1987.

The foreign tax credit system will provide for a credit of the lesser of the foreign tax paid and the Australian tax paid in respect of the same income. Deemed source rules will be introduced to determine whether a particular item has a foreign source such that a resident will be entitled to foreign tax credit.

In addition, the rebate in respect of dividends received by resident companies from non-resident companies will cease to apply and dividends received from non-resident companies will fall under the existing foreign tax credit system contained in our s.45.

2.111 Double Tax Treaties

Australia has concluded comprehensive double tax treaties with 21 countries being Belgium, Canada, Denmark, France, Germany, Greece, Ireland, Italy, Japan, Korea, Malaysia, Malta, The Netherlands, New Zealand, Norway, the Philippines, Singapore, Sweden, Switzerland, United Kingdom and U.S.A. All of these are generally based on either the 1963 on the 1977 O.E.C.D. draft convention.

In addition to the general treaties, Australia has concluded limited treaties relating to international air transport income with France, Italy and India.

The general pattern of the comprehensive treaties based on the O.E.C.D. draft is to effect a rate of limitation on the country of source of 15% in respect of dividend income, 10% in respect of interest income and 10% or 15% in respect of royalty income, with the usual provisions that industrial or commercial profits of an enterprise of one country arising from the operations of a permanent establishment in the other country may be taxed at ordinary assessment rates in the other country on so much of the income as is attributable to the permanent establishment, including dividend, interest and royalty income effectively connected with the permanent establishment. Other industrial and commercial profits may be taxed only in the country of residence.

The treaties generally provide that in respect of dividend, interest and royalty income the country of residence will grant a credit for the taxes paid in the country of source.

2.2 RATES OF TAX

2.21 Individual Tax

In the year 1984-85 the general rate of tax for individuals is 30% subject to a zero rating for the first $4,595 of income the highest marginal rate is 60% and is reached at $35,788). The rates for subsequent years are set out in Annexure A.

Special rules apply in relation to individuals under 18 years of age who are not in full time employment. They are normally taxed at the middle rate of tax (46%) in respect of their unearned income where it is in excess of $416.

2.22 Companies

Corporations pay tax at a flat rate of 46% of their taxable income. This will increase to 49% in respect of the 1986-1987 year of income.

Non-resident corporations currently pay an additional tax of 5% on their reduced taxable income, thus normally resulting in non-resident corporations paying a flat rate of 51% of their taxable income.

In addition, where private companies do not make a sufficient distribution of their after tax taxable income to their shareholders, they pay tax at a flat rate of 50% of the difference between the amount that they were required to distribute to their shareholders and the amount that they have actually distributed to their shareholders. This Undistributed Profits Tax is likely to be abolished with the introduction of the imputation system in the 1987-1988 year of income.

2.23 Withholding Taxes

Withholding tax on dividends is at the general rate of 30% reducing to 15% in the case of payments to residents of countries with which Australia has a double tax treaty.

Withholding tax on interest is at the rate of 10%, and is unaffected by the double tax treaties.

2.3 ASSESSABLE INCOME

2.31 Generally

The assessable income of the taxpayer is defined to include the gross income derived directly or indirectly from all sources whether in or out of Australia in the case of a resident taxpayer, and the gross income derived directly or indirectly from all sources in Australia in the case of a non-resident taxpayer, but does not include exempt income. In effect, this brings within the assessable income of the taxpayer all receipts which are either income by ordinary general law concepts or which are deemed to be income for the purposes of the I.T.A.A. What is income has been the subject of extensive judicial consideration and it is probably best considered in the context of the principal types of income.

2.32 Business Income

An activity will be regarded as a business if it is carried on in accordance with ordinary commercial principles which are characteristic of trading in the line of business in which the businessman ventures his capital. The I.T.A.A. generally brings into assessable income all gross receipts of the business although in some cases net profit from particular activities only form part of the business income. Generally however the I.T.A.A. looks to gross receipts rather than net profits.

2.33 Dividends

The assessable income of a shareholder in a company includes, in the case of a resident shareholder, dividends paid to him by the company out of profits derived by it from any source and, in the case of a non-resident shareholder, dividends paid by the company to the extent to which they are paid out of profits derived by it from sources in Australia.

Dividends are defined to include:

(a) any distribution made by a corporation to any of its shareholders whether in money or other property;

(b) any amount credited by a corporation to a shareholder in his capacity as a shareholder; and

(c) stock dividends and bonus shares (except those paid up out of profits arising from the sale or revaluation of assets not acquired for resale at a profit).

Dividends do not include moneys paid or credited to a shareholder or property distributed to a shareholder where the payment or distribution is debited against a share premium account nor do they include distributions representing a return of the corporation's actual paid up capital (as opposed to reserves in excess of that amount).

In determining the source of the profits from which the dividend has been paid it is necessary to have regard to the location of the business of the company which actually paid the dividends. If that business is in Australia the dividends may be regarded as having an Australian source notwithstanding the fact that the shares may be registered on an ex-Australian register. However, when the company paying the dividends is itself a holding company, one may not look to where the business of its subsidiary was carried on to attribute a source to the profits from which the dividends were paid by the holding company. In that event one may look to the location of the central management and control of the holding company to determine the source of the profits paid by the holding company. This is because it would be the operation of the central management and control that would have lead to the investment in the subsidiary. In effect that is where it carries on its business.

As from 1 July 1987 a company imputation system will apply with the result that the taxation of resident individual shareholders will atler significantly. The consequences of this change are set out at paragraph 2.644.

2.34 Interest

Apart from the specific provisions of s.25(2) of the I.T.A.A.. the source of interest income is determined by the general law. Early cases suggested that the source of interest was the place where the deed giving rise to the interest obligation was located in the case of a speciality debt or the residence of the debtor in the case of interest payable under a simple agreement. Subsequent cases have indicated that one must look beyond the actual written obligations to the transactions which gave rise to the interest namely the making available of the credit and the provision of the funds. The place where payment is to be made may also be relevant. The source of the income of the borrower which is used to pay the interest is not a relevant factor.

Section 25(2) specifically provides that interest on loans secured by mortgage of Australian property shall be deemed to have an Australian source unless the interest is paid outside Australia to a non-resident on debentures issued by a company outside Australia.

2.35 Royalties

The word royalty is used in the I.T.A.A. in two senses, firstly in its ordinary meaning and secondly in the extended meaning specified in s.6(1).

Royalty in its ordinary meaning refers to payments such as those made to holders of patents or copyrights under licences to use those rights and to payments made to mineral owners for rights to work the minerals based on the amount of minerals won.

Section 6(1) defines royalties to include:

> "payments whether periodical or not ... paid or credited as consideration for:
>
> (a) the right to use copyrights, patents, trademarks, designs, secret formulae or other like property or rights;
>
> (b) the right to use industrial, commercial or scientific equipment;
>
> (c) the supply of scientific, industrial or commercial knowledge or information;
>
> (d) the supply of any assistance ancillary to and as a means of enabling the enjoyment of the foregoing rights, knowledge or information;
>
> (e) the right to use motion picture films, television films, videotapes or broadcasting tapes;
>
> (f) a partial or total forbearance in respect of exercising or otherwise making use of the rights or actions dealt with in (a) to (e)."

Section 26(f) provides that the assessable income of a taxpayer will include amounts received by way of royalty other than amounts which are only deemed to be royalties because of the expanded definition and which are not income within the ordinary meaning of that expression.

Section 6C deems an Australian source for royalties where they are paid or credited to non-residents by an Australian resident or by a non-resident acting through a permanent establishment in Australia.

The result of all these provisions is broadly that:

1. Royalties within the ordinary meaning of that term form part of the assessable income whether they are income within the ordinary meaning of that term or capital.

2. Royalties within the extended definition of that term form part of the assessable income if they are of an income nature within the ordinary meaning of that term.

3. Royalties whether within the ordinary or the extended meaning of the term are deemed to have an Australian source if they constitute outgoings of an Australian business.

4. It does not matter whether the royalties have been paid if an enforceable obligation has arisen which has been reflected in the accounts of the Australian entity then the royalty is included in the assessable income of the payee.

Royalties paid to non-residents are subject to a quasi withholding tax described in paragraph 2.79 below.

2.36 Salaries and Wages

All remuneration for services rendered whether received as an employee or as an independent supplier of personal services is income within the ordinary meaning of that term and forms part of the assessable income. Salaries or wages are generally assesable only in the year of receipt.

In addition s.26(e) includes in the assessable income the value to a taxpayer of all allowances, gratuities or benefits given or granted to him in relation to his employment.

This has given rise to some difficulty in determining the value to the taxpayer of such common employees benefits as use of company vehicles, provision of housing or low interest loans for housing purposes. It is clear that the amount brought to tax is not the cost to the employer of such benefits but only their value to the taxpayer, which can be difficult to calculate.

Because of the difficulties associated with taxing the benefits received the government proposes to introduce with operation from 1 July 1986 a fringe benefits tax which will be imposed upon the employer rather than the employee and which will be imposed at a rate of 49%, i.e. the highest marginal rate. Items falling within the fringe benefits tax will be excluded from the operation of s.26(e).

Payments in consideration of covenants to refrain from following a specified line of employment are generally of a capital nature.

There are special provisions relating to taxation of benefits under employee share acquisition schemes.

Generally, the source of an employee's salary income is to be determined as a matter of fact but will ordinarily be the place where the services are performed which give rise to the right to remuneration.

An eligible termination payment is assessable in full to the extent to which it relates to service after 30 June 1983, but is subject to a maximum rate of 30%. In the case of payments received at age 55 or later the first $50,000 is subject to a maximum tax of 15%. That part of an eligible termination payment that relates to service before

30 June 1983 is subject to tax under s.26(d) which includes only 5% of the lump sum received in assessable income. Payments upon retirement in lieu of Long Service Leave or holiday pay will be taxed in full at the standard rate of tax unless it relates to long service leave attributable to service prior to 15 August 1978 which part qualifies for the same treatment as under s.26(d).

Most retirement payments including redundancy payments and superannuation fund payouts will constitute eligible termination payments.

2.37 <u>Capital Gains</u>

Until recently realised capital gains in general have not automatically been subject to taxation. There were two exceptions to this position being capital gains caught by s.25A and capital gains caught by s.26AAA.

Section 25A provides that the assessable income of a taxpayer shall include profit arising from the sale by the taxpayer of any property acquired by him for the purposes of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme.

This section (or more correctly its predecessor s.26(a)) has been the subject of extensive case law. The section, contrary to the usual operation of the provisions of the Act, brings to charge only the net profit arising from the transaction.

The critical factor in determining taxability under the first limb of the section is the dominant subjective intention of the taxpayer at the time the property was acquired, which must be the purpose of profit-making by sale.

With a view to avoiding disputes which so often arise as to establishing the intention of the taxpayer, s.26AAA was introduced some years ago. This brings into the taxpayer's assessable income any profit arising from the sale of property within twelve months of its purchase, irrespective of the taxpayer's intention. The section provides that a sale made in pursuance of an option granted within the twelve months period shall be deemed to have been made within the twelve months period. Trading stock or plant the subject of depreciation are not within the ambit of the section.

Recent amendments have overcome a loophole in this section which could be exploited by the sale of shares in a company owning the property rather than the property itself.

2.38 <u>Capital Gains in respect of Property acquired after 19 September 1985</u>

In respect of property acquired after 19 September 1985, a general capital gains tax will apply. The tax will only apply upon the realisation of property. Property acquired on or before 19 September 1985 will, upon realisation, be subject to the pre-existing law.

The existing s.26AAA will be retained but s.25A will be abolished.

Where property is held for more than 12 months, the asset cost base will be indexed in accordance with C.P.I. movements over the period of ownership so that only the "real" gain will be taxed.

Unlike the position in many overseas countries, the tax will be levied at ordinary rates of personal and company income tax rather than at a flat rate of tax. This could, in some cases, produce a "bunching effect" and it may be that the legislation provides for an election to spread the capital gain over a number of years.

Anti-avoidance provisions will apply to transactions designed to avoid a transfer at market value if a transfer is the overall effect of the transaction.

Exemptions from the operation of the capital gains tax will include:

(a) a taxpayer's principal residence and reasonable curtilage;

(b) superannuation policies;

(c) life assurance policies;

(d) motor vehicles;

(e) other personal use items (such as furniture) whose disposal value in the year is below $5,000.

In addition, institutions that are exempt from income tax will be exempt from capital gains tax.

It is expected that the tax will apply to non-residents (subject to any double tax treaty protection) in respect of property located in Australia. This may enable some flexibility in transactions between non-residents to minimise the impact of the capital gains tax.

Nominal Capital losses (i.e. losses which are not adjusted for inflation) will be allowed as a deduction against realised capital gains or carried forward until realised capital gains are derived.

The death of an individual taxpayer will not constitute a realisation but special rules will apply in relation to the subsequent disposal of the property of the deceased taxpayer.

2.39 Trading Stock

As income is determined on the statutory basis of deducting allowable deductions from assessable income to determine the taxable income, rather than by looking at the accounting profit of an enterprise, specific provisions are included in the I.T.A.A. to bring to account the opening and closing values of trading stock or inventories as part of the procedure for determining a realistic annual income for tax purposes. Inventories or trading stock on hand at the end of the year may be valued on the basis of cost or market selling value or replacement price. Different items of trading stock may be valued on any of the alternative bases and a consistent basis need not be adopted in each financial year. However, the value of the items of trading stock adopted at the end of any financial year must be used as the opening value for the following financial year.

Special provisions are contained in s.31C to overcome the purchase of trading stock at excessive prices. Where the purchase price exceeds an arm's length price and the Commissioner is satisifed that the vendor and the purchaser are not dealing at arm's length, the Commissioner may substitute an arm's length purchase price at which similar goods could have been acquired in place of the transfer price used in the transaction.

Special provisions ensure that trading stock disposed of other than in the ordinary course of business are brought to account at market value.

However, reconstruction of partnerships may be effected within specified limits without bringing trading stock to account at market value.

The former provisions allowing an additional deduction to offset the effects of inflation included in the sale price of trading stock have been withdrawn.

2.310 Exempt Income

Certain forms of income, and the income of certain entities is specifically exempt from tax. Such exemptions include:

(a) the income of religious, scientific, charitable or public education institutions;

(b) the income of certain funds established for public charitable purposes;

(c) the income of certain superannuation funds (more fully discussed in para. 2.56);

(d) the remuneration of certain diplomatic officials, certain visiting sportsmen, visiting government advisers and certain foreign pension payments;

(e) income from certain gold mining operations;

(f) income which is derived prior to 1 July, 1987 and has a foreign source according to Australian domestic law and which has borne income tax in the country of its source. This situation is adjusted where income attributable to dividends is received or a double tax agreement rate limitation applies to reduce the tax otherwise payable in the country of source.

The former exemption applying to the salaries of visiting industrial experts on short term engagements in Australia was abolished some years ago.

2.4 ALLOWABLE DEDUCTIONS

Taxable income is the balance of the assessable income remaining after deducting the allowable deductions. Having considered the principal components of assessable income we might briefly consider the principal allowable deductions.

2.41 Losses and outgoing incurred in gaining or producing the assessable income

This is the principal head of allowable deductions and basically comprises all revenue outgoings. Section 51(1) of the I.T.A.A. provides:

"all losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income shall be allowable deductions except to the extent that they are losses or outgoings of capital or of a capital, private or domestic nature or are incurred in relation to the gaining or producing of exempt income".

Hence, broadly speaking, losses are deductible if they are incurred in gaining or producing the assessable income or in carrying on a business for such purpose unless they fall within one of the three exclusions.

This general heading covers most of the items which would be ordinarily regarded as revenue outgoings. It is worth noting that:

1. Expenditure need not relate to income of the current year. Expenditure relating to present or future income is equally deductible.

2. Payments to reduce future expenditure are allowable.

3. The outgoings must actually be incurred. However, outgoings incurred are not limited to expenditure actually made, they include liabilities presently incurred and due though not yet discharged.

4. Mere provisions for liabilities yet to accrue are not deductible. In particular, provisions in respect of long service leave or annual leave are not deductible. An employer in only entitled to a deduction when such payments are actually made to the employee concerned.

5. Certain losses and outgoings which would satisfy the requirements of s.51(1) are specifically made non-deductible. These include payments in respect of fines and penalties, entertaining expenses, club subscriptions and certain leisure facilities.

2.42 Losses of a Capital Nature

Losses of a capital nature are not deductible as revenue outgoings. The basic test of what is a capital outgoing has been expressed as follows:

"The distinction between expenditure and outgoings on revenue account and on capital account corresponds with the distinction between the business entity structure or organisation set up or established for the earning of profit and the process by which such an organisation operates to obtain regular returns by means of regular outlay, the difference between the outlay and the return representing profit or loss."

Three factors were regarded as significant, namely:

1. The character of the advantage sought. If the expenditure results in the aquisition of a fixed capital asset, it is obviously of a capital nature. If on the other hand, it results in the

acquisition of an asset in the form of circulating capital which is turned over or utilised in the process of carrying on the business it will be referable to revenue.

2. The manner in which the asset is to be used. If it is to be used as part of the process by which profits are derived rather than as an element in the creation or maintenance of the profit earning entity it will not be of a capital nature.

3. The means adopted for payment. If the asset is aquired by periodic outlays covering the use of the asset during each financial period then it may be of a revenue nature. Where the outlay is calculated as a single final provision for its future use or enjoyment it will generally be capital.

In a case concerning the deductibility of payments to proprietors of retail petrol outlets made by oil companies with a view to acquiring the right to sell only their petrol through the outlet, it was pointed out that while each single payment might have been of a capital nature the large number of payments considered in toto indicated that the payments were made as part of the day-to-day market battle to maintain sales and were of a revenue nature rather than of a capital nature.

2.43 Repairs

Repairs to plant machinery and buildings used for business purposes are deductible as long as they are simply repairs involving replacement or renewal of worn out parts of the item of equipment and do not involve the replacement of the whole item or capital improvements.

Initial repairs, involving the expense incurred in putting into working order assets which were in disrepair at the time of aquisition are of a capital nature and not deductible.

2.44 Depreciation

2.441 Depreciation Generally

A deduction is allowed for depreciation of plant or articles owned by the taxpayer and used during the year for the production of assessable income.

The restriction to plant or articles means that buildings as such are not depreciable. However specialised buildings or parts of buildings which may be more properly regarded as part of an industrial plant rather than a mere housing or shelter for the plant may be regarded as plant rather than buildings.

Additionally, special provisions enable an effective amortisation of the cost of new buildings (but not existing buildings), where the building satisfies certain requirements.

Depreciation can only be claimed by the owner of an asset. In the case of leased property the lessor is the owner who is entitled to depreciation.

However, in the case of hire-purchase transactions, the purchaser or user is normally regarded as the owner for depreciation purposes.

2.442 Rates of Depreciation

The I.T.A.A. indicates that the rate of depreciation should be fixed in relation to the estimated effective life of the unit of property. In practice the Commissioner prescribes standard rates applying to the use of plant on a one shift basis. Where a special circumstances apply or the plant is used for longer working hours higher rates may be claimed.

At the election of the taxpayer depreciation may be claimed either on a prime cost or straight line basis at a percentage which will write off the value over the estimated life of the plant, or on a diminishing value method where the annual percentage write off is one and a half times the prime cost rate.

Some typical rates are as follows:

Item	Prime Cost Percent	Diminishing Value Percent
Computer System Hardware	20	30
Earth Moving Plant	15	22.5
Motor Vehicles	15	22.5
Oil Refining Plant	10	15
Office furniture	5	7.5
Ships	6.25	9.375
Steel Furnace	10	15
Wharves	2.5	3.75

The basis of depreciation initially used may be changed once by notice of election, and once changed the new method must be used for all plant subsequently acquired.

From time to time these rates may be accelerated to encourage investment in productive plant.

2.443 Sales of Depreciated Assets

When an asset which has been depreciated is sold, destroyed or otherwise disposed of, then a balancing adjustment must be carried out.

Where the consideration received exceeds the written down book value of the asset then so much of that excess as does not exceed the depreciation which has been claimed or was claimable shall be included in the taxpayer's assessable income in the year of disposal.

Any amount in excess of the depreciation previously allowed as a deduction is treated as a capital gain and will be taxed as such if the asset was acquired after 19 September, 1985.

There is a provision available to elect not to include the recouped depreciation in the assessable income in the year of disposal but rather to treat that recouped depreciation as a reduction of the cost of replacement assets purchased.

This will reduce the depreciation available on those assets in future years.

Where the consideration received is less than the written down book value of the asset that deficit will be an allowable deduction. Anti-avoidance provisions exist to overcome manipulation of the right to a deduction.

2.45 Bad Debts

Three conditions must be satisfied for a bad debt to be allowable as a deductions under s.63 of the I.T.A.A. These are:

(a) the debt must be bad in the sense that the taxpayer must have genuinely reached a conclusion that the debt is unlikely to be recovered;

(b) the debt must be written off as a bad debt during the year of income by some form of written record or entry in the books of account; and

(c) the debt must have previously formed part of the taxpayer's assessable income or must be in respect of money lent by a money lender in the ordinary course of that business.

Provisions created for doubtful debts are not deductible. There are complicated provisions relating to the writing off of bad debts by companies. These were introduced to avoid what was regarded as undesirable trafficking in loss companies with bad debts and are similar to the loss company provisions referred to in the next section.

2.46 Losses of Previous Years

Generally, revenue losses incurred may be carried forward and deducted from future income for a seven year period. Provision also exists for the transfer of losses between members of the one wholly owned group of companies (see paragraph 2.47 following). Losses cannot be carried back or, apart from the transfer of losses amongst a wholly owned group, transferred to associated taxpayers. The seven year restriction does not apply to losses arising from primary production business or from film investments which are dealt with separately.

There are complicated provisions restricting the availability of deductions for past losses by corporations where there has been a significant change in the shareholding between the year when the loss was incurred and the year when the deduction for past losses is sought. These were introduced to counter what was regarded as undesirable trafficking in loss companies whereby shareholders of a company which had incurred losses were able to sell the shares in that company with the benefit of the revenue losses for a significant consideration. A company's losses may now only be carried forward if it meets either a continuing ownership test or a continuing business test.

To meet the continuing ownership test, shares carrying more than 50% of all voting, dividend and capital distribution rights must be beneficially owned at all time during the year in which the loss is sought to be recouped, by one or more persons who at all times during the year of loss, held any shares (not necessarily the same shares) carrying similar rights.

In addition to these basic tests there are complicated provisions giving the Commissioner power to disqualify the company from carrying the loss forward where options or rights exist in respect of the shares held by former owners and which may enable the new owners to gain control of that shareholding or where transactions have been entered into purely to take advantage of the availability of carrying forward losses. The complicated nature of these provisions makes it essential to obtain specific advice in connection with any arrangements to take over companies which are claimed to have the benefit of carried forward losses.

The continuing business test only applies if the continuing ownership test is not met. To meet the continuing business test the company must carry on at all times in the year in which the loss is sought to be recouped, the same business as was carried on immediately before the change of ownership of the shares which would prevent it from satisfying the continuity of ownership test. The test will not be met if the company has derived income from a business or transaction of a kind which it had not carried on or entered into before the change. The tests are expressed in imprecise wording which make it difficult to be certain in any specific case that the tests have been met.

2.47 Group Losses

A resident company which incurs losses may now "transfer" those losses to another resident company provided that one company wholly owns the other or that they are both wholly owned by the one holding company during the whole of the relevant year of the loss and the year of income.

Both the transferor company (loss company) and the transferee company (income company) must be Australian resident companies.

This may provide significant planning opportunities for New Zealand entities wishing to carry out an Australian takeover or expansion.

Any subvention payment by the transferee to the transferor company will be non-assessable.

The group loss provisions apply to losses incurred in relation to the year ending 30 June 1985 and subsequent years.

2.48 Gifts and Donations

Gifts made by the taxpayer during the year of income to any of a long list of funds, societies or institutions, generally of a charitable nature, set out in the I.T.A.A. are allowable deductions. Gifts must be of money or of property other than money which was purchased by the taxpayer within 12 months preceding the making of the gift. The restriction as to purchase within 12 months does not apply to gifts of works of art made to an approved art gallery.

The gifts may be of any amount up to the total taxable income of the taxpayer for that year.

However, gifts in excess of the taxable income for the year cannot be carried forward and set off against the taxable income of future years.

2.5 PARTICULAR PROVISIONS AFFECTING SPECIFIC BUSINESSES

2.51 General Mining Operations

There are complex and detailed provisions relating to general mining and exploration. The benefits for the mining industry are twofold. Certain income is exempt from tax and deductions for expenditure are available which would not be normally regarded as revenue outgoings.

The exemption contained in s.23(o) grants a complete exemption for income from mining for gold or gold and copper where the value of gold is at least 40% of the total output.

The type and timing of the expenditures determines when they may be deducted (i.e. immediately or over a period of time) and against what income they may be deducted (i.e. against all assessable income or only particular types of assessable income such as net mining business income). Transitional provisions exist to deal with expenditure incurred prior to the various dates of change of regime.

The deductions available in relation to general mining are principally:

1. Expenditure incurred by a taxpayer on exploration or prospecting for minerals on any mining properties in Australia is an allowable deduction immediately but may only be deducted from net assessable income. Any excess may be carried forward indefinitely to future years when there is net assessable income available to absorb the excess expenditure. In relation to expenditure incurred on or after 1 July, 1985, a mining company will have the option (in the year of expenditure) to treat the whole of the expenditure as deductible in the year it is incurred thereby giving rise to a loss which may be transferred to members of the same wholly owned group of companies. Expenditure incurred on or before 21 August 1984 is only available for deduction against net mining income and any excess is carried forward indefinitely until such time as there is net mining income available to absorb it.

2. Deductions are allowable in respect of certain capital expenditures. The allowable capital expenditure includes expenditure on extraction and treatment plant, mine buildings on the mine site, provision of water, electricity and other services.

   Expenditure in relation to ships, railways and rolling stock roads and other facilities for the transport of minerals outside the mine site and for port facilities are specifically excluded from these provisions and are dealt with separately (see 3 below).

   Allowable capital expenditure which has not previously been recouped is deductible over the future life of the mine or a ten year period whichever is the less. Certain transitional provisions apply to expenditure incurred before August 1981.

3. Costs of mineral transportation and transport facilities outside the mine site which are excluded from the previous provisions may be spread over 10 or 20 years at the taxpayer's

election. Slightly different provisions relate to expenditure incurred before 1976.

4. There is a deduction for staff housing in the mine area and for hospital educational and other welfare facilities which may be written off over 10 years or the life of the mine.

Where mining or prospecting rights or information are transferred there are provisions which enable the transfer of such expenditures from one taxpayer to another. Such expenditure will normally retain its character and time of incurrence in the hands of the transferee.

The above is only an extremely general summary of the mining provisions of the legislation which are expressed in considerable detail.

2.52 Petroleum Mining Operations

Separate provisions apply to petroleum mining. In general similar deductions are available for exploration and prospecting expenditure, capital works at the mine site, housing and welfare facilities and transportation facilities. Generally the deductions may be written off against net assessable income and are not restricted to net petroleum mining income. This means that petroleum mining expenditure can be written off against other income of a company engaged in petroleum mining but different provisions apply in relation to expenditure incurred prior to August 1981 which in general is required to be written off against net petroleum income.

In relation to expenditure incurred on or after 1 July, 1985, a petroleum mining company will have the option to treat the whole of the prospecting and exploration expenditure as deductible in the year in which it is incurred thereby giving rise to a loss which may be transferred to members of the same wholly owned group of companies.

Where petroleum mining or prospecting rights or information is transferred, there exist provisions to enable the transfer of the expenditure incurred. Such expenditure will normally retain its character and time of incurrence in the hands of the transferee.

2.53 Timber Operations

Persons engaged in "forest operations" which includes the planting or tending of trees intended for felling, will be primary producers and will be entitled to the concessions available to primary producers referred to in the next section. Timber milling operations as such do not fall within the primary production provisions.

In addition, persons engaged in "timber operations" which includes the planting and tending of trees and also the felling, transportation and milling of such trees, are entitled to certain deductions for capital expenditure on mill buildings, access roads and staff housing on the basis that their capital cost may be written off over 25 years or the estimated life of the milling operation whichever is the lesser.

2.54 Primary Production (Farming) Operations

Traditionally a number of income tax concessions have been granted to persons engaged in the business of primary production, which includes agriculture, the raising of livestock, fishing and timber operations.

In many cases the allowance of concessions in relation to primary production expenditure has led to primary production losses which could be offset against income from other sources. This lead to investment in primary production being a highly regarded tax shelter by high income earning individuals who would subsequently sell the farming property and realise a tax free capital gain.

Capital gains tax will apply to all farms acquired after 19 September 1985. In addition, losses incurred after 1 July 1986 will be quarantined against "notional farm income" and any excess will be able to be carried forward indefinitely until offset against excess notional farm income of a future year or capital gains arising from the sale of the farm or any other farming asset.

There is a special procedure for valuing natural increase of livestock which defers the tax in respect of the increase in value of the herd or flock through natural increase until the animals are sold.

Since 1981 capital expenditure on soil conservation has been able to be written off in the year it is expended.

Capital Expenditure incurred after 19 September 1985 on plant and structural improvements for water conservation and water conveyance is able to be written off over a 5 year period.

By their nature primary production receipts tend to fluctuate. Special provisions allow a smoothing of income through the use of Income Equalization Deposits.

In addition, individuals who are engaged in the business of primary production either directly or through partnerships or a trust are entitled to the benefit of averaging their income over a 5 year period. The benefit, in the form of a tax rebate, is reduced where the person derives income from sources other than primary production. In recent times the application of the primary production averaging provisions has changed regularly with the changes directed at restricting the benefits to those persons whose sole or major source of income is primary production activities.

2.55 Films

Investment in approved Australian films may currently qualify for generous income tax concessions under Division 10BA. An amount equal to 120% of the qualifying investment in the creation of the actual copyright (or an interest therein) in an eligible film may be deducted in the year in which the contribution to the cost of making the film is deposited in the Australian Film Industry Trust Account.

This deduction is only available to Australian resident taxpayers.

The deduction is allowable against all income irrespective of whether it arises from films or otherwise, but if the deduction results in a loss for taxation purposes in that particular year of income, the amount of the loss resulting from the investment in the film is deemed to be a film loss and is carried forward in to future years to be deducted only against income derived from the exhibition or disposal of interests in the copyright of an Australian film. Revenue expenses incurred in making a capital investment in an Australian film do not qualify for the 120% deduction and may only be offset against assessable income derived from films. Receipts from the film up to an amount equal to 20% of the capital contributed towards the production of the copyright in the film are exempt from income tax. Subject to this exemption amounts received from exploiting a film, either be exhibiting that film or alternatively by disposing of the interest (or part of an interest) in the copyright of the film are treated as assessable income.

An alternative treatment of capital expenditure on an Australian film is available under other provisions of the Act. This allows the expenditure to be written off over a period of two years being the year of income in which the film is completed and first used and the year following that year.

2.56 Notional Profit Assessments

Three forms of business carried on by non-residents are assessed on a percentage of their gross receipts. These provisions are based on the assumption that it may be very difficult for the country of source to determine accurately the profitability of the operations carried on within the source country.

2.561 Film Royalties Derived by Non-residents

This provision formerly provided for the payment of tax at assessment rates on 10% of the gross income received by non-residents from the exhibition of motion picture films in Australia.

Since 1977 a special rate of tax has been declared in respect of royalties arising from the right to use motion pictures, films, television films, video tapes and the copyrights of such films or tapes.

The tax is at the rate of 10% on the gross royalty paid to the non-resident.

There were provisions in certain of the Australian double tax treaties preserving the validity of the older form of taxing film royalties. The new procedure of taxing such royalties under the royalty provisions harmonises more completely with the existing double tax treaties.

2.562 Non-resident Insurers

Where a non-resident insurer enters into contracts for insurance (other than life assurance) in respect of Australian business and the contract is not made by a principal office or branch established by the insurer in Australia then the non-resident insurer is taxed on a deemed taxable income equal to 10% of the gross premiums received in respect of the Australian business. Australian business for this purpose includes insurance of risks in respect of property in Australia or where the insured event can happen only in Australia or where the contract has been entered into (wherever the property or risk is situated) through the instrumentality of an agent or representative in Australia.

The resident paying the premium is responsible to deduct the tax and a deduction is not allowed for the premium paid (where it is a business outgoing) unless the Commissioner is satisfied that the tax will be paid.

A non-resident insurer may elect to submit a return and be taxed on his actual profit or loss deriving from the Australian insurance business where he is able to establish the amount of such profit to the satisfaction of the Commissioner.

Re-insurance with non-residents is either dealt with under the above provisions or alternatively the Australian insurer may elect not to seek a deduction for the re-insurance premium paid in which event the re-insurance premium will not be taxable in the hands of the non-resident re-insurer.

The double tax treaties which Australia has entered into specifically preserve the right to tax non-resident insurers under these provisions and provide for the granting of tax credits in the country of residence of the insurer.

2.563 Non-resident Ship Owners

Where a ship, belonging to or chartered by a person whose principal place of business is out of Australia, takes on passengers or goods in Australia, 5% of the gross fares or freight so resulting is deemed to be taxable income derived by him in Australia. The Master and the ship's agent are liable to pay the tax.

These provisions clash with the provisions of Australia's double tax treaties. In the event of such clashes the provisions of the relevant treaty prevail and the treaty provisions will need to be consulted in the case of ship owners which are resident in any of the treaty countries.

2.57 Life Assurance Companies

Special provisions govern the determination of the taxable income of life assurance business effected by life assurance companies. Other income of such companies is dealt with under the ordinary provisions of the legislation. The provisions recognise the fact that life assurance extends over a long term and the outgoings which properly relate to the premium received cannot be determined except by actuarial calculation.

The principal provisions are as follows:

1. Premium income is excluded from assessable income.

2. Expenditure incurred exclusively in gaining such premiums is not an allowable deduction.

3. General management expenses are not deductible except to the extent that they were incurred in gaining assessable income.

4. Income from the investment of life assurance funds forms part of the assessable income.

5. A special deduction is allowed determined by reference to the life assurance company's calculated liabilities, namely the present actuarial value of its expected future liability under life policies. The deductions are determined in accordance with complex mathematical formulae and basically provide for a deduction equal to 1% of the calculated liabilities, subject to small increases or decreases according to the extent to which the company maintains a substantial investment in Commonwealth government loan securities and other public securities. If the company's calculated liabilities exceed the value of all its assets it is not taxable on its life insurance business income for that year.

6. As the investment of insurance company funds are an essential part of its business, any profit realised on the change of investments (which, in respect of other businesses, may well be a capital receipt) form part of the general revenue of a life assurance company.

2.58 Pension and Superannuation Funds

Special provisions apply to both the taxation of the incomes of superannuation funds and to the deductibility of contributions to superannuation funds.

Provided a superannuation fund meets a number of specific tests designed to ensure it is a bona fide superannuation fund providing genuine benefits for members on retirement, then the whole of the income of the fund is exempt from tax.

Subject to compliance with certain limits to ensure that retirement benefits are not unduly high in relation to members' incomes, contributions to the funds made by employers constitute allowable deductions for income tax purposes.

The level of acceptable contributions in respect of high income earners has recently been increased.

There are certain deductions available for contributions by self-employed persons to approved self-employed persons superannuation funds but they are considerably less favourable than those applying to employers.

If superannuation funds do not meet the specified tests then generally speaking their income will be subject to tax and contributions to them will not be allowable deductions.

2.59 International Business Transactions

Division 13 of the I.T.A.A. is designed to ensure that for taxation purposes transactions between parties take place using an arm's length consideration rather than an artificial transfer price adopted by the related parties.

The operation of Division 13 will be attracted if:

(a) property is supplied under an international agreement;

(b) having regard to any connection between the parties the Commissioner is satisfied that the parties were not dealing at arm's length with each other; and

(c) the consideration for the supply of the property was not the consideration that would have existed if the parties were dealing at arm's length with each other.

Where these conditions are satisfied the Commissioner is entitled to substitute the arm's length consideration for the consideration that was actually involved in the transaction and to make consequential adjustments in respect of the assessments (if any) of other parties to the agreement. In respect of residents of countries with which Australia has comprehensive double tax agreements, the right to make adjustments directly affecting the non-resident will be limited to that allowed by the relevant agreements, but this will not in any way diminish the ability of the Commissioner to adjust the position of a resident of Australia under the provisions of Division 13.

Property is given a very wide meaning for the operation of Division 13 and includes the provision of services.

An international agreement exists if:

(d) a non-resident supplies or acquires property under an agreement otherwise than in connection with a business carried on in Australia by the non-resident at or through a permanent establishment of the non-resident in Australia; or

(e) a resident carrying on business outside Australia supplies or acquires property under an agreement, such property being supplied or acquired in connection with that business.

An ancillary power to deem part or all of the income to have an Australian source and hence able to be taxed in the hands of a non-resident is also provided.

2.510 Business Carried on Partly In and Partly Out of Australia

There are a number of statutory provisions which entitle the Commissioner to reallocate the profit or attribute Australian source profit in relation to the importation and exportation of goods and transactions where part of a profit may have an Australian source.

Where goods manufactured out of Australia are imported into Australia and sold in Australia by the manufacturer of the goods the Australian source profits will be ascertained by deducting from the sale price of the goods the amount for which they could at that time have been purchased by a wholesale buyer in the country of manufacture plus the cost of transportation and selling them in Australia.

Similarly, where goods are imported into Australia and sold by a person other than the manufacturer the Australian source profit shall be ascertained by deducting from the sale price of the goods their purchase price and the transportation and selling expenses.

These sections are designed to counter distorted transfer pricing by raising the sale price into Australia to minimise Australian source profit.

It is also provided that where goods are sold through the instrumentality of an agent or representative in Australia the goods will be deemed to have been sold in Australia for the purpose of the preceding provisions.

Further provisions enable the Commissioner to limit the deductions available for the purchase of trading stock to the price at which similar goods could have been acquired in an arm's length transaction at the time of their purchase.

There are also provisions empowering the Commissioner to allocate profit in transactions whether arising on importation of goods into Australia or the making of contracts or the carrying out of successive steps of production or manufacture in different countries to ensure that an appropriate proportion of the profit is deemed to have an Australian source.

Again these provisions are supplemented by the reallocation provisions contained in most of the double tax treaties to which Australia is a party.

2.6 TAXATION TREATMENT OF PARTICULAR ENTITIES

2.61 Individuals

2.611 Salary and Personal Services Income

Salary and fees received for the rendering of personal services form part of the assessable income of the individual taxpayers, as has been more fully discussed in paragraph 2.36.

2.612 Pay as You Earn Tax Collections and Provisional Tax

A pay as you earn tax collection system (known as the "P.A.Y.E." system) applies in Australia in relation to salary and wages paid to individuals.

The employer is obliged to deduct from salary and wages the amount provided in prescribed rate scales which ensures that the approximate amount of tax ultimately payable by individuals is deducted from their regular salary. The employer is obliged to remit the amount of such collections monthly to the Commissioner of Taxation. The system also extends to certain independent contractors who are in a dependent relationship with a head contractor.

Individuals in receipt of business or investment income or any income other than salary income from which P.A.Y.E. deductions have been made are obliged to pay an estimated amount known as provisional tax on the account of the following year's tax liability. Previously this has been when paying the amount assessed to tax in each year. Fiscal years end on 30th June and tax for that fiscal year is normally payable in arrears by the 30th March following. At that time an individual is obliged to pay the tax assessed for the relevant year plus an amount approximately equal to that tax on account of the tax due for the following year less the provisional tax paid with the previous year's tax assessment on account of the tax for the current year. In relation to provisional tax for the year 1986-87, there will be a change to the system to provide for the payment to be made in 4 instalments. Thereafter, the instalments will be payable on 1 September, 1 December, 1 March and 1 June of the financial year in respect of which the provisional tax relates.

2.613 Concessional Allowances

For many years individuals were entitled to deductions, and after the reorganisation of the system in 1975, rebates in respect of concessional allowances comprising allowances for spouse and dependent children, medical expenses paid and certain education expenses. As part of the reconstruction of the personal tax system in 1985 no concessional allowances will be available other than a limited medical expenses rebate and the rebates for spouse and certain other family members.

Concessional allowances are not available to non-residents.

2.62 Partnerships

The I.T.A.A. defines "partnership" to mean:

> "an association of persons carrying on business as partners or in receipt of income jointly, but not including a company".

Hence for income tax purposes the term includes both a partnership in the ordinary meaning of that term and also persons who are in receipt of income jointly arising for example out of common ownership of property.

Whether a partnership exists is a matter of fact to be determined by all the circumstances. There is no necessity to have a formal partnership agreement. However, this is usually a prudent step.

Partnerships are required to furnish a return of the partnership income calculated as if the partnership were a taxpayer except that no deductions are allowed either for concessional allowances or losses of previous years. The partnership return will disclose either a net income of the partnership or a partnership loss and it will disclose the interest of each partner in the net income or loss.

The share of each individual partner in the net income or loss of the partnership is taken into his individual return as an additional item of income or loss. If the share of the partnership loss exceeds his other income for the year the loss may be carried forward against the income of future years subject to the restrictions relating to carry forward of previous years losses referred to in paragraph 2.46 above.

There are anti-avoidance provisions aimed at family income splitting arrangements in which partners over 18 do not have the full control of their share of the partnership income.

Family income splitting arrangements involving partners under 18 are dealt with separately. Such partners are normally taxed at a rate of at least 46% in respect of partnership income without the advantage of any zero rating.

Because of the extended definition of partnership for income tax purposes, relationships which may ordinarily be regarded as joint ventures may fall within the income tax definition of partnership. Whether they fall within the definition will usually depend on whether the joint venturers are in receipt of the income jointly or whether they have a separate and severable entitlement to income.

Entitlements to receive a proportion of the produce or output of a venture will not generally give rise to the joint receipt of income.

2.63 Trusts

A trust is not a legal entity at general law nor is it a taxpaying entity for income tax purposes. A trust of property or income is simply a fiduciary obligation imposed on the party known as the trustee to hold property or income for a particular purpose or for the benefit of a person or class of persons known as the beneficiaries. The trust may arise from a settlement evidenced by deed or may arise by will or by operation of law. The trustee under a trust is not entitled to the benefit of trust property or income which must be held for the benefit of the beneficiaries.

The special provisions of the I.T.A.A. relating to the taxation of trusts is regarded as an exclusive code governing the taxation of trustees but not necessarily of beneficiaries who may be liable to tax in respect of trust income under the general provisions of the I.T.A.A..

The provisions in relation to the taxation of the trust income are somewhat complex and it is not possible within the scope of this paper to discuss all the complexities involved.

Since 1978 detailed amendments have been made to the provisions of the I.T.A.A. dealing with trusts.

For some years prior to 1978 foreign source income of trusts was not subject to tax in certain circumstances even where the trustee and the beneficiaries were all residents of Australia. The amending legislation was designed in part to overcome this situation.

As a result Australia now employs the concept of a resident trust estate. A trust which has at least one trustee who is a resident of Australia or which has its central management and control located in Australia will qualify as a resident trust estate. Such a trust must calculate its net income on the same basis as if it were a resident individual (i.e. worldwide income will be included). To the extent to which there is net income to which no beneficiary is presently entitled the trustee will be taxed. This will encompass net income regardless of source. A non-resident trust estate must calculate its net income on the same basis as if it were a non-resident (i.e. only Australian source income will be included). To the extent to which there is net income to which no beneficiary is presently entitled the trustee will be taxed. Obviously this will only extend to income with an Australian source.

Non-residents will not be taxed on foreign source income of a resident trust and there will be provision to refund to non-residents Australian tax paid on accumulated foreign source income of an Australian trust which is ultimately distributed to a non-resident beneficiary who was also a non-resident beneficiary at the time the income was derived.

The trustee is obliged to lodge a return of the income of the trust estate. If the income has been distributed to a beneficiary or if a beneficiary is presently entitled to the trust income and is not under a legal disability such as infancy, then the income will form part of the beneficiary's taxable income and will be added to his other income and taxed accordingly.

If the trust estate has incurred a net loss then generally that loss is retained within the trust and set off against income of future years before distributions are required to be made to beneficiaries.

If the income is accumulated within the trust and not distributed or appropriated to individual beneficiaries then the trustee is liable to tax on the undistributed trust income at a flat rate of 60%. It is not clear if this rate will be reduced to 49% in parallel with the reduction of the personal income tax rates.

Slightly different results may occur if the trust estate arises from a will or a damages trust.

Where a beneficiary is presently entitled to a share of the income of the trust estate and is under a legal disability such as infancy, then the trustee is liable to pay tax in respect of that share of the net income of the trust estate at the rates applicable to the income of an individual. If such a beneficiary derives income from more than one trust or from other sources, he must include his entitlement to the trust income with his other general income in his income tax return and pay tax at the higher effective rate applicable to his total income occurring as a result of the progressive increases in the marginal tax rate, receiving a credit for the tax paid by the trustee.

In addition to the foregoing, trust distributions which do not involve current year income may be taxed in the hands of the beneficiary. In general, this will only occur if the fund out of which the distribution is made has not previously borne tax but would have borne tax if received by a resident of Australia in the year in which it was received by the trustee. This provision was introduced to overcome any argument that the distribution received by the beneficiary did not constitute assessable income (e.g. on the basis that it was a distribution of part of the corpus of the trust). Prior to the introduction of this provision foreign sourced income could be accumulated and then in a subsequent year distributed as corpus to an Australian resident beneficiary.

There are provisions aimed at income splitting arrangements within families which reduce the normal zero rating in respect of the first $4595 of income to $416 in respect of trust income and any other "unearned" income received by children under 18 who are not in full-time employment.

Income splitting within families is reasonably widely practiced, particularly amongst higher income groups, through the use of discretionary trusts under which the income producing assets are held on discretionary trusts usually for the benefit of husband, wife and children with the trustee having the power to determine the extent to which the income will be divided annually between the various members of the family. It is now fairly common for trusts to be involved in the conduct of trading enterprises with a view to avoiding the 46% company tax which applies to the income of all corporations. It is likely that with the reduction of the personal income tax rates and the introduction of a full imputation system for company tax, there will be less incentive to carry on business through a trading trust. However, the use of a trust to maintain the holding of shares in an operating company will be a likely consequence.

Where a non-resident beneficiary is involved, special withholding provisions apply to the trustee of the trust, which require the amount of the tax applicable to the shares of income to be remitted to the Commissioner. The non-resident beneficiary is then able to claim a credit against the tax ultimately payable.

Complex anti-avoidance legislation exists to overcome trust stripping which is an operation analogous to dividend stripping.

2.64 Companies

2.641 Public and Private Companies

The classification of companies into public or private companies is principally for the purpose of the levying of undistributed profits tax on the excessive accumulations of income within private companies.

Every company is a private company unless it is a public company as defined in the I.T.A.A..

Every public company is primarily either:

(a) a company whose shares are listed for quotation on the official list of a stock exchange either in Australia or elsewhere;

(b) a co-operative company as defined in I.T.A.A.;

(c) a non-profit company as specified in the I.T.A.A.;

(d) a mutual life assurance company;

(e) a company in which a government or government instrumentality has a controlling interest; or

(f) a subsidiary of another public company.

The most important of these is the company listed on the stock exchange either in Australia or elsewhere.

Although a company may meet the primary test there are other provisions which may deny the company public company status. In addition, the Commissioner has certain powers to deem an apparent public company to be a private company if certain guidelines are met.

Even though the shares in the company may be listed on the stock exchange it will not be a public company if shares representing three-quarters of the paid up capital of the company or three-quarters of the voting power of the company or three-quarters of the dividend entitlement were held by 20 family groups or less. Hence, even a moderately closely held company is unable to qualify as a public company.

With the coming into operation of the company imputation system on 1 July, 1987 the operation of Division 7, the Undistributed Profits Tax and the distinction between public and private companies will be abolished.

2.642 Private Company Undistributed Profits Tax

A private company which does not make a sufficient distribution of its net income after tax in relation to any year of income is liable to pay provisional tax upon the undistributed amount at the prescribed rate, which is currently 50%.

The undistributed amount is the company's taxable income for the year less the sum of the company tax payable, the retention allowance (described below) and the dividends paid during the prescribed period in respect of that tax year (i.e. within the 12 month period commencing 2 months before the end of the fiscal year and ending 10 months after it).

The retention allowance, which is the proportion of the net profit after tax which may be retained with a view to building up working capital, is very broadly a sum equal to the total of 10% of any interest, rent and public company dividends represented by the net profit after tax, and 80% of other income (principally general business income) represented in the net profit after tax. There is no retention allowance in respect of dividends received from another private company.

The effect of these provisions, especially the denial of any retention allowance for dividends received from other private companies, is to ultimately force the distribution of the appropriate proportion of private company profits through to the individuals who ultimately hold a direct or indirect interest in the company and to subject those dividends to further tax in the hands of the individual share holders as part of their ordinary income.

As indicated earlier, Undistributed Profits Tax will cease to apply once the Imputation System is introduced.

2.643 Inter-company Dividend Rebate

A resident company which is a public company for tax purposes and which holds shares in another company is entitled to a rebate of tax under s.46 of the I.T.A.A. on all dividends included in its taxable income. The effect of the rebate is to virtually permit the recipient to receive dividend income free of further tax.

A resident private company is similarly entitled to a rebate of tax on dividends received with one exception.

The exception effectively gives the Commissioner of Taxation power to deny 50% of the dividend rebate to a private company where the circumstances of the shareholding in the private company and in any holding company or companies are such that the Commissioner is not satisfied that an amount equivalent to those dividends will ultimately, within a maximum period of 22 months from the end of the year of income, find its way into the hands of individual or public company shareholders. This is part of the scheme designed to prevent the unauthorised retention of accumulated profits within private company groups. In ordinary circumstances however, if the private company group is appropriately structured the full rebate of tax is generally allowed.

There are anti-avoidance provisions which will deny the rebate in the case of certain tax avoidance dividend stripping operations.

From the Treasurer's Statement on 19 September, 1985 it is clear that the s.46 rebate will cease to apply to dividends received from foreign companies after 30 June 1987. Instead the tax credit provisions of s.45 will apply.

However, it is as yet unclear how s.46 will be affected by the imputation system. It is likely to remain substantially unaltered other than for the addition of tracing provisions to allow the imputation credit in respect of the original declaration of the dividends to flow with the successive inter-company dividends and be available when a dividend traceable to the original dividend is declared in favour of a resident individual.

2.644 Operation of the Imputation System

As from 1 July 1987 a full imputation system of taxation will operate. It is likely to be based upon the Advance Corporation Tax System employed in the United Kingdom.

When a company pays a dividend to shareholders the company will be required to pay compensatory tax equal to 49/51ths of the dividend to the Commissioner of Taxation.

The amount of the compensatory tax is to be offset against the company tax otherwise payable by that company.

The individual shareholder receiving a dividend is required to include in his assessable income the amount of the dividend received and an amount equal to the compensatory tax applicable to that part of the dividend received by him and will be entitled to a credit for the compensatory tax paid by the company. At a maximum personal marginal tax rate of 49% this means that, ignoring the Medicare Levy, the dividend will be received effectively tax free. Where the shareholder has a marginal tax rate less than 49% the shareholder will be able to offset the excess compensatory tax credit against the tax payable upon other income.

The position in relation to Corporate Shareholders is not as yet clear. It is likley that the s.46 intercompany dividend rebate will apply and when the corporate shareholder in turn pays on a dividend the appropriate portion of the compensatory tax credit will be passed on to its shareholders.

It is likely that non-resident shareholders will not be entitled to credit for any compensatory tax attaching to dividends received.

It is likely that the imputation system will not apply to captive distributions such as the issue of bonus shares. The mechanical details of the imputation have yet to be announced. It is only once they become known that precise planning can be carried out.

2.7 WITHHOLDING TAXES ON PAYMENTS TO NON-RESIDENTS

2.71 Withholding Taxes on Dividends

Income derived by a non-resident which consists of dividends paid by a resident company are liable to withholding tax if the non-resident does not carry on business in Australia through a permanent establishment. No decision has been made as to how the dividend withholding tax provisions will be altered to fit with the proposed imputation system of company tax.

Withholding tax is at the rate of 30% on the gross amount of the dividends, subject to a reduction to 15% where the non-resident is a resident in one of the countries with whom Australia has a comprehensive double tax treaty. Withholding tax is a final tax in Australia.

As the withholding tax is imposed on the gross amount of the dividend, no deductions (such as cost of interest paid on loans obtained to finance the purchase of the shares on which of the dividends are declared) may be taken into account in computing the withholding tax.

Dividends from resident companies derived by certain foreign charities and non-profit organisations and superannuation funds are exempt from withholding tax unless the dividends would be subject to tax in their country of residence.

Where dividends are derived by a non-resident who carries on business in Australia through a permanent establishment then dividends form part of the ordinary Australian source income of that non-resident and are taxed at assessment rates.

2.72 Withholding Taxes on Interest

2.721 Withholding Tax

Interest derived by non-residents is subject to withholding tax if it is paid to the non-resident by a resident (unless it is an outgoing of a business carried on outside Australia through a permanent establishment by that resident) or by a non-resident where it is an outgoing of the business carried on in Australia by that non-resident through a permanent establishment.

For the purpose of withholding tax, interest is defined to also include amounts in the nature of interest. This is designed to allow the discount component in relation to certain financing transactions that do not constitute loans as such to be taxed in Australia by way of withholding tax.

Withholding tax is charged at the general rate of 10% which is not affected by the double tax treaties as 10% is also the rate limitation prescribed in those treaties. Withholding tax is a final tax in Australia.

If the recipient of the interest is carrying on business in Australia through a permanent establishment then, as in the case of dividends, the interest forms part of the normal Australian source income of the resident and is taxed on an assessment basis.

Again as in the case of dividends, interest paid to certain foreign charities, non-profit organisations and superannuation funds are exempt from withholding tax provided that the interest is also exempt from tax in their country of residence.

In addition there are two further exemptions from withholding tax which can be of significance to non-resident lenders and which are described in the following paragraphs.

2.722 Exclusion for Certain Bearer Debentures

With a view to assisting the raising of overseas finance by Australian resident companies, an exemption from withholding tax is granted where the following conditions are met:

(a) the borrower must be an Australian resident company;

(b) The debentures were issued outside Australia in respect of a loan raised outside Australia in a non-Australian currency;

(c) the debentures are bearer debentures;

(d) the interest is paid outside Australia in a non-Australian currency; and

(e) the Commissioner of Taxation has issued a Certificate of Approval.

A certificate will normally be granted on the Commissioner being satisfied that:

(f) the debentures were issued for public subscription and are intended to be widely spread; and

(g) the borrowing was undertaken for the purpose of raising money to be used by the company in an Australian business or to make the moneys available to another person to be used by that person in an Australian business (an Australian business for this purpose is primarily a business carried on in Australia by a resident in Australia although it can include the use of moneys outside Australia if connected with the operations in Australia of business carried on by a resident wholly or partly in Australia).

If loans are raised on bearer debentures which do not comply with the provisions of this exemption then they may fall within the terms of an anti-avoidance provision aimed at preventing the issue of bearer debentures (except in accordance with this specific exemption) and be liable to tax at a rate of 55%, although if certain of the conditions of the exemption only are met the tax may be limited to the usual 10% withholding tax.

2.723 Exclusions for Certain Borrowings by Governments or Government Authorities

A further specific exemption from withholding tax is available in respect of loans raised outside Australia pursuant to contractual obligations entered into on or after 20 May, 1983 by an authority of the Commonwealth, by a State or by an Authority of a State after the Commissioner of Taxation has issued an approval certificate in respect of loan raising.

The Commissioner will normally issue such a Certificate where he is satisfied that the loan funds will not be used by the borrower in competing directly with a non-government enterprise.

2.73 Withholding Tax on Royalties

2.731 General Principles

Royalties derived by non-residents from Australian sources are subject to Australian tax by assessment in the normal way, unless the amount of tax is subject to limitation under a double tax treaty. Such tax on an assessment basis is charged on the net amount of the royalties, i.e. the gross amount of the royalties less expenses incurred in gaining that royalty income.

However, persons liable to pay royalties to non-residents are required to notify the Commissioner of the amounts of those royalties before sending any payments outside Australia and the Commissioner will then notify the payer of an amount required to be retained by the payer and accounted for to the Commissioner to cover the non-residents tax liability. Hence, although there is no withholding tax as such imposed on royalties, this restriction on payment has a similar effect.

Where the recipient is a company, the amount which the Commissioner will require the payer to retain will normally be an amount equal to 51% of the gross amount of the royalty to be paid being the sum of the ordinary company tax rate of 46% and the branch profits tax of 5%.

As the true obligation is to pay tax only on the net amount of the royalty the non-resident is entitled to submit an income tax return establishing the expenses incurred in relation to the gaining of the royalty income and any excess tax retained will be remitted to the recipient. Alternatively, it is often possible to negotiate with the tax authorities the retention of a lesser amount than 51% of the gross royalty if evidence is placed before the Commissioner establishing to his reasonable satisfaction what percentage of the gross royalties are represented by expenses incurred in earning those royalties.

2.732 Definition of Royalties

Royalty is used in the I.T.A.A. in two senses. Firstly in its ordinary general meaning and secondly in an extended meaning specified in the I.T.A.A. Both these definitions of royalties are explained in paragraph 2.35 above.

2.733 Effect of Treaties

The double tax treaties which Australia has negotiated with overseas countries normally limit the amount of tax which may be charged by the source country to 10% of the gross amount of royalties.

The only exceptions to this are the double tax treaties with New Zealand and Malaysia which limit the tax to 15% of the gross royalties and the Philippines Treaty which limits the tax to 25% of the gross royalties (reduced to 15% in certain circumstances).

In the case of royalties paid to residents of those countries which fall within the specific provisions of those treaties the amount of tax which Australia is entitled to charge is limited to the prescribed percentage of the gross amount of the royalties.

Even if a royalty recipient resident in one of those countries with which Australia has a double tax treaty elects to lodge an Australian income tax return claiming a deduction for the expenses incurred in gaining the royalty income, the relevant limitation will apply if the tax that would result from applying the limit is less than an amount equal to 51% of the net income. Hence, it is only worthwhile for residents of those countries to submit a return of income in Australia if the net income calculated on Australian tax principles is such that the tax thereon would be less than the amount that is obtained by applying the appropriate rate limitation to the gross amount of the royalty.

Generally, the rate limitation will not apply where the royalty is effectively connected with a permanent establishment of the non-resident located in Australia or if there is a special relationship between the parties and the payment is commercially excessive.

2.74 Branch Profits Tax

The tax on Australian source income of non-resident companies, somewhat incorrectly described as a "branch profits tax", has been described in paragraph 2.18.

2.8 TAX RETURNS, PAYMENT OF TAXES, OBJECTIONS AND APPEALS

2.81 Fiscal Year

The Australian fiscal year is normally the year ended 30th June.

Permission can be sought to adopt a substituted fiscal year. In the past such permission is usually granted to subsidiaries of overseas companies where the parent company has a different balancing date.

2.82 Tax Returns

All taxpayers are required to file returns by 31st August in each year or within two months of the end of their fiscal year where a substituted accounting period has been approved. In practice extensions of this period by up to four or five months may be allowed where the return is being lodged through a registered tax agent (public accountant).

Different forms of tax returns are prescribed for individuals, companies, partnerships and trusts and returns should be submitted in the appropriate form.

Basically the returns provide for a statement of all assessable income and allowable deductions to enable the taxable income to be determined. In the case of companies and other enterprises who prepare normal balance sheets and financial statements it is in practice customary to submit those financial statements together with such supplementary statements and details as are necessary to adjust the accounting profit to recognise additional items of assessable income which have not been taken into account as expenses for accounting purposes. A company return must be signed by a person specified as the company's public officer for income tax purposes who must be a resident of Australia and who is responsible for the accuracy of the return and upon whom assessments and notices may be served by the Commissioner of Taxation.

For Australian income tax purposes each company is treated as a single and separate entity. There is no provision for assessment of groups of companies on a consolidated basis. However, members of a wholly owned group of companies may transfer losses amongst themselves and receive reasonable subvention payments tax free (see paragraph 2.47). This only applies to resident companies that have been wholly owned by common corporate ownership during the whole of the relevant year. In addition, where the group loss provisions do not apply, proper management charges may be charged between companies within the group provided they are justifiable on ordinary commercial principles.

2.83 Assessment of Tax

From the annual returns and from any other information in his possession the Commissioner of Taxation is required to make an assessment, that is to say ascertain the taxable income and the tax payable thereon. As soon as the amount of tax has been determined by the Commissioner a notice of assessment is served on the taxpayer which normally calls for the payment of the tax in 30 days. In the case of individual taxpayers who are liable to pay provisional tax the assessment will not normally call for the payment of the tax before 31st March immediately following the end of the fiscal year.

2.84 Payment of Taxes

Taxes are required to be paid by the due date specified in the assessment and non-deductible interest at the rate of 20% per annum is charged on any overdue payments.

2.85 Individual P.A.Y.E. Instalments and Provisional Tax

The provisions relating to payment of tax instalments in respect of individual salary and wages on the pay as you earn system has been described in paragraph 2.612 as have the rules relating to the payment of provisional tax by individuals in respect of non-salary income.

2.86 Quarterly Instalments of Company Tax

Up until 1973 company tax was payable only when assessed which was normally some nine months after the end of the relevant fiscal year. In that year a scheme for the collection of company tax by quarterly instalments was introduced which was subsequently suspended but was reintroduced for the 1977/78 and subsequent years of income. Under the present procedure the Commissioner now serves notices on companies for the payment of tax instalments. Three instalments are payable on 15th August, 15th November and 15th February after the end of the fiscal year. In respect of these three quarterly instalments each instalment is generally of an amount equal to 25% of the company's notional tax which is an amount equal to the income tax assessed in relation to the company's previous fiscal year. The final instalment is the balance of the tax actually payable in respect of the relevant fiscal year and is paid normally within 30 days after the issue of the actual assessment for the year. There is a provision for adjustment of the instalment to equal 25% of the actual tax for the year if the actual assessment is issued before the instalment payments have become due. There is also provision entitling the company to apply for a reduction of the instalment where it is able to give a reliable estimate of the actual income for the relevant year.

2.87 Prescribed Payments System

The Prescribed Payments System is designed to bring into the taxpaying community many of the payers and payees previously considered to be operating a cash economy enabling the easier avoidance of income tax. By imposing a mandatory rate of tax deduction on certain payers, similar in operation to the P.A.Y.E. system, there is a compulsory collection of taxation in expectation of an ultimate tax liability thereby minimising the damage arising from non-disclosure of the relevant income.

The prescribed payments system has been applied initially in relation to the various sectors of the building industry and the transport industry. It is planned to extend its operation to other areas as the need is established.

The primary rate of deduction is 25% reducing to 15% if certain required information is supplied to the payer prior to payment. The payee can seek a variation or an exemption from operation of the system based upon prior taxpayer history or special circumstances, e.g. carried forward losses.

The obligation is upon the payer to make the deductions and remit them to the Commissioner and a failure to do so can result in significant penalties.

2.88 Objections and Appeals

A taxpayer who is dissatisfied with an assessment is entitled to lodge an objection against the assessment within sixty days after the assessment has been served on him.

It should be noted that unless an objection is lodged within the prescribed period neither the Commissioner nor any Court or Board of Review has any power to waive the prescribed time and the taxpayer's rights of objection are irretrievably lost.

An objection does not need to be in any prescribed form but must specify the grounds of objection. The grounds of objection need to be stated with sufficient clarity to direct the Commissioner's mind to the basis on which it is contended that the assessment is erroneous. The taxpayer on any appeal is limited to the grounds of objection specified in his notice.

Once an objection has been lodged the Commissioner is required to consider the objection and either allow the objection in whole or in part or disallow it entirely.

When an objection has been disallowed in whole or in part the taxpayer is entitled, within the sixty days after being served with the notice of disallowance, to request the Commissioner in writing to either refer the decision to a Taxation Board of Review for review or to refer the objection by way of appeal to the Supreme Court of a State.

The Taxation Board of Review is an administrative tribunal which in addition to considering the correctness or otherwise of the assessment as a matter of law is entitled to substitute its own discretion for that of the Commissioner in cases where the Commissioner has issued the assessment relying on any of the various discretions granted to him under the Act.

The Supreme Court of a State is not entitled to redetermine the exercise of the Commissioner's discretion but is entitled to consider the correctness of the assessment as a matter of law.

When an appeal has been determined by a board of review or by the Supreme Court there are certain further powers of appeal to the Federal Court of Australia, and in special circumstances, to the High Court of Australia.

It should be noted that the taxpayer is obliged to pay the full amount of tax notwithstanding that an objection or an appeal is proceeding.

In most cases, however, where it can be established that there is substantial merit in the appeal, arrangements can be made to defer a substantial part of the tax in dispute usually on the basis that the taxpayer will pay interest on the unpaid tax if the appeal is determined in the Commissioner's favour.

2.89 Anti-Avoidance Provisions

The I.T.A.A. contains a general anti-avoidance provision, known as "Part IVA", designed to enable the Commissioner to counteract the large upsurge in tax avoidance that occurred over the decade of the Seventies. The provisions require the existence of three elements:

(a) a scheme;

(b) a tax benefit; and

(c) a dominant objective purpose on the part of one of the parties to the scheme to obtain a tax benefit for the taxpayer concerned.

The term "scheme" is widely defined so as to include almost any bilateral or unilateral action.

A tax benefit exists where:

(d) an amount is not included in a taxpayer's assessable income for a tax year, where in the absence of the scheme it would have been included or might reasonably have been expected to have been included in the assessable income of the taxpayer for that year; or

(e) a deduction is allowable to the taxpayer in a tax year where in the absence of the scheme it would not have been allowable or might reasonably have been expected to have been not allowable in respect of that year.

The question of whether any party has the required dominant purpose is to be satisfied by an objective evaluation of eight factors listed in s.177D(b). It is necessary that this purpose outweigh all other purposes put together.

It is likely the operation of Part IVA will not extend to normal family or commercial dealings but so far there have been no decided cases on its application. On this basis if an overall "scheme" can be justified in terms of its commercial results without the added tax benefits (if any) which may be achieved then it is unlikely that Part IVA will apply.

On the basis of present Court interpretation it is likely that Part IVA will be given full effect.

If Part IVA is attracted the Commissioner is empowered to make adjustments to the taxable income of the taxpayer obtaining the tax benefit and compensating adjustments to the other parties involved in the scheme. The Commissioner is also empowered to impose penalty tax of up to 200% of the tax involved.

In addition to Part IVA, legislation over the past nine years has led to a large number of specific anti-avoidance provisions introduced in order to overcome what have been seen to be loop-holes in the operation of the Act. These anti-avoidance provisions are detailed and far-reaching but in general do not affect genuine commercial transactions between parties dealing at arm's length.

2.9 TAX INCENTIVES

2.91 General Outline

Traditionally, the Australian taxation system has been used as a means of providing government encouragement to certain activities or business ventures.

A number of tax incentives currently exist which have been previously referred to in Part 2.5 of this Paper. These include:

(a) primary production concessions;

(b) mining concessions;

(c) petroleum concessions;

(d) timber operation concessions;

(e) film concessions.

2.92 Research and Development

In addition it is proposed to provide to companies a deduction of 150% of expenditure incurred in respect of approved research and development. Although the deduction is to apply from 1 July 1985, no more has been announced concerning this deduction than is contained in the Minister's Initial Press Release on the matter.

2.93 Investment Allowance

The investment allowance applies in relation to contracts entered into before 30 June 1985 and has therefore ceased to be an incentive for new investment not already contracted for.

The investment allowance plan was introduced in 1976 to offer an incentive to Australian enterprises to institute equipment expansion and modernisation programs.

The allowance comprises a deduction of 18% of the relevant capital expenditure which is in addition to normal depreciation (from 1976 to June 1978 the allowance had been 40% and from 1978 to April 1981 that allowance had been 20%).

This means that the enterprise is entitled to a total write off of 118% of the cost of the capital plant, 18% plus the first year's depreciation in the year of installation and the remaining depreciation over the remaining life of the plant.

The principal conditions relating to the allowance are:

(a) it applies only to the depreciable assets i.e. plant and equipment but not buildings;

(b) small items of the value of less than $500 are excluded as also are motor vehicles and certain leisure related items;

(c) the property must be retained for at least 12 months;

(d) the property must be used for the purpose of producing assessable income solely in Australia by the person claiming the allowance;

(e) although the allowance principally applies to the owners of equipment provision is made for the allowance to be claimed when the equipment is on lease, and it may be claimed either by the finance company effecting the leasing or, where a long term lease is involved, by the user. The availability of the investment allowance in lease transactions has provided a substantial stimulus to the extension of all forms of financial leasing in Australia since the introduction of the allowance, particularly during the 40% phase from 1976 to 1978.

This allowance can be lost (retrospectively) if certain events occur subsequent to the actions giving rise to the deduction.

If it is decided to encourage private investment in productive plant the reintroduction of the investment allowance would be one of the possible steps available to the government.

2.94 Scientific Research

Capital expenditure on buildings used exclusively for scientific research in relation to the taxpayer's business may be depreciated in three annual instalments. Plant used solely for scientific research is entitled to accelerated depreciation of 33 1/3% on a prime cost method or 50% on the diminishing value method.

Research carried out overseas is deductible if it relates exclusively to the taxpayer's Australian business. If the taxpayer's business is carried on both in Australia and overseas the Australian deduction is limited to the Australian proportion of the world business. Payments made to approved research institutes for scientific research in relation to the taxpayer's business are deductible even if they would not otherwise be regarded as a revenue outgoing.

2.95 Other Tax and Non-Tax Incentives

As appears from a number of the matters discussed already, there are substantial incentives granted to specific businesses such as mining, timber and primary production businesses usually in the form of entitlements to write off as revenue expenditure, expenditure which would normally be regarded as of a capital nature.

In addition there are a number of non-tax incentives such as the research and development grant scheme offering a government subsidy of approximately 40% of certain expenditure on industrial research and development and the export market development grant scheme offering subsidies with a view to encouraging the development of Australian exports.

There are certain state promoted incentive schemes usually relating to decentralisation. Some states make industrial land in areas away from the major state capitals available on attractive terms to industrial enterprises and offer reduced rail freights, reductions in payroll tax and a variety of other incentives.

3. OTHER FEDERAL TAXES

3.1. CUSTOMS DUTIES

3.11 General Outline

Australia imposes customs duties on goods imported into Australia. The duties account for about 5% of the Federal Government's revenue or about 4.5% of the total Australian revenue raisings.

The customs legislation conforms to general international practice in relation to customs duty. Australia is a member of the Customs Cooperation Council of Brussels and over recent years the legislation has been increasingly brought into harmony with Customs Cooperation Council recommendations.

3.12 Valuation

In 1981 Australia amended its Customs legislation to adopt a system of valuing goods for Customs duty purposes based on the principles of the Multilateral Trade Negotiations ("M.T.N.") Agreement on Customs Valuation. This Agreement arose out of the General Agreement on Tariffs and Trade ("G.A.T.T.") held in Geneva during the late seventies. This method of valuation completely replaced the Brussels Definition of Value which Australia had adopted in 1976 in place of the old British Commonwealth system of definition of value for duty. The principles of the M.T.N. Agreement are becoming a universal international system and have been adopted by the U.S.A., E.E.C. countries, Japan and the Scandinavian countries.

The M.T.N. Agreement provides for a positive valuation system in that value for duty is based primarily on the price actually paid or payable for the imported goods, i.e. the transaction value. Where there is no transaction value or the transaction value has been distorted the Agreement provides for alternative methods of valuation. The M.T.N. Agreement has been reflected in ss.154-160D of the Customs Act.

3.13 Brussels Nomenclature Classification of Goods

Australia uses the Brussels nomenclature for the classification of goods for tariff purposes. The explanatory memoranda and recommendation of the Customs Cooperation Council on the interpretation of the Brussels nomenclature also apply in the interpretation of the Australian tariff schedules.

3.14 Rates of Duty

Duties are imposed on a wide range of imports although a substantial range of goods is exempt from duty. It is almost impossible to attempt any general categorisation of the goods which are exempt and subject to duty. Duties are generally on an ad valorem basis.

There are two rates of duty, a general tariff applying to most countries and a preferential tariff applying to a number of former British Commonwealth countries and Papua New Guinea. The preferential tariff rate although many goods carry the same rate of duty whether they are imported from countries to which the general tariff applies or the preferential tariff. Schedule 5 of the Customs Tariff Act applies to impose special rates of duty upon goods that are the produce or manufacture of New Zealand.

Rates of duty are set generally on the recommendation of the Industries Assistance Commission (formerly known as the Tariff Board). The Commission reports regularly to the Government and will also consider requests from Australian or foreign owned companies operating in Australia for tariff protection against imports. Public enquiries are held at which interested parties may submit evidence and the Commission then reports to the Government which will generally accept the recommendations although this is not always the case.

It is also possible to apply for and obtain temporary protection by way of tariff increases or quotas where an industry is liable to suffer serious damage from imports in the short term.

There is an important possibility of obtaining exemption or a significant reduction in customs duty on the basis of "tariff concession orders" where it is able to be demonstrated that goods serving similar functions are neither produced nor capable of being produced in the normal course of business in Australia. This means of admission has often been used in relation to heavy industrial machinery of a type not produced in Australia.

The government may impose dumping duties on goods which are sold for importation into Australia at less than their fair market value in the country of origin at the time of the sale. Such duties are only imposed to protect goods which are manufactured in Australia and where the dumping is considered detrimental to Australian industry.

3.15 <u>Economic and Tariff Policies</u>

It will be seen from the above note that customs duty and adjustments to tariff rates and dumping duty are used by the government as much for their economic effect in the protection of Australian industry as for the revenue produced. It appears that the general rates of Australia's customs duty are relatively high by world standards although some slight reduction of the rates has been effected in recent times.

3.2 <u>SALES TAX</u>

3.21 <u>General Outline</u>

Sales tax is a single stage turnover commodity tax levied on goods produced in Australia or imported into Australia. It is generally imposed on the last wholesale sale of the goods, that is the point where the goods are sold to a retailer either by the manufacturer or by a wholesaler. In the case of goods imported into Australia it can sometimes be levied and collected simultaneously with the customs duty.

3.22 <u>Classes of Taxpayer</u>

All manufacturers and wholesale merchants are required to be registered for sales tax purposes.

Each registered person is required to file a monthly return and with it pay the tax due on transactions for that month.

To ensure that the tax is payable once only on any particular taxable goods each registered person in the importation and wholesale distribution chain is required to "quote his sales tax registration number" when purchasing the goods from another wholesaler, if the purchaser is acquiring the goods for resale by wholesale and not by retail. By this procedure payment of the tax is deferred until the goods are being sold by the last wholesaler in the distribution chain to the ultimate retailer. Tax is calculated at the rate specified in the schedules based on the "sale value" of the goods. Where goods are sold by wholesale the sale value is the price for which the goods are sold although the Commissioner for Taxation has certain powers to reconstruct the price if it is not an arm's length sale.

Where the manufacturer sells his products by retail the sale value is generally an amount equal to the wholesale sale price of the goods.

Where goods are imported by a person for his own use or for sale by retail, tax is payable on a value which is equal to 120% of the total of the value for duty of the goods for customs purposes and any customs duty payable thereon.

When tax is paid on this basis it is paid together with the customs duty when the goods are cleared through customs.

3.23 Classification and Rates

There are three basic rates of sales tax, a standard rate of 20%, a preferred rate of 10% and a luxury goods rate of 30%. In addition certain goods are exempt from the tax. Some examples of the goods subject to the various rates are as follows:

(a) exempt - agricultural machinery and implement mining machinery and equipment, scientific, educational and religious goods and works of art, foodstuffs, beverages, primary products, drugs, medical and surgical goods;

(b) 10% rate - furniture, household appliances;

(c) 20% rate - motor vehicles and all other goods which are not exempt nor subject to the 10% or 30% rate;

(d) 30% rate - jewellery, gems, furs, perfume, cosmetics, television photographs, photographic materials, records and radio sets.

3.24 Exemptions

The above zero rate exemptions are based on the nature of the goods. Other exemptions are available to particular types of users.

Exemptions on this basis are available for goods used for certain purposes in connection with agriculture, mining, hospitals, charitable institutions, schools and universities, and for other specified purposes.

3.25 Economic Policies

The sales tax is used as a means of economic management and not only as a revenue raising device. An example of this was the reduction in 1978 of sales tax on motor vehicles from 27.5% to 15% as a stimulus to the Australian motor vehicle industry. Sales tax on motor vehicles has been changed several times in recent years, sometimes on a temporary basis, but generally to assist the Australian motor vehicle industry.

Other adjustments have been made from time to time on the basis of stimulating sales in certain industries.

3.3 ESTATE AND GIFT DUTIES

As indicated in paragraph 1.34, Federal Estate and Gift Duties have been abolished since 1 July 1979.

4. STATE TAXES

4.1 PAY-ROLL TAX

4.11 General Outline

Pay-roll tax was formerly a Federal tax and in 1971 the Federal government granted the right to levy pay-roll tax to the States with a view of giving to the States a suitable growth tax.

The tax is payable by the employer and is charged on the total pay-roll (called the "taxable wages"). While each State is entitled to set its own rate, the same rate has normally prevailed in most States. At present the standard rate is 5%. Each State has the power to impose temporary surcharges.

At present New South Wales imposes a 1% surcharge on pay-rolls of over $1 million p.a..

The term "taxable wages" is defined to mean any wages, salaries, bonuses, commission or other allowances paid or payable to employees as such. In some states there exist statutory extensions to the above definition.

There are exemptions for small employers. The actual exemption levels vary from time to time between the States but generally an employer having no more than 6 to 8 employees will be unlikely to have to pay the tax unless the employees are high income earners. The present exemption level in New South Wales is $170,000 p.a. (rising to $200,000 p.a. on 1 July 1986) and registration as an employer is not required unless the average weekly pay-roll in any month exceeds $3,265. From time to time the exemption limit varies and in addition surcharges may be imposed.

4.12 Collection

Pay-roll tax is collected on a monthly return basis whereby employers are required to lodge a return and pay the tax shortly after the end of each month in respect of salaries paid during that month. In certain states some small employers are entitled to lodge the returns and pay the tax only on a quarterly, half-yearly or annual basis.

As a result of attempts to avoid the tax by setting up a series of companies to act as employers which are actually under the one ownership or control, detailed legislation has now been introduced into all states whereby groups of related companies are treated as one and no exemption is available to the members of the group as individuals.

However, the members of the group may nominate a member to be taxable in respect of all wages paid by the group and to be entitled (if it is applicable) to any exemptions.

4.13 Incentives through Pay-roll Tax Rebate

Certain states including New South Wales have granted rebates of pay-roll tax particularly to stimulate movement of industries to country areas under industrial decentralisation programs. In addition there has been some discussion of granting rebates in New South Wales to certain employers under programs to alleviate the current higher level of unemployment.

4.2 STAMP DUTIES

4.21 General Outline

Each of the states and the internal territories have traditionally levied stamp duties on a wide range of documents. Stamp duties represent a significant contribution to state revenue.

Traditionally stamp duties were imposed only on certain specified documents but over the last 10-15 years certain transactions have been subjected to stamp duty largely by the device of requiring persons participating in such transactions to bring into existence an instrument which is then subjected to stamp duty.

4.22 Traditional Taxes on Documents

Each of the states has its own schedule of stamp duties and there are minor differences between rates of duty in different states although generally the level of duties imposed in the states is similar. The traditional transactions subject to stamp duty include property transfers (at rates of 1%-3%), share transfers (at the rate of 0.6%) and cheques (at a flat rate of 10 cents). Most deeds and agreements are subject to duty either at ad valorem rates on the consideration varying from 1%-3% or fixed rates of $1-$10.

4.23 Transaction Taxes

In addition to the traditional taxes on documents taxes are now imposed on a wide range of commercial transactions. Where these transactions do not necessarily involve the execution of a document the stamp duty legislation requires the parties to bring a document into existence which is then the subject of stamp duty. In some cases the bringing into existence of a document is no longer compulsory and the parties are obliged to pay duty to the Stamp Duties Authorities on a return basis. The principal types of transactions the subject of these transaction duties are certain types of security transactions where duties are imposed at rates varying from 0.25% to 0.4% on the capital amount of the loan secured and hiring arrangement where duties are imposed at rates varying from 1% - 2.5% on the monthly instalments paid and on other credit and rental transactions. Although these transaction duties are usually nominally paid by the lender or the financier, they are in practice passed on to the consumer either as part of the contractual arrangement or by way of an increase in rate of interest or hiring charges.

4.3 FINANCIAL INSTITUTIONS DUTY

4.31 General Outline

A financial institutions duty, which is payable in respect of receipts received by "financial institutions", is imposed in Victoria and New

South Wales (at a rate of 0.03%), South Australian (0.04%) and Western Australia (0.03%).

This duty is payable by the financial institutions but is usually passed on to depositors. There is a $300 ceiling of duty upon any single deposit ($500 in W.A.).

There are also special provisions in the legislation of each State dealing with short term money market receipts.

4.4 GIFT AND DEATH DUTIES

4.41 State Death Duties

As indicated previously death duties have been abolished in all States.

4.42 State Gift Duties

The position in relation to gift duty is the same as that with death duty.

4.5 LAND TAX

4.51 General Outline

New South Wales, Victoria and Queensland and several other Australian states impose a land tax on land situated within the state. The tax is generally levied on the unimproved capital value of land held by each owner within the state at the commencement of the tax year which is generally the 1st January. Value is generally determined in accordance with official government valuations.

Tax is generally at progressive rates rising to rates of the order of 2-3% of the unimproved value. As the tax is at progressive rates most of the state legislation includes provisions for the grossing up of the value of land held by company groups, although the company grouping provisions in some states are rather unsophisticated.

Most of the state legislation provides for exemptions for a sole or principal residence up to certain values which will generally exclude from tax all but the most expensive homes. In most states there are concessions or exemptions for land used for primary production.

The main burden of the tax therefore in most states falls on commercial and industrial properties and investment housing.

4.42 Foreign Land Holders

In some states foreign land holders are denied exemptions available for resident owners. In New South Wales for example, foreign companies owning rural property do not get the full benefit of the primary production exemption unless they are able to demonstrate that 90% of their gross income is derived from primary production and they are granted an exemption certificate. In some other states foreign holders are denied the general exemptions for small holdings available to residents. Apart from these specific provisions in the legislation of certain states non-residents are generally taxed at the same rate as residents.

5. MUNICIPAL TAXES

Municipal taxes are imposed by the local government or municipal authorities. These are city, town, shire or rural district councils which are charged with the administration of local areas including road construction, garbage collection, water supply, town planning and general town maintenance and improvement. The taxes are generally levied on property owners only and are levied at a percentage rate on the value of all properties within the council district. The rates of tax (or "council rates" as they are generally known) vary greatly between percentage level in highly developed areas due to the greater value of properties and reaches its highest level in some of the outlying suburban areas around the main cities. The tax will generally vary from a fraction of 1% on the capital value annually to as much as 3% or 4% of the capital value. In some areas (usually major cities) water supply is provided by a separate authority. However, the same principles apply to the assessment and collection of water rates.

ANNEXURE A

Income $pa	Present Scale Marginal Rate (cents per $)	Income $pa	Proposed Scale 1.9.1986 Marginal rates (cents per $)	Proposed Scale 1.7.1987 Marginal rates (cents per $)
0-4595	0	0-5100	0	0
4595-12500	25	5101-12600	24	24
12501-195000	30	12601-19500	29	29
19501-28000	46	19501-28000	43	40
28001-35000	48	28001-35000	46	40
35000-& over	60	35000-& over	55	49