Date introduced: 15 October 1986
House: House of Representatives
Presented by: Hon. Chris Hurford, M.P.,
Minister Assisting the Treasurer

DIGEST OF BILL

Purpose

The Bill will amend a number of tax Acts. The main changes to be implemented relate to:

- early balancing companies;
- provisional tax avoidance schemes;
- the retention of tax on natural resource and royalty payments;
- fees for requests to forward a matter to the Administrative Appeals Tribunal;
- complimentary provisions for new A.C.T. taxes.

Background

Early balancing companies are those that, with the Commissioners approval, have a financial year ending other than on 30 June. Under the company tax system, tax is paid in instalments and is balanced at the end of the financial year. Where a company balances before 30 June they will enjoy a deferral of tax from their balancing day until 30 June. This also results in a delay in receipt of revenue. In the second reading speech to this Bill, the Minister estimates that the measures contained in this Bill will raise an addition $220 million in 1986-87, $230 million in 1987-88 and $240 million in 1988-89.
The measures relating to natural resource and royalty payments were announced on 7 April 1986 and will apply from that date. Similarly, the decision to impose a fee for the referral of requests to the Administrative Appeals Tribunal was announced in the Budget, though the fee will apply from a day fixed by Proclamation.

The measures relating to taxation in the A.C.T. are complimentary to the provisions to be introduced by the Australian Capital Territory Stamp Duty Amendment Bill 1986 and the Australian Capital Territory (Transfer of Marketable Securities) Bill 1986.

Main Provisions

Amendments to the Income Tax Assessment Act 1936

Clause 26 will amend section 23 of the Income Tax Assessment Act 1936 (the Principal Act) to make payments under the proposed new student assistance scheme AUSTUDY subject to tax, except to the extent that they relate to dependent children. This amendment will operate from the day the Student Assistance Amendment Act 1986 comes into force (sub-clause 2(4)).

The general rule for calculating whether an asset was acquired within 12 months of disposal where the asset was acquired due to death, i.e. the asset will be deemed to have been acquired on the day acquired by the deceased, will be extended to assets acquired by surviving joint tenant (clause 31 which will amend section 160Z of the Principal Act).

As section 160ZZC of the Principal Act currently stands, capital gains tax will be payable on the consideration received for the granting of an option in the year of granting and if the option is taken up in a later year there will be an adjustment. Clause 35 will amend this section so that the consideration received for options granted after 19 September 1985 will only be subject to tax if and when the options expire, are cancelled, released or abandoned.

Clause 37 will amend section 160ZZQ of the Principal Act which deals with the exemption from capital gains tax of the principal place of residence. A new sub-section 160ZZQ(13A) will be inserted into the Principal Act to exempt beneficiaries from the tax where they have used the inherited house as their sole or principal place of
residence. As the Principal Act currently stands, the exemption will only apply where the house is also the principal residence of the deceased's spouse during the period in which it was held by the legal personal representative of the deceased. (i.e. Before ownership was transferred to the beneficiary.) Sub-section 160ZZQ(17) deals with the taxable value of an inherited residence where it has not been the sole or principal residence of the taxpayer, or the deceased prior to their death, and has been disposed of after 12 months of the deceased's death. A new sub-section 160ZZQ(17A) will be inserted into the Principal Act by clause 37 and will reflect the amendments to be introduced by proposed sub-section 160ZZQ(13A).

A new section 221AB will be inserted into the Principal Act by clause 39 and will deal with tax instalments for early balancing companies (i.e. those whose year of income ends more than one month before the end of the 'normal' financial year). Under the proposed section, such a company's tax year will finish on the anniversary of the first day of the month in which the tax year ends or 1 January in the next year, whichever is the latter. As a result, such companies will be required to pay tax instalments based on their tax year and will be required to balance their tax at the end of their tax year. The proposed section also contains provisions relating to the phasing in of the new provisions.

A new Subdivision B, titled Provisional Tax Avoidance Schemes, will be inserted into Division 3 of Part VI of the Principal Act by clause 44.

Proposed section 221YHAAA contains the definition of phrases used in the proposed subdivision. Arrangement is defined to mean any agreement, proposal or arrangement, whether unilateral or otherwise. Likewise, associate is given a wide meaning and includes companies that act under direction, relatives and trustees if a family member can benefit under the trust. In addition the proposed section contains definitions of family partnership and family trust which, basically, depend on the amount of income received by the taxpayer and any associates compared to the amount of total income of the partnership or company.

Proposed section 221YHAAB will require taxpayers whose income in the previous year recorded a family partnership or trust income or loss to include additional information in their tax statement.
Proposed section 221YHAAC will deal with provisional tax avoidance schemes by taxpayers other than trustees. Where the Commissioner is of the opinion that a taxpayer has received a provisional tax benefit and, after having regard to the matters listed in the proposed section, (which include how an arrangement was entered, its substance and form and any changed financial position) concludes that the arrangement was entered into to achieve a provisional tax benefit, a notice may be issued the benefit and the taxable income will be increased by the amount specified in the notice. Proposed sub-section 221YHAAC(2) will define where a provisional tax benefit will have occurred and how the amount of benefit is to be calculated. Generally, a benefit will be taken to have occurred where an amount that might reasonably have been expected to be included in income is excluded or a deduction is allowed where it might reasonably have been expected to have been disallowed if the arrangement had not been entered into.

The anti-avoidance provisions for trustees reflect the provisions for other taxpayers and are contained in proposed section 221YHAAD.

A taxpayer will be able to request a review of a decision relating to a decision under proposed sections 221YHAAC and 221YHAAD and the normal review provisions will apply (proposed section 221YHAAE).

A failure to pay the additional tax will attract the normal penalty provisions (clause 45 which will amend section 221YHJ of the Principal Act).

A new Division 3B, titled Collection of Tax in Respect of Certain Natural Resource Payments and Royalty Payments, will be inserted into the Principal Act by clause 46.

Persons making such payments to non-residents will be required to notify the Commissioner of the amount of the payment and is not to make the payment until the Commissioner has notified the amount of tax that is to be deducted from such a payment. Unless the Commissioner has issued an exemption certificate a penalty of $2 000 will apply for a breach of this provision (proposed section 221YHZB).

A duty will be imposed on people making such payments to deduct the tax. If they fail to so act, they will be liable to a fine of $1 000 and a 20% per annum penalty on the undeducted amount (proposed section 221YHZE).
Proposed section 221YHZD will impose a duty to remit the amount deducted to the Commissioner. Failure to comply with this provision may result in a $5,000 fine and/or 12 months imprisonment and penalty tax. For government bodies the penalty tax will be 20% per annum of the unpaid amount while for others the penalty will be 20% of the principal amount plus 20% per annum of the unpaid amount.

Credits, which will be a debt due and payable by the Commissioner, will be allowed where the amount deducted is greater than the amount due. Credits will first be applied to other tax owed by the taxpayer (proposed sections 221YHZK and 221YHZL).

Amendments to the Taxation Administration Act 1953

The number of Second Commissioners of Taxation will be increased from two to three (clause 54 which will amend section 4 of this Act).

A new Part IVAB will be inserted into the Act by clause 55 and will be titled Requests For Reference.

Required fee is defined in proposed section 14ZAB to be $200 or such other amount as is fixed by regulation.

A request to refer a matter to the Administrative Appeals Tribunal must be accompanied by the required fee (proposed section 14ZAC).

The fee is to be refunded if the request is withdrawn before the request is complied with, if the decision is varied by the Commissioner, or proceedings end in a manner favourable to the taxpayer (proposed section 14ZAE).

Amendments to the Australian Capital Territory Taxation (Administration) Act 1969

Clause 9 will amend section 47 of this Act to require instruments of conveyance to be accompanied by the information required by the Commissioner before it will be stamped.

Section 50A will be amended to allow for the refund of duty where an agreement is not completed (clause 10) and a new section 50AA will be inserted to allow a refund where a Crown lease is surrendered (clause 11).
A new Division 9A will be inserted into the Act by clause 12 and will deal with the transfer of marketable securities outside the Territory. The main provision in the proposed Division is proposed section 58AB which will impose a tax on the registration of a marketable security. Where tax is also paid in another jurisdiction, a credit equal to the amount paid in that jurisdiction will be given, though the credit is not to exceed the tax payable in the A.C.T. (proposed section 58AD).

For further information, if required, contact the Economics and Commerce Group.

Bills Digest Service
25 November 1986

LEGISLATIVE RESEARCH SERVICE

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Commonwealth of Australia 1986

Except to the extent of the uses permitted under the Copyright Act 1968, no part of this publication may be reproduced or transmitted in any form or by any means, including information storage and retrieval system, without the prior written consent of the Department of the Parliamentary Library. Reproduction is permitted by Members of the Parliament of the Commonwealth in the course of their official duties.