TAXATION LAWS AMENDMENT BILL (NO. 5) 1986

Date introduced: 28 November 1986
House: House of Representatives
Presented by: Hon. Chris Hurford, M.P., Minister Assisting the Treasurer

DIGEST OF BILL

Purpose

To make a number of amendments to the Income Tax Assessment Act 1936 (the Principal Act), particularly as regards the payment of provisional tax by instalments, the treatment of foreign exchange gains and losses and short term redeemable shares.

Background

The proposal to introduce payment of provisional tax by instalments was announced by the Treasurer in the Statement on Reform of the Australian Taxation System on 19 September 1985. The proposal regarding the treatment of foreign exchange gains and losses was announced on 18 February 1986 and will apply to such gains and losses from that date. Similarly, the treatment of redeemable preference shares, which were often used instead of debt to raise finance, was announced on 7 April 1986 and will apply from that day. A rebate was available to residential companies receiving such dividends and, consequently, short-term equity was often used as a vehicle to raise funds rather than loans as the interest on such loans was not subject to a rebate.

Main Provisions

A new section 46C will be inserted into the Principal Act by clause 7 to deal with short-term redeemable shares. 'Debt dividend' is defined to be a dividend paid that may, having regard to the matters listed in the clause such as the manner of calculating the dividend and any conditions attached, be reasonably regarded as equivalent to
interest paid on a loan. 'Short-term financial arrangement' is defined to be arrangement for the purpose of obtaining finance for a period that is unlikely to exceed two years or an extension of the period for which finance is available of two years. Taxpayers will no longer be entitled to a rebate on debt dividends where the share was issued or acquired after the commencement time (i.e. 5 p.m. AEST on 7 April 1986).

Payments of debt dividends will be deductible to the extent that they qualify under section 51 (clause 8 which will insert a new section 67AA into the Principal Act). The proposed amendment will also be extended to corporate unit trusts (clause 10) and public trading trusts (clause 11).

A new Division 3B, titled Foreign Currency Exchange Gains and Losses, will be inserted into Part III of the Principal Act by clause 9.

Proposed section 82U will deal with the application of the Division. It will apply to gains and losses of a capital nature and gains made under a contract made on or after the commencement day (i.e. 19 January 1986) where, if a loss had been made, the loss would have been deductible under section 51.

Proposed section 82W will deal with contracts made prior to the commencement of this Bill where the loan is rolled over, extended or money is repaid or lent on or after the commencement day. In such circumstances the Division will apply as if the contract was made when the roll over, extension or money changing hands occurred.

Where a taxpayer has an option to buy foreign currency and the option is not exercised, any sum paid for the option will be deemed an exchange loss that accrued during the period the option was held. Similarly, when a deposit is paid and the purchase is not proceeded with the lost deposit will be deemed to have paid on an option (proposed section 82X).

Currency exchange gains will be included in assessable income (proposed section 82Y).

Most losses will be deductible providing the Commissioner is notified that the contract is entered into, the terms of the contract and the purpose for which the
contract was entered. Where a loss is made on a contract and the taxpayer or another has made a gain on another contract that would not have been entered into except for the existence of the first contract, a deduction will not be allowed to the extent that the gain accruing to the taxpayer or an associate is not assessable income. Where the gain is accrued by another, the lesser of any compensation paid to the taxpayer or an associate and any gain that will not be included in the other persons assessable income will not be deductible. Generally, deductions will be reduced to the extent that the taxpayer receives compensation for a loss (proposed section 82Z).

Losses and gains on currency used to finance rental property investment will be treated as rental property losses and gains for the purposes of the negative gearing provisions (proposed section 82ZA).

Deductions under Sub-division A of Division 3 will not be allowed where the sole reason for the deduction is the inclusion of gains in assessable income (proposed section 82ZA).

Gains or losses resulting from currency fluctuations under hedging contracts will not be considered capital gains or losses (clause 12).

The payment of provisional tax by instalments will be introduced by clause 16. Generally, the tax is to be paid in three instalments in 1987-88 and four instalments in subsequent years. Where the taxpayer satisfies the Commissioner that more than 75 per cent of the assessable income will be derived after 1 December in a tax year, there will be two instalments. An instalment will not be payable unless a notice in respect of that instalment has been issued.

Clause 18 deals with the amount of each instalment. Where there are to be three instalments the amount that has to be paid will be 50 per cent of the amount due in the first instalment and 25 per cent in each of the subsequent payments. For four instalments, 25 per cent will be payable at each instalment and for two payments, each will be 50 per cent of the amount due. Provision is made for adjustment where the amount of provisional tax is altered.

The instalments will be payable by the date specified in the instalment notice (clause 19).
Clause 20 deals with the notification of instalments. The instalment is not to be payable within 30 days of the issue of a notice and not earlier than the following dates: for three payments 1 December, 1 March and 1 June; for four payments 1 September, 1 December, 1 March and 1 June; for two instalments 1 February and 1 June. Instalments will not be payable where a notice for lump sum payment has been issued before the instalment notice or where the provisional tax in the previous year was not greater than $2000.

Clause 21 will provide for the payment of provisional tax by instalment where the tax is paid on estimated income.

Where tax is paid on estimated income, penalty tax at the rate of 20 per cent will be paid on the amount calculated in accordance with the formula contained in that clause which depends on the amount due, the relevant percentage payable at the instalment and any instalments paid (clause 22).

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