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Bills Digest
No. 83 2003–04

Taxation Laws (Clearing and Settlement Facility Support) Bill 2003

ISSN 1328-8091

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Published by the Information and Research Services, Parliamentary Library,
Department of Parliamentary Services, 2004.

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 83 2003–04

Taxation Laws (Clearing and Settlement Facility Support)
Bill 2003

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12 February 2004

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Taxation Laws (Clearing and Settlement Facility Support) Bill 2003

Date Introduced: 4 December 2003

House: House of Representatives

Portfolio: Treasury

Commencement: Royal Assent

Purpose

The purpose of the Taxation Laws (Clearing and Settlement Facility Support) Bill 2003 (the Bill) is to ensure that there are no income tax and goods and services tax (GST) consequences arising from a payment out of the National Guarantee Fund (the NGF) under section 891A of the *Corporations Act 2001* (the Corporations Act).

Background

The NGF was established in 1987 following the formation of the Australian Stock Exchange (ASX) from the separate capital city exchanges.¹ The NGF replaced the fidelity funds each stock exchange was required to establish and maintain under the *Securities Industry Act 1980*.² The NGF is administered by the Securities Exchange Guarantee Corporation (SEGC) in accordance with the compensation provisions of Division 4 of Part 7.5 of the Corporations Act.

The NGF provides protection for investors by:

- providing compensation to investors in circumstances set out in Division 4 of Part 7.5 of the Corporations Act and Regulations, and
- providing a clearing and settlement support by providing the financial backing for ASX related clearing houses.³

Section 891A of the Corporations Act provides that if the Minister⁴ is satisfied that if a body corporate specified in the Corporations Regulations 2001 has made adequate arrangements covering all or part of the clearing and settlement system support provided

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by Division 4 of Part 7.5 of the Corporations Act the Minister may instruct the SEGC to pay a specified amount to that body corporate out of the NGF if it will have sufficient assets to meet claims after the payment is made.⁵

Main Provisions

Clause 3 exempts payments made from the NGF under subsection 891A(1) of the Corporations Act from a tax liability as a consequence of any income tax law or the GST that would otherwise apply. **Subclause 3(3)** defines income tax law as having the same meaning as in the *Income Tax Assessment Act 1997* and GST as having the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Once the Bill receives Royal Assent the exemption will apply for any payment made from the NGF after the day the Bill was introduced into Parliament.⁶

Concluding Comments

The Bill is designed so that payments out of the NGF, if under the direction of the Minister in accordance with section 891A of the Corporations Act to provide protection for an alternative clearing and settlement system, will not be subject to any income tax or GST. However, it does not prevent any income derived from that payment, e.g. investment income, from being subject to income tax and GST laws.

Endnotes

- 1 Prior to 1987 each state capital city had its own exchange. These were amalgamated to form the Australian Stock Exchange on 1 April 1987.
- 2 The *Securities Industry Act 1980* was repealed by the *Corporations (Repeals, Consequential and Transitionals) Act 2001* with effect from 15 July 2001 as part of the Government's reform of the corporations law.
- 3 *Explanatory Memorandum*, p. 3.
- 4 Currently the Parliamentary Secretary to the Treasurer.
- 5 *Explanatory Memorandum*, p. 3.
- 6 The Bill was introduced into the House of Representatives on 4 December 2003.

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