

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 2) 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for Finance, the Hon. J.S. Dawkins, M.P.)

General Outline

The Bill will amend the income tax law to give effect to decisions announced by the Treasurer on 19 May 1983 to:

- . terminate the taxation concessions available in respect of the conversion or replacement of oil-fired plant;
- . extend from 3 to 5 years the write-off period for certain depreciable plant (including hay, grain or fodder storage facilities) used by primary producers;
- . terminate the special depreciation arrangements for storage facilities for petroleum fuel;
- . withdraw the exemption from withholding tax available in respect of interest on overseas borrowings by private sector "Australian entities";
- . abolish the rebate of tax for contributions to secure entitlement to basic hospital and medical benefits in respect of any period after 30 June 1983;
- . abolish the "universal" rebate of tax for home loan interest in excess of 10 per cent per annum that is paid or accrues after 30 June 1983.

Main Features

Deduction for costs of converting oil-fired plant (Clause 3)

The Bill proposes to terminate the deduction presently available in equal instalments over 2 years for capital costs incurred by a taxpayer in converting oil-fired plant to use alternative energy sources. The deductions will cease to be available in respect of conversion costs incurred under a contract entered into after 19 May 1983 or incurred in connection with a conversion that the taxpayer commenced to carry out after that date.

Depreciation of certain primary production plant and structural improvements (Clauses 4 and 5)

The Bill will, for the future, authorize a reduction in the $33\frac{1}{3}$ per cent rate of depreciation that is proposed, by amendments contained in clauses 10 and 13 of the Income Tax Assessment Amendment Bill 1983, to apply to new plant used wholly and exclusively for the purpose of agricultural or pastoral pursuits, forest operations or fishing operations and to structural improvements used for the storage of grain, hay or fodder in the course of carrying on a business of primary production. The $33\frac{1}{3}$ per cent rate is, by that Bill, to apply to plant and structural improvements that are acquired under a contract entered into by a taxpayer after 19 July 1982 or commenced to be constructed by a taxpayer after that date.

Under amendments proposed by this Bill, the $33\frac{1}{3}$ per cent prime cost rate is to revert to the previous 20 per cent rate that applies until 19 July 1982. The reduced rate will, however, apply only in respect of eligible plant and improvements acquired under a contract entered into after 19 May 1983 or which the taxpayer commenced to construct after that date.

Consistent with safeguards proposed in the Income Tax Assessment Amendment Bill 1983, the 20 per cent rate will not be available in respect of eligible structural improvements that are the subject of a sale and leaseback or similar arrangements where the lessee/real end-user would have otherwise been depreciating the improvements on the basis of pre-accelerated rates of depreciation (i.e., under general depreciation rates applying in relation to improvements acquired under a contract, or commenced to be constructed, before 22 August 1979). Similar safeguards are not proposed in relation to primary production plant generally as eligibility for the accelerated rate is, in these cases, restricted to new plant.

Special depreciation on storage facilities for petroleum fuel

(Clause 6)

The Bill will terminate the special depreciation allowance at the rate of 100 per cent that is authorised by section 57AJ of the Principal Act for storage facilities - and ancillary plant necessary for the functioning of such facilities - used wholly and exclusively for the storage of liquid or gaseous petroleum fuel that is held for use in a business as fuel or as trading stock for disposal. The special depreciation allowance will cease to be available in respect of eligible facilities acquired under a contract entered into after 19 May 1983 or that the taxpayer commenced to construct after that date.

Further amendments proposed by the Bill will confine eligibility to plant that is first used or installed ready for use for the purpose of producing assessable income before 1 July 1984.

Conversion allowance for the replacement of oil-fired plant

(Clause 7)

The Bill will terminate the special 40 per cent conversion allowance presently available in respect of capital expenditure incurred by a taxpayer on the acquisition or construction of a unit of non-oil-fired plant to replace oil-fired plant.

The conversion allowance will cease to be available in respect of the cost of replacement plant acquired by a taxpayer under a contract entered into after 19 May 1983 or in respect of plant that the taxpayer commenced to construct after that date.

Interest Withholding Tax

(Clauses 8 to 13 and 16)

These clauses give effect to a proposal to withdraw the general exemptions from withholding tax in respect of interest on overseas borrowings by "Australian entities" and the Australian Industry Development Corporation (AIDC), and to substitute a new exemption for borrowings by public sector authorities.

The existing exemption for interest on external borrowings of Australian resident companies, by way of certain publicly or otherwise widely distributed debentures issued overseas is to be preserved. In addition, interest on external borrowings by the Commonwealth will continue to be exempt under section 6B of the Loans Securities Act 1919 where an undertaking is given by the Commonwealth that the interest payable to a non-resident will be exempt.

On withdrawal of the general exemption for interest paid by "Australian entities" (broadly, Australian owned and controlled bodies and Australian Governments and their authorities) exemptions in respect of external borrowings by the States and by Commonwealth and State authorities will be maintained under a new provision in the Principal Act where the Treasurer certifies the interest to be tax-exempt. A certificate will not, however, be given where funds from the borrowing will be used by an authority in direct competition with private sector enterprises.

The general exemption is to be withdrawn for interest paid on or after the date on which the legislation is enacted in respect of loans raised in pursuance of contractual obligations entered into after 19 May 1983. The exemptions will thus continue to be available in respect of interest paid on loans raised in pursuance of contractual obligations entered into on or before that date.

Transitional provisions will provide that interest paid during the period between 19 May 1983 and the date on which the legislation is enacted, on loans raised in pursuance of contractual obligations entered into after 19 May 1983, may still qualify for exemption from withholding tax unless the Commissioner of Taxation is satisfied that the interest was paid at that time, rather than at a later time, for the purpose of obtaining the benefit of the exemption.

Premiums paid for basic health insurance (Clause 14)

The Bill will amend the provisions of the income tax law which allow a rebate of tax for contributions paid by a taxpayer to a registered hospital or medical benefits fund for the purpose of securing entitlement to basic hospital benefits or basic medical benefits. By the amendments proposed by this clause the rebate is to be abolished in respect of all contributions paid after 30 June 1983 and in respect of contributions paid on or before 30 June 1983 to the extent that those contributions secure basic health cover in respect of any period after that date.

Rebate of tax in respect of home loan interest (Clause 15)

The Bill also discontinues the income tax rebate allowed to an individual resident taxpayer for certain home loan interest payments in respect of a dwelling in Australia occupied by the taxpayer as his or her sole or principal residence. The particular rebate is now available in respect of such part of the qualifying interest on the first \$60,000 of the loan or loans on the home as is attributable to the portion of the interest rate which exceeds 10 per cent per annum. The rebate is at the standard rate of tax of 30.67 per cent.

By the amendments proposed by this clause the rebate will not be available for interest payments that are made after 30 June 1983 or, if made on or before 30 June 1983, that accrue after that date.

A more detailed explanation of the Bill is contained in the following notes.

Clause 1 : Short title, etc.

By sub-clause (1) of this clause the amending Act is to be cited as the Income Tax Assessment Amendment Act (No. 2) 1983.

Sub-clause (2) facilitates references to the Income Tax Assessment Act 1936 which, in the Bill, is referred to as "the Principal Act".

Clause 2 : Commencement

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

Clause 3 : Deduction for cost of converting oil-fired plant

Clause 3 will amend section 53H of the Principal Act to terminate the special two year write-off authorised by that section for expenditure incurred in converting or adapting oil-fired plant to operate on alternative energy sources. A deduction is also available under the section for expenditure incurred in converting or adapting plant to support the operation of converted oil-fired plant or of plant that qualifies for the special 40 per cent conversion allowance for non-oil-fired plant that is provided under Subdivision BB of Division 3 of Part III of the Principal Act (see notes on clause 7).

Clause 3 proposes amendments to paragraphs (c) and (d) of the definition of "conversion costs" in sub-section 53H(30) to limit eligibility for deduction under the section to conversion costs incurred under a contract entered into on or before 19 May 1983 or incurred in connection with a conversion that the taxpayer commenced to carry out on or before 19 May 1983.

Under existing sub-section 53H(1) of the Principal Act, eligibility for the two-year write-off is further limited to eligible conversion costs incurred before 1 July 1984.

Clause 4 : Special depreciation on property
used for storage of grain, hay
or fodder

Clause 4 will authorize a reduction in the $33\frac{1}{3}$ per cent rate of depreciation that is, by amendments contained in clause 10 of the Income Tax Assessment Amendment Bill 1983, proposed to apply to structural improvements used for the storage of grain, hay or fodder in the course of carrying on a business of primary production.

Under sub-paragraph 57AE(2)(a)(ii), proposed to be inserted in the Principal Act by clause 10 of the Income Tax Assessment Amendment Bill 1983, eligible structural improvements that are acquired under a contract entered into by a taxpayer after 19 July 1982 or commenced to be constructed by the taxpayer after that date are to qualify for a $33\frac{1}{3}$ per cent rate of depreciation - under which the cost of an eligible improvement is deductible in 3 equal annual instalments - commencing with the year of income in which the improvement is first used for the purpose of producing assessable income or is first installed ready for use for that purpose.

Amendments proposed by paragraph (a) of clause 4 will limit the operation of sub-paragraph 57AE(2)(a)(ii) to eligible structural improvements acquired under a contract entered into before 20 May 1983 or which the taxpayer commenced to construct before that date. The effect of the amendment is that eligible improvements acquired under a contract entered into on or after that date or which the taxpayer commenced to construct on or after that date will qualify for a 20 per cent rate of depreciation under sub-paragraph 57AE(2)(a)(i).

Amendments proposed by paragraph (b) of clause 4 will amend sub-section 57AE(4), which is proposed to be inserted in the Principal Act by the Income Tax Assessment Amendment Bill 1983. The effect of the amendment will be, consistent with the safeguards proposed to be inserted in section 57AE by that Bill, that the 20 per cent rate will not be available in respect of eligible structural improvements that are the subject of a sale and leaseback or similar arrangement where the lessee/real end-user would have otherwise been depreciating the improvements on the basis of lower rates of depreciation (i.e., under general depreciation rates applying in relation to improvements acquired under a contract, or commenced to be constructed by a taxpayer, before 22 August 1979).

Clause 5 : Special depreciation on property
used for primary production

Clause 5 will authorize a reduction in the $33\frac{1}{3}$ per cent rate of depreciation that is proposed, by amendments contained in clause 13 of the Income Tax Assessment Amendment Bill 1983, for new plant used wholly and exclusively for the purpose of agricultural or pastoral pursuits, forest operations or fishing operations.

Under sub-paragraph 57AH(3)(a)(ii), proposed to be inserted in the Principal Act by clause 13 of that Bill, eligible plant that is acquired under a contract entered into by a taxpayer after 19 July 1982 or commenced to be constructed by the taxpayer after that date is to qualify for the $33\frac{1}{3}$ per cent rate of depreciation - under which the cost of eligible plant is deductible in 3 equal annual instalments - commencing with the year of income in which the plant is first used for the purpose of producing assessable income or is first installed ready for use for that purpose.

Amendments proposed by clause 5 will limit the operation of sub-paragraph 57AH(3)(a)(ii) to eligible plant acquired under a contract entered into before 20 May 1983 or which the taxpayer commenced to construct before that date. The effect of the amendment will be that eligible plant acquired under a contract entered into on or after that date, or which the taxpayer commenced to construct on or after that date, will qualify for a 20 per cent rate of depreciation - under which deductions are available in 5 equal annual instalments - under sub-paragraph 57AH(3)(a)(i).

Clause 6 : Special depreciation on storage
facilities for petroleum fuel

Clause 6 will terminate the special depreciation allowance at the rate of 100 per cent that is authorized by section 57AJ of the Principal Act for storage facilities - and certain ancillary plant necessary for the functioning of such facilities - used wholly and exclusively for the storage of liquid or gaseous petroleum fuel where that fuel is held wholly and exclusively for sale as fuel or for use as fuel in the course of carrying on a business. The allowance presently applies to eligible facilities acquired by a taxpayer under a contract entered into on or after 1 October 1980, or which the taxpayer commenced to construct on or after that date.

Paragraph (a) of clause 6 will amend paragraph 57AJ(2)(c) to confine the special 100 per cent allowance to eligible facilities acquired by a taxpayer under a contract entered into on or after 1 October 1980 and before 20 May 1983 and to facilities constructed by the taxpayer where construction commenced during that period.

Paragraph (b) of clause 6 will insert new paragraph 57AJ(2)(ca) to impose an additional requirement for deduction under the section that eligible petroleum fuel storage facilities and ancillary plant must be in use for the purpose of producing assessable income or installed ready for use for that purpose and held as reserve plant before 1 July 1984.

Clause 7 : Deduction in respect of plant
installed on or after
22 August 1979

Clause 7 will amend section 82EB, the operative provision of Subdivision BB of Division 3 of Part III of the Principal Act, which authorises an income tax deduction of 40 per cent of capital expenditure incurred by a taxpayer on the acquisition or construction on or after 22 August 1979 of a unit of non-oil-fired plant to replace oil-fired plant that was in use on 21 August 1979. The 40 per cent conversion allowance is also available for units of property installed to support the operation of such replacement plant or to support the operation of converted plant that qualifies for the 2 year write-off under section 53H (see notes on clause 3).

Clause 7 proposes amendments to paragraphs (b)(i) and (ii) of sub-section 82EB(1) to confine the deduction allowable under the section to eligible expenditure incurred in respect of plant acquired by a taxpayer under a contract entered into on or after 22 August 1979 and before 20 May 1983 and to plant constructed by the taxpayer, the construction having commenced during that period.

Under existing paragraph 82EB(1)(c) of the Principal Act, eligibility for the allowance is further confined to plant that is first used or installed ready for use for the purpose of producing assessable income by 30 June 1984.

Clause 8 : Division not to apply
to certain interest

The amendment proposed by this clause is consequential upon that proposed by clause 13 and will include in section 125 of the Principal Act a reference to new section 128GA which is to be inserted by clause 13. The new section will, in effect, maintain the exemption from withholding tax of interest on certain government and government authority loans that is currently provided for under provisions of the Principal Act which, by this Bill, are to cease to apply.

At present, such interest is, where it would otherwise be liable to the tax levied under section 126 on interest paid by companies on certain bearer debentures, also exempt, by virtue of section 125, from the tax under section 126. The inclusion in section 125 of the reference to proposed new section 128GA will ensure that that position remains unchanged.

Clause 9 : Liability to withholding tax

By this clause, it is proposed to amend sub-section 128B(3) of the Principal Act which provides that withholding tax is not imposed on certain specified income. The amendment is associated with that proposed by clause 13, under which a new section 128GA is to be inserted in the Principal Act to preserve exemption from withholding tax for interest on certain government and government authority loans (see notes on that clause).

The amendment proposed will substitute a new paragraph (h)(iv) in sub-section 128B(3) which, along with technical drafting changes, will incorporate a reference to new section 128GA so that withholding tax is not imposed on income to which that section applies.

Clause 10 : Certain income not included
in assessable income

Existing section 128D of the Principal Act provides that certain income on which withholding tax is payable, or on which the tax would but for specified exemption provisions be payable, is not to be subject to income tax by assessment. The exemption provisions so specified in the section include those under which interest on certain government and government authority loans are exempt from withholding tax.

By clause 13, a new section 128GA is to be inserted in the Principal Act to maintain the exemption in respect of such loans (see notes on that clause). As a consequence of that, it is proposed to amend section 128D to include a reference to new section 128GA, to ensure that the exemption provided under that section will not be cancelled out by the substitution of tax by assessment.

Clause 11 : Division not to apply to
interest on borrowings by
Australian Industry
Development Corporation

Section 128EA of the Principal Act provides a general exemption from withholding tax for interest paid to non-residents by the Australian Industry Development Corporation (AIDC) on overseas borrowings.

This clause will amend section 128EA to insert a new sub-section - sub-section (3). That sub-section will operate so that the withholding tax exemption will not apply to interest paid on or after the date of commencement of the sub-section (being, by virtue of clause 2, the day on which the amending Act receives the Royal Assent) in respect of a loan raised in pursuance of a contractual obligation entered into, in effect, after 19 May 1983.

The amendment will have the effect that the exemption may still apply to any interest that is, in fact, paid by the AIDC in respect of a loan raised in pursuance of a contractual obligation entered into on or before 19 May 1983. In addition, subject to the transitional provisions contained in clause 16, the exemption may still apply to interest paid before the date of commencement of new sub-section 128EA(3) in respect of a loan raised in pursuance of a contract entered into after 19 May 1983 (see notes on clause 16).

Interest paid by the AIDC may in future qualify for exemption under proposed section 128GA (clause 13).

Clause 12 : Division not to apply to
interest on certain loans

Under section 128G of the Principal Act, interest paid on loans borrowed overseas by "Australian entities" is exempt from withholding tax where the moneys are appropriately used - that is, the moneys are for use in an enterprise owned by an Australian entity (described in section 128J) or an enterprise in which there is substantial Australian participation (section 128K).

By this clause, a new sub-section - sub-section (3)- will be inserted in section 128G to withdraw that exemption from withholding tax for interest paid on or after the date of commencement of the sub-section (the day on which the amending Act receives the Royal Assent) in respect of a loan raised in pursuance of a contractual obligation entered into, in effect, after 19 May 1983.

As with the amendment proposed by clause 11 to withdraw the general exemption on interest paid by the Australian Industry Development Corporation, this amendment will operate so that the "Australian entity" exemption may still apply to any interest that is, in fact, paid in respect of a loan raised in pursuance of a contractual obligation entered into on or before 19 May 1983 and, subject to the transitional provisions contained in clause 16, to interest paid before the date of commencement of new sub-section 128G(3) in respect of a loan raised in pursuance of a contractual obligation entered into after 19 May 1983.

Included as Australian entities for the purpose of the existing exemption provided by section 128G are the Commonwealth, a State or an authority of the Commonwealth or of a State. By the amendment proposed by this clause, the section will cease to apply to those entities on the same basis as other Australian entities.

However, as far as the Commonwealth is concerned, interest on external borrowings will continue to be exempt

from withholding tax under section 6B of the Loans Securities Act 1919 where an undertaking is given by the Commonwealth that the interest payable to a non-resident will be exempt. In the case of State external borrowings and those by Commonwealth and State authorities, clause 13 proposes the insertion of new section 128GA in the Principal Act to maintain exemption in accordance with that section.

Clause 13 : Division not to apply to interest
on certain government loans and
government authority loans

This clause proposes the insertion in the Principal Act of new section 128GA so that exemption from withholding tax of interest paid to non-residents by a State, or a Commonwealth or State authority, on external borrowings will be preserved where the Treasurer has issued a certificate under the new section.

Proposed sub-section (1) of new section 128GA will specify that the section is to apply to interest in respect of a loan where the following conditions are satisfied -

- . the loan was raised by a State or by a Commonwealth or State authority in pursuance of a contractual obligation entered into on or after 20 May 1983 (paragraph (a));
- . the Treasurer has issued a certificate under proposed sub-section 128GA(3) (paragraph (b)); and
- . the loan was raised outside Australia (paragraph (c)).

New sub-section 128GA(2) will provide that a borrowing entity that has raised a loan that, in effect, satisfied tests (a) and (c) of sub-section (1), may apply in writing for a certificate to be issued by the Treasurer under sub-section (3).

Where the borrowing entity has applied under sub-section (2), the Treasurer will be authorised by new sub-section 128GA(3) to issue a certificate containing particulars of the loan. The issue of the certificate will satisfy the remaining condition - paragraph (b) of sub-section (1) - to be satisfied for the loan interest to be exempt from withholding tax.

Proposed sub-section 128GA(4) will provide that the Treasurer is not to issue a certificate in respect of a loan under sub-section (3) if he is satisfied that the loan moneys will be used by a Commonwealth or State authority in competing directly with a non-government enterprise (a term defined in sub-section (6)).

New sub-section 128GA(5) is the operative provision under which withholding tax is not to be payable on interest to which sub-section 128GA(1) applies.

Sub-section 128GA(6) will define the term "non-government enterprise" used in sub-section (4) to mean an enterprise carried on by an entity other than the Commonwealth, a State or a Commonwealth or State authority - that is, basically, a private sector enterprise.

Clause 14 : Premiums paid for basic health insurance

This clause will amend sub-section 159XA(2) of the Principal Act to withdraw the rebate for contributions for basic health insurance cover. Sub-clause (a) will amend paragraph (a) of the sub-section to ensure that a rebate is not allowable for amounts paid after 30 June 1983.

Sub-clauses (b) and (c) will amend paragraph 159XA(2) (b) of the Principal Act so that a rebate is not allowable for contributions paid before 1 July 1983 to the extent that those contributions are for the purpose of securing an entitlement to basic health insurance cover in respect of any period after 30 June 1983.

Clause 15 : Rebate of tax in respect of home loan interest

This clause provides for the abolition of one of the two home loan interest rebates at present authorised by Subdivision AA of Division 17 of Part III of the Principal Act. Payments of interest that qualify for a rebate under the scheme now being terminated are those which relate to the interest slice in excess of 10 per cent per annum on the first \$60,000 of a loan or loans on a person's sole or principal residence.

Clause 15 proposes the amendment of paragraph 159ZNA(1) (b), by which the rebate is available only if the relevant amount of interest is paid by the taxpayer on or after 1 July 1982. The amendment will mean that the rebate is available only if the relevant interest is also paid before 1 July 1983. Existing sub-section 159ZNA(11) will then have the effect that interest paid before 1 July 1983 that falls due on or after that date will also not qualify for the rebate.

Clause 16 : Transitional

This clause, which will not amend the Principal Act, relates to clauses 11 and 12. Those clauses will amend existing sections 128EA and 128G of the Principal Act to effectively withdraw the exemption from withholding tax

available for interest paid by the Australian Industry Development Corporation and Australian entities on external borrowings, where the interest is paid on or after the date the amending Act receives the Royal Assent in respect of a loan raised in pursuance of a contractual obligation entered into on or after 20 May 1983 (see notes on clauses 11 and 12).

Sub-clause (1) of this clause is the transitional provision which will apply to relevant interest, that is interest paid before the date of its commencement (the day on which the amending Act receives the Royal Assent) in respect of a loan raised in pursuance of a contractual obligation entered into on or after 20 May 1983 (paragraph (a)). In terms of the amendments proposed by clauses 11 and 12, sections 128EA and 128G could, but for this transitional provision, still apply to such interest.

Sub-clause (1) will operate as a safeguarding provision so that the exemption otherwise available for relevant interest will not be available in respect of so much of it as the Commissioner of Taxation is satisfied was paid before the date of commencement of the provision, rather than at a later time, for the purpose of obtaining the benefit of that exemption (paragraph (b)). In forming his opinion, the Commissioner of Taxation is to have regard to the amount of the loan involved, the terms of the contractual obligation and the amount of the interest concerned.

Sub-clause (2) of clause 16 will apply so that, in a case where sub-clause (1) operates to deny exemption from withholding tax and the payer of the interest involved has failed to deduct the necessary withholding tax, that payer will not be guilty of an offence under the Income Tax Assessment Act 1936.