

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 3) 1983

EXPLANATORY MEMORANDUM

(Circulation by authority of the Treasurer,
the Hon. P.J. Keating, M.P.)

General outline

This Bill will amend the income tax law to give effect to the decision announced by the Treasurer on 19 May 1983 that there are to be no new entrants after 30 September 1983 to the tax rebate scheme for home loan interest payments by first home buyers and that benefits under the scheme after that date are to be subject to an income test.

Main features

The Income Tax Assessment Amendment Bill (No. 3) 1983 will amend the provisions of the income tax law which allow a rebate of tax for home loan interest payments during the first five years of occupancy of a taxpayer's sole or principal residence. The effect of the amendments is that -

- (a) there will be no new entrants to the rebate scheme after 30 September 1983, subject to some transitional measures; and
- (b) entitlement to a rebate after that date will be subject to an income test.

At present, the rebate is 30 cents in the dollar of qualifying interest, subject to an upper limit of \$500 in the first full year of occupancy, reducing by \$100 per year during the following four years. The upper limit is increased by \$200 where the dwelling is also the home of a dependent child or dependent student of the taxpayer. This increase is available on a pro-rata basis if the dwelling is the home of the dependant for only part of the year.

Broadly, the Bill proposes that taxpayers who qualify under the rebate scheme on or before 30 September 1983, that is, those who have first occupied a dwelling as their sole or principal residence on or after 1 July 1977 and on or before 30 September 1983, will continue to receive the benefits of the existing scheme, but subject to the operation of an income test. The income test will apply in such a way that benefits under the scheme after 30 September 1983 will be available in full to taxpayers whose "family incomes" in the 1982-83 income year are \$24,300 or less, shading out proportionately for family incomes up to \$27,900. No rebate will be available after 30 September 1983 where a taxpayer's family income is \$27,900 or greater.

The income that will be taken into account for the purpose of the income test will be the combined 1982-83 taxable income of the taxpayer and the person (if any) who is his or her spouse on 1 October 1983.

For the 1983-84 year of income, only the rebate entitlement attributable to the period after 30 September 1983 is to be income tested. The rebate otherwise available for the whole year in accordance with the existing law will

be apportioned over the periods up to and after 30 September 1983 on the basis of the number of whole months in each of those two periods during which the taxpayer is an owner-occupier of a dwelling which is his or her sole or principal residence and in respect of which rebatable interest is paid.

The Bill extends the operation of the provisions to taxpayers who, although they enter the rebate scheme by taking up occupation of a dwelling after 30 September 1983, have contracted to acquire or build or commence to build on or before that date the dwelling they ultimately occupy. This transitional measure will protect those first home buyers who will not be eligible under the proposed system of income-tested periodic cash payments to first home buyers who contract to purchase or build their principal residence on or after 1 October 1983. Because of differences in the tests which must be satisfied under the two schemes, some first home buyers would not without this extension be entitled to the benefits of either scheme. Where such a taxpayer comes within the rebate scheme the income test will apply to the combined 1982-83 taxable income of the taxpayer and the person (if any) who is his or her spouse on the day the dwelling is occupied.

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. 3) 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 2 will facilitate the early incorporation of the income-tested home loan interest rebate into pay-as-you-earn tax deduction procedures.

Clause 3 : Interpretation

Sub-section 159ZA(1) defines certain terms used in Subdivision AA of Division 17 of Part III of the Principal Act which authorises a rebate of tax for home loan interest paid during the first 5 years of owner-occupation of a sole or principal residence.

Clause 3 proposes the insertion in sub-section 159ZA(1) of a definition of the term "relevant combined taxable income". The definition is used to describe the income which is to be taken into account in applying an income test to determine a taxpayer's eligibility for the rebate. The income test is set down in proposed section 159ZKA, to be inserted in the Principal Act by clause 6.

Paragraph (a) of the definition specifies that, where neither paragraph (b) nor (c) of the definition applies (that is, where a taxpayer does not have a spouse on the date referred to in the relevant circumstances described in those paragraphs) the income to be used in the income test will be the taxable income of the taxpayer of the year of income that commenced on 1 July 1982.

Paragraph (b) will apply where the "first occupation date" of a taxpayer is on or before 1 October 1983 and the taxpayer has a spouse on 1 October 1983. In these circumstances, the income test will be based on the combined taxable income of the year of income that commenced on 1 July 1982 of both the taxpayer and the person who was his or her spouse on 1 October 1983.

The term "first occupation date" is already defined in sub-section 159ZA(1) to mean the date on which a taxpayer first occupied, as his or her sole or principal residence, a dwelling in Australia in which the taxpayer had ownership rights. This date is the commencement of the 5 year period of eligibility for the home loan interest rebate. "Spouse" is also defined in sub-section 159ZA(1) and means the person who is legally married to the taxpayer, unless the person is living separately and apart from the taxpayer, or a person living with the taxpayer on a de facto marriage basis.

Paragraph (c) of the definition will apply where the first occupation date of a taxpayer is after 1 October 1983 and the taxpayer had a spouse on the first occupation date. In such a case the income test will be based on the combined taxable income of the year of income that commenced on 1 July 1982 of both the taxpayer and the person who was his or her spouse on the first occupation date of the taxpayer.

Clause 4 : Rebatable interest

Section 159ZJ of the Principal Act specifies those amounts, paid by a taxpayer in a year of income by way of interest in respect of a loan connected with a dwelling, which are to be taken into account for the purposes of calculating rebate entitlement. In particular, paragraph 159ZJ(2)(c) requires that a taxpayer's "first occupation date" (defined in section 159ZA - refer clause 3) must be before 1 July 1985 in order that an amount of interest paid by him or her may be rebatable.

Paragraph (a) of clause 4 proposes to amend paragraph 159ZJ(2)(c) to change the date from 1 July 1985 to 1 October 1983. The amendment will mean that, except in the circumstances described below, a rebate will only be allowable for qualifying interest paid in respect of a dwelling where a taxpayer's first occupation date is before 1 October 1983, that is, where a taxpayer enters the rebate scheme before that date.

Paragraph (b) of clause 4 proposes to insert two new sub-sections - (2A) and (2B) - in section 159ZJ. Those provisions will allow for an extension of the 1 October 1983 cut-off date, proposed to be inserted by paragraph (a) of this clause, as part of a transitional measure to permit entry to the rebate scheme by persons who contract to purchase or build, or who commence construction themselves of, a dwelling in Australia before 1 October 1983 but who do not occupy the dwelling until that date or later.

The new sub-section 159ZJ(2A) will, subject to the proposed new sub-section (2B), operate to entitle a taxpayer to a rebate of tax, so long as his or her first occupation date is before 1 July 1985, where -

- (a) before 1 October 1983 the taxpayer, or the taxpayer and another person or other persons -
 - (i) entered into a contract for the purchase of a dwelling;
 - (ii) entered into a contract for the construction by another person of a dwelling; or
 - (iii) commenced the construction of a dwelling; and
- (b) on or after 1 October 1983 the taxpayer occupies the dwelling referred to above and the dwelling is the first dwelling in Australia, in which the taxpayer has an ownership interest, that he or she has occupied as a sole or principal residence.

Proposed sub-section (2B) will operate as a safeguard so that a taxpayer will not receive the benefit of the rebate for interest payments on a dwelling as a consequence of the operation of proposed sub-section (2A) if, at any time, he or she receives a payment in respect of a dwelling under the terms of the proposed First Home Owners Bill 1983, which will have the object of encouraging and assisting persons by direct cash payments to purchase or build their first home and which, broadly, is proposed to apply to persons buying or building homes from 1 October 1983.

Clause 5 : Rebate of tax

Section 159ZK is the operative provision which authorises a rebate of tax in a taxpayer's assessment of an amount equal to 30 per cent of the interest that is taken into account under section 159ZJ for the purposes of calculating rebate entitlement.

The amendment proposed by clause 5 is a drafting measure required by the insertion of proposed new section 159ZKA by clause 6.

Clause 6 : Reduction of rebate where combined taxable income exceeds \$24,300

This clause proposes the amendment of the Principal Act to insert new section 159ZKA which will make entitlement to the rebate of tax from 1 October 1983 subject to the operation of an income test. The clause sets out the formula by which the rebate of tax to which a taxpayer would otherwise be entitled is to be reduced on account of the taxpayer's "relevant combined taxable income" (as defined in section 159ZA - see the notes on clause 3).

Paragraph (a) of proposed section 159ZKA specifies that the amount of a taxpayer's rebate which is to be subject to reduction upon application of the income test is the rebate (referred to as the "unreduced rebate") to which the taxpayer would be entitled under the Subdivision, but for the operation of section 159Z0 (the provision which permits the transfer between a taxpayer and his or her spouse of the rebate to which the taxpayer would otherwise be entitled). Thus, the amount of the unreduced rebate is that which results from the application of the existing statutory upper rebate limits set down in sections 159ZL, 159ZM and 159ZN, which limit rebate entitlement by reference to the taxpayer's first occupation date and to whether the taxpayer co-owned the dwelling or had a dependant living in the dwelling.

Paragraph 159ZKA(b) will apply the income test where the relevant combined taxable income of the taxpayer exceeds \$24,300. If a taxpayer's relevant combined taxable income does not exceed \$24,300 there will be no reduction in the rebate to which he or she is otherwise entitled. The paragraph contains a formula which will proportionately disallow part of the rebate referred to in paragraph (a) for incomes above \$24,300 and below \$27,900 and reduce it to NIL for incomes of \$27,900 and above.

The formula is expressed as $A - B \frac{C - 24,300}{3,600}$ which represents the following factors :

- A is the amount of the unreduced rebate (refer paragraph 159ZKA (a));

B is -

- (a) in respect of the year of income that commenced on 1 July 1983, the amount calculated by the formula $\frac{DE}{F}$ where -

D is the amount of the unreduced rebate;

E is the number of whole months after 30 September 1983 in the year of income during which the taxpayer was an eligible occupier of a rebatable dwelling; and

F is the number of whole months in the relevant year of income during which the taxpayer was an eligible occupier of a rebatable dwelling; and

- (b) in respect of the year of income commencing on 1 July 1984 or a subsequent year of income, the amount of the unreduced rebate; and

C is 27,900, except where the number of whole dollars in the relevant combined taxable income of the taxpayer is less than 27,900, in which case C is equal to the number of those whole dollars.

In effect, for the year of income that commenced on 1 July 1983, the formula will reduce the rebate entitlement of a taxpayer whose relevant combined taxable income for the 1982-83 year exceeded \$24,300, by reducing that part of the rebate that is attributable to occupation of the dwelling after 30 September 1983 in the same proportion that the excess of the combined taxable income over \$24,300 bears to \$3,600. For the year of income commencing on 1 July 1984 or a subsequent year of income the whole of the rebate entitlement will be similarly shaded-out, again on the basis of 1982-83 combined taxable income and the excess of that amount over \$24,300.

Clause 7 : Reduction of rebate limit in cases
of co-ownership

Section 159ZN provides the method by which a taxpayer's upper rebate limit, determined under section 159ZL or 159ZM, is apportioned where another co-owner or other co-owners also qualify for a rebate in respect of the dwelling.

The amendment proposed by clause 7 is a formal drafting measure required as a consequence of the insertion of proposed section 159ZKA in the Principal Act.

Clause 8 : Amendment of assessments

This clause will amend sub-section (10) of section 170 of the Principal Act, which governs the power of the Commissioner of Taxation to amend income tax assessments. Sub-section 170(10) provides that nothing in section 170 is to prevent the amendment of an assessment at any time for the purpose of giving effect to specified provisions of the Principal Act.

By clause 8 it is proposed to insert in sub-section 170(10) a reference to new sub-section 159ZJ(2B) which clause 4 of the Bill proposes to insert in the Principal Act.

The insertion in sub-section 170(10) of the reference to sub-section 159ZJ(2B) will enable the Commissioner to amend the assessment of a taxpayer at any time to withdraw a rebate entitlement that had previously arisen as a consequence of the operation of proposed new sub-section 159ZJ(2A) where the taxpayer later receives a grant under the proposed First Home Owners Act 1983. Proposed sub-section 159ZJ(2A) is being inserted as a transitional measure to extend rebate entitlement to first home buyers who contract to purchase or build, or who commence construction of, a dwelling in Australia before 1 October 1983 but who do not occupy the dwelling until that date or after (refer clause 4). The transitional measure is not to operate if a home buyer subsequently receives a grant under the First Home Owners Act 1983.