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THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX ASSESSMENT AMENDMENT BILL 1989

INCOME TAX AMENDMENT BILL (No.2) 1989

MEDICARE LEVY AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,

the Hon. P.J. Keating, M.P.)

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GENERAL OUTLINE

INCOME TAX ASSESSMENT AMENDMENT BILL 1989

This Bill will amend the Income Tax Assessment Act 1936 -

- to require, from December 1989, instalments of tax deducted from the salary or wages of employees to be remitted to the Commissioner of Taxation twice-monthly where, in the financial year ended 30 June 1989, and/or a later financial year -
  - the total of the deductions made by the employer exceeds $5 million; or
  - in the case of a company/employer which is part of a wholly-owned group of companies, the total of the deductions made by the companies in the group exceeds $5 million (1989-90 Budget announcement);
- to raise, from $5,000 to $8,000, for the 1989-90 and subsequent years of income, the threshold for general exemption from the quarterly instalment system of paying provisional tax (1989-90 Budget announcement);
- to ensure that excess provisional tax credits are not offset against quarterly instalments of provisional tax not yet due for payment (1989-90 Budget announcement);
- to provide the method of calculating provisional tax for the 1989-90 income year.

INCOME TAX AMENDMENT BILL (No.2) 1989

This Bill will formally impose tax payable for the 1989-90 and, until the Parliament otherwise provides, the 1990-91 financial year.

MEDICARE LEVY AMENDMENT BILL 1989

This Bill will amend the Medicare Levy Act 1986 -

- to impose a basic rate of Medicare levy of 1.25 per cent for the 1989-90 and, until Parliament otherwise provides the 1990-91 financial year; and
- to exempt from the levy individuals with taxable incomes of $10,330 or less and families and sole parents with family incomes of $17,400 or less; the family or sole parent threshold is raised by a further $2,100 for each dependent child or student (1989-90 Budget announcement).

FINANCIAL IMPACT

INCOME TAX ASSESSMENT AMENDMENT BILL 1989

The estimated gain to the revenue from the introduction of twice-monthly payment of tax instalment deductions is $550 million in 1989-90. This gain is in the form of a one off bring forward of revenue. Additionally, outlays on public debt interest will reduce by $20 million in 1989-90 and $70 million in subsequent years.

The increase in the threshold below which quarterly instalments of provisional tax are not payable is estimated to increase outlays on public debt interest by $20 million in 1989-90, $18 million in 1990-91 and $15 million per annum in subsequent years.

The adoption of a reduced uplift factor of 10 per cent for the calculation of 1989-90 provisional tax will result in an estimated cost to revenue of $160 million in 1989-90.

INCOME TAX AMENDMENT BILL (No.2) 1989

This Bill will formally impose tax payable for the 1989-90 financial year.

MEDICARE LEVY AMENDMENT BILL 1989

The estimated cost of the increased Medicare levy low income thresholds is $10 million in 1989-90 and $35 million in 1990-91.

MAIN FEATURES

The main features of these Bills are as follows:

INCOME TAX ASSESSMENT AMENDMENT BILL 1989

Twice-monthly payment of tax instalment deductions
(Clauses 3 to 5)

The Bill will give effect to the Government's 1989-90 Budget proposal to require certain employers (called "early remitters") to pay to the Commissioner of Taxation by the twenty-first day of a month the income tax which they deduct ("tax instalment deductions") from payments of salary or wages to their employees in the first 14 days of the month. Deductions from payments of salary or wages in the balance of the month are to be paid to the Commissioner no later than the seventh day of the next month.

The proposal will first apply to employers who made tax instalment deductions in excess of $5 million in relation to the financial year ended 30 June 1989. These

employers will be required to remit the deductions on a twice-monthly basis, commencing with a payment by 21 December 1989 of the deductions made in the period 1-14 December 1989. Deductions in the balance of that month will be payable no later than 7 January 1990.

Employers who are members of a wholly-owned group of companies will also be required to pay the deductions to the Commissioner on this twice-monthly basis if the aggregate annual remittances of tax instalment deductions in relation to the financial year ended 30 June 1989 of all the companies in the group exceed $5 million.

Employers who, or companies in a wholly-owned group which, first make tax instalment deductions in excess of $5 million in the year ending 30 June 1990, or a later year, will also be required to remit on the above twice-monthly basis, commencing in the September following the end of the relevant financial year.

An employer who becomes liable to make twice-monthly remittances at any time will be required to continue remitting on that basis unless the Commissioner determines otherwise. Where there is an arrangement for the purpose of avoiding or defeating the proposed requirements, the Commissioner would be authorised to determine that an employer is to pay the tax instalment deductions on the twice-monthly basis.

Instalments of provisional tax
(Clauses 7, 8, 10 and 11)

The Bill will implement the two Budget proposals announced on 15 August 1989 to alter the operation of the quarterly instalment system of paying provisional tax.

First, with effect for provisional tax payable in the 1989-90 and subsequent income years, the Bill will raise the threshold for general exemption from the system from $5,000 to $8,000. As a result a taxpayer will not be required to pay quarterly instalments of provisional tax in respect of the 1989-90 year of income where his or her provisional tax in respect of the 1988-89 year was $8,000 or less.

Secondly, where income tax payable for an income year is less than the provisional tax credit available in respect of that year, the Bill will operate so that, with effect from the day of Royal Assent, the excess provisional tax credit will not be offset against any quarterly instalment of provisional tax in respect of the following income year which has been notified but is not yet due for payment.

Provisional tax for 1989-90 year
(Clauses 6 and 9)

Provisional tax for the 1989-90 year of income is to be calculated by applying 1989-90 rates of tax and Medicare levy to 1988-89 taxable incomes increased by an uplift factor of 10 per cent. Subject to certain adjustments outlined below, rebates and credits allowed in 1988-89 will be taken into account as appropriate in the calculation of 1989-90 provisional tax.

Rebates will be adjusted as follows :

(a) the level of 1988-89 franking rebates will be adjusted to account for the reduction in the company tax rate, before being uplifted by 10 per cent;

(b) concessional rebates allowed in 1988-89 assessments will be adjusted to reflect the increase in the levels of those rebates in 1989-90; and

(c) any zone rebate, a rebate for a Defence Force member serving overseas, or a rebate for civilians serving with the United Nations that was allowed in 1988-89 assessments will be adjusted by an amount equal to 20 per cent of any additional amounts of concessional rebates to which a taxpayer may be entitled in 1989-90 by virtue of paragraph (b).

Also, credits allowed in 1988-89 assessments for foreign taxes will be uplifted by 10 per cent.

Finally, certain consequential amendments are proposed in the legislation dealing with arrangements to avoid provisional tax, to allow for the reduced uplift factor of 10 per cent.

INCOME TAX AMENDMENT BILL (No.2) 1989

This Bill will amend the Income Tax Act 1986 to formally impose tax payable for the 1989-90 financial year and the subsequent year, at the rates of tax declared by the Income Tax Rates Act 1986.

MEDICARE LEVY AMENDMENT BILL 1989

Medicare levy will, by this Bill, be payable on taxable incomes for the 1989-90 financial year and, until the Parliament otherwise provides, the 1990-91 financial year. The amendments to the levy arrangements contained in the Bill will -

. impose the Medicare levy in respect of 1989-90 and

the subsequent financial year at the rate of 1.25 per cent; and

- increase the level of the low income thresholds so that no levy will be payable by :

  .. a person whose taxable income does not exceed $10,330; or

  .. a married (including de facto) couple where the sum of the couple's taxable incomes does not exceed $17,400, or by a sole parent where his or her taxable income does not exceed $17,400; for each dependent child or student maintained by a married couple or sole parent the threshold for payment of the levy is to continue to be increased by $2,100.

A more detailed explanation of the provisions of these Bills is contained in the following notes.

INCOME TAX ASSESSMENT AMENDMENT BILL 1989

Clause 1 : Short title

Subclause (1) provides for the amending Act to be cited as the Income Tax Assessment Amendment Act 1989.

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

Clause 2 : Commencement

The amending Act is to commence on the day on which it receives the Royal Assent. But for this clause, the Act would, by reason of subsection 5(1A) of the Acts Interpretation Act 1901, commence on the twenty-eighth day after the date of Assent.

Clause 3 : Interpretation

Introductory note

For the purposes of enabling income tax to be collected from employees by instalments, employers are required, by section 221C of the Principal Act, to deduct amounts prescribed by the Income Tax Regulations (generally referred to as "tax instalment deductions") from the salary or wages that are paid to employees.

Employers who employ more than ten employees, or make ten or more eligible termination payments, in a twelve month period are required to register as "group employers". As a group employer they must forward any tax instalment

deductions made in a month to the Commissioner of Taxation no later than the seventh day of the next succeeding month. An employer who is not a group employer is required to purchase tax stamps, and keep a tax deduction sheet, in respect of any tax deducted.

The amendments in this Bill will require certain group employers to pay the tax instalment deductions to the Commissioner on a twice-monthly basis. These employers are referred to as 'early remitters'. Deductions made from the salary or wages of employees of early remitters in the first 14 days of a month are to be payable to the Commissioner no later than the twenty-first day of that month. Deductions made in the balance of the month are to be remitted no later than the seventh day of the next month.

Group employers who are not early remitters will continue to pay the tax instalment deductions made in a month to the Commissioner by the seventh day of the next month.

Clause 3 of the Bill will amend section 221A of the Principal Act which contains definitions that apply for the purposes of Division 2 of Part VI of that Act, dealing with the collection by instalments of tax from individuals. The clause inserts the following definitions in subsection 221A(1) :

"early remitter" is to have the meaning given by section 221EC which is proposed to be inserted in the Principal Act by clause 4 of the Bill (refer to later notes on that clause). The term defines a group employer who is required to remit tax instalment deductions twice-monthly, broadly, to be an employer whose total annual remittances of tax instalment deductions to the Commissioner exceed $5 million. Early remitters will include the Commonwealth, a State or a Territory including an authority of the Commonwealth, State or Territory.

"eligible employer group" has the meaning given by section 221ED which is proposed to be inserted in the Principal Act by clause 4 of the Bill (and is also discussed in later notes on that clause). The term defines a group of companies for the purpose of deciding whether any company in such a group is subject to the twice-monthly basis for remitting tax instalment deductions.

Clause 4 : Certain group employers to be early remitters

Clause 4 inserts two new sections - sections 221EC and 221ED - in the Principal Act.

By section 221EC, the group employers who will be

treated as 'early remitters', and therefore required to pay their tax instalment deductions to the Commissioner on a twice-monthly basis, are defined.

A group employer will be an early remitter in accordance with subsection 221EC(1) in relation to a particular month (termed the deduction month) - unless excluded from being an early remitter in respect to that month because of a notice issued under subsection (3) (refer to the notes on that subsection) - if any of three situations apply. An employer who qualifies as an early remitter will continue as such unless the Commissioner determines otherwise under proposed new subsection 221EC(3).

The first situation, set out in proposed paragraph 221EC(1)(a) is that before the beginning of a particular month - called the "deduction month" - the total PAYE remittances of the group employer in relation to any financial year ending on or after 30 June 1989 exceeded $5 million. As discussed later in these notes, the term "PAYE remittances" is defined in paragraph 221EC(8)(a) to mean, in relation to a financial year, amounts of tax instalment deductions the employer was required to pay to the Commissioner in respect of the year under paragraph 221F(5)(a) of the Principal Act.

The second case concerns a group employer member of an "eligible employer group" as defined in proposed new section 221ED discussed later in the notes on this clause. Such a group employer will be an early remitter in relation to a deduction month where, before the beginning of the month, both of the following apply :

(a) at the end of any financial year ending on or after 30 June 1989 ("the threshold year"), the group employer was a part of an eligible employer group (subparagraph (b)(i)); and

(b) the total PAYE remittances (refer to the later notes on paragraph 221EC(8)(b)) for the threshold year of all employers in the eligible employer group at the end of that year exceeded $5 million (subparagraph (b)(ii).

The third situation is where the Commissioner has served a notice on the group employer under proposed new subsection 221EC(5) (refer to the notes below on that subsection) requiring the group employer to be an early remitter in respect of a particular period (paragraph (c)).

Paragraph 221EC(2)(a) ensures that a group employer cannot be an early remitter in relation to any month prior to December 1989. As a consequence, the requirement to pay tax instalment deductions to the Commissioner on a twice-monthly basis will not apply to any deductions made before 1 December 1989 - the announced commencement date of the measure.

Example

Assume that in the financial year ended 30 June 1989 the tax instalment deductions made by a group employer exceeded $5 million. That employer will be an early remitter in respect of all tax instalment deductions made on and after 1 December 1989, and will remain an early remitter regardless of the level of any subsequent deductions unless and until the Commissioner issues a notice under subsection 221EC(3) which is discussed below.

By paragraph 2(b) group employers who are early remitters because of the operation of paragraphs (1)(a) or (b) (refer to the earlier notes on those paragraphs) are not to be treated as early remitters in relation to July and August of a particular financial year, unless they were an early remitter in relation to June of the previous financial year. This subsection, which will first be relevant to July and August 1990, gives employers who become early remitters following the end of any financial year after that which ended on 30 June 1989 sufficient time to make the necessary accounting or administrative changes so as to be able to comply with the new remittance rules.

Example

Assume a group employer, in relation to the financial year ending 30 June 1990, had tax instalment deductions in excess of $5 million for the first time.

Because the group employer was not an early remitter in respect of June 1990, that employer will become an early remitter in relation to tax instalment deductions made on or after 1 September 1990.

This rule only applies in the year in which a group employer first becomes an early remitter. The rule will also not apply if a group employer is notified, under subsection 221EC(5) (refer to the later notes on that section), that it is to be an early remitter.

Under subsection 221EC(3) the Commissioner may serve a notice in writing on a group employer determining that the employer is not an early remitter in relation to

- any month or months specified in the notice (subparagraph (a)(i)); or
- all months after and including a month specified in the notice (subparagraph (a)(ii)).

Employers so notified will be freed from the obligations placed on early remitters by this Bill for the

period indicated in the notice.

In deciding to make a determination under paragraph (3)(a) the Commissioner would consider matters such as the number of employees in respect of whom tax instalments are deducted, the amount of the tax deductions, the location of the employer or any undue imposition that would be placed on the employer in complying with the law.

Paragraph (3)(b) allows the Commissioner to vary or revoke a determination made under paragraph (3)(a) by serving a notice on the employer advising of the variation or revocation.

By subsection 221EC(4) a notice under subsection (3) in relation to a particular month does not have effect unless the notice was served before the fifteenth day of the preceding month. As a consequence, if a notice under this subsection is given to a group employer on, say, the seventeenth of a month, the employer will remain an early remitter in relation to deductions made in the next month, reverting to a single remittance basis in the following month. This will give group employers the opportunity to make any necessary accounting or administrative changes that may be necessary to comply with such a notice.

The subsection will also have an operation where an employer is an early remitter in relation to the month of September of a year and is required under proposed paragraph 221F(12A)(c) (see the later notes on clause 5 of the Bill) to give a notice to the Commissioner on or before 14 August of the year. Unless such an employer is determined not to be an early remitter under paragraph (3)(a) by the 14 August, the obligation to notify the Commissioner under proposed paragraph 221F(12A)(c) will still exist.

Under subsection 221EC(5) the Commissioner may serve a notice in writing on a group employer determining that the employer is to be an early remitter in relation to

- any month or months specified in the notice (subparagraph (a)(i)); or
- a month and all subsequent months specified in the notice (subparagraph (a)(ii)).

The power given to the Commissioner to require a group employer to be an early remitter is intended to overcome arrangements to avoid the early remittance provisions, such as the moving of employees into a new company that does not already qualify as an early remitter, while retaining only a few or no employees in the company that has qualified as an early remitter. In this circumstance, the Commissioner can require the new company to remit on the twice-monthly basis.

Group employers who are so notified will be subject to all the obligations placed on early remitters by the new measures, for the period indicated in the notice. In deciding to issue a notice the Commissioner may have regard to the matters set out in subsection 221EC(7) which is discussed below.

The Commissioner may vary or revoke a determination made under paragraph (5)(a) by serving a notice on the group employer advising of the variation or revocation (paragraph (b)).

Subsection 221EC(6) will ensure that a notice issued under subsection (5) will not have any effect until the second month following the month in which the notice was served. This subsection is intended to ensure that employers who become early remitters because of the application of subsection (5) have reasonable time to change any accounting or administrative arrangements necessary to comply with the requirements of an early remitter.

Example:

> An employer is served a notice under paragraph 221EC(5)(a) on 17 May 1990 determining that the employer is an early remitter. The first month for which the group employer will be treated as an early remitter is July 1990.

Subsection 221EC(7) lists matters that the Commissioner may take into account when exercising the power under subsection (5) determining that a group employer is an early remitter (see the previous notes on that subsection). These matters are broadly:

- any arrangement that was entered into or carried out after 15 August 1989 (the date of announcement of the proposal) where the purpose, or one of the purposes, of the arrangement is to avoid the requirement to pay tax instalment deductions to the Commissioner by the twenty-first day of a month, in accordance with proposed new subparagraph 221F(5)(a)(i) (refer to later notes on clause 5 of the Bill in relation to that subparagraph) (paragraph (a));

- where appropriate, the extent to which the group employer concerned pays the salary or wages of employees who were formerly paid by another employer (paragraph (b)); and

- any other matters the Commissioner considers relevant (paragraph (c)).

Subsection 221EC(8) defines two terms necessary for the operation of the tests in subsection 221EC(1) for

determining whether a group employer is an early remitter. By paragraph 8(a) a reference in paragraph 221EC(1)(a) to the PAYE remittances of a group employer for a financial year, is to be taken as a reference to the amounts of tax instalment deductions the group employer was required to pay to the Commissioner under paragraph 221F(5)(a) of the Principal Act (including that paragraph as varied under subsection 221F(7)) in respect of deductions made during that financial year. Subsection 221F(7) authorises the Commissioner to vary the requirements of subsection 221F(5) to remit monthly.

Paragraph (8)(b) defines a term used in paragraph 221EC(1)(b) to quantify the total amount of income tax instalment deductions made by an eligible employer group (refer to the later notes on section 221ED) that causes the employer companies in the group to become early remitters. For this purpose, the reference to the PAYE remittances for a financial year of employers that were included in an eligible employer group at the end of a financial year (refer to the earlier notes on subsection 221EC(1)), is a reference to the amounts of tax instalment deductions of all the employers in that group that were required to be paid to the Commissioner under paragraph 221F(5)(a) of the Principal Act (including that paragraph as varied under subsection 221F(7)) in respect of deductions made during that financial year. The "eligible employer group" test is applied at the end of a financial year. The "PAYE remittances" test is imposed on the group having regard to the companies then in the group, whether or not they were in the group at all times during the year, or after the year unless the Commissioner has by notice under subsection 221EC(3) discussed earlier determined that the company is not an early remitter.

Example

Companies A, B, C and D are, at the end of the financial year ending 30 June 1990, included in a wholly owned group of companies.

Companies A, B and C have been group companies for all of the financial year. Company D, however, became part of the group on 31 May 1990.

Tax instalment deductions made by each company during the financial year were :

Company A	$2 million
Company B	$1 million
Company C	$1 million
Company D	$2 million
	$6 million

Each employer will be an early remitter because the total deductions required to be paid to the

Commissioner under paragraph 221F(5)(a) of the Principal Act in relation to that financial year by all employers in the group at the end of the year exceeded $5 million.

In determining the amount of PAYE remittances for a financial year, it does not matter whether the remittances were actually paid to the Commissioner during or after the financial year to which they relate - the test is that the remittances were in respect of deductions in the relevant year.

Example

Assume a group employer made tax instalment deductions of $5.6 million from salary or wages paid to employees during the financial year ended 30 June 1989, but the actual deductions remitted to the Commissioner in that year were only $4.9 million ($0.7 million is being outstanding).

The group employer will be an early remitter from 1 December 1989. The amount of tax instalment deductions required by paragraph 221F(5)(a) to be paid to the Commissioner in relation to the financial year ending 30 June 1989 exceeded $5 million, even though the actual payments received were less than that amount.

Subsection 221EC(9) is a relieving measure to ensure that an employer is not treated as an early remitter in relation to a month where it proves it did not know or could not reasonably be expected to know, before the beginning of that month, that it would be an early remitter in respect of that month.

For example, subsection 221EC(9) would operate in determining whether an employer has committed an offence for the purposes of subsection 221F(14) by not paying tax instalment deductions to the Commissioner by the required day. This defence will apply equally to the employer or to any other person who may be charged in relation to an offence arising from Division 2 of Part VI (other than subsection 221F(12A) - which, as indicated in later notes on clause 5 of the Bill, is a form of notification required of new early remitters).

Section 221ED : Eligible employer groups for determining early remitters.

Clause 4 also proposes to insert a new section - section 221ED - in the Principal Act. The new section details the method by which employers will be grouped into eligible employer groups for the purposes of proposed new paragraph 221EC(1)(b) (refer to the earlier notes on that paragraph). Company/employers that are part of an "eligible employer group" may be treated as early

remitters, subject to the $5 million qualifying threshold that applies to the aggregate tax instalment deductions of all employers in the group.

Subsection 221ED(1) defines an eligible employer group, for the purposes of Division 2 of Part VI of the Principal Act, to consist of any collection of 2 or more companies each of which is a group company in relation to each of the others.

Subsection 221ED(2) specifies for the purposes of this section, 2 tests which must be satisfied if, a company is to be treated as group company in relation to another company. They are that :

- one of the companies is a subsidiary of the other (paragraph (a)); or
- each of the companies is a subsidiary of the same company (paragraph (b)).

Subsection 221ED(3) specifies the circumstances in which a company (the 'subsidiary company') is to be taken as a subsidiary of another company (the 'holding company') for the purposes of section 221ED.

Under paragraph (a), a company is a subsidiary of another company (that is, they are within a company group) if all the shares of the company are beneficially owned by the other company.

Paragraph (b) establishes a group relationship of a company in relation to another company if all the shares in the first-mentioned company are beneficially owned by a company that is, or two or more companies, each of which is, a subsidiary of the other company.

By paragraph (c) the necessary group relationship of a company and another company is also established if all the shares in the first-mentioned company are owned by the other company and by a company that is, or by two or more companies each of which is, a subsidiary of the other company.

Subsection 221ED(4) extends the operation of subsections (1), (2) and (3) by establishing a group relationship between companies which are part of a wholly-owned chain of subsidiaries of a holding company. Thus, in a corporate structure under which all of the shares in a subsidiary are owned by one or more wholly-owned companies that are interposed between a holding company and the end subsidiary company, a group relationship will be found between them.

Clause 5 : Group Employers

Section 221F of the Principal Act sets down the

requirements on certain employers to register with the Commissioner of Taxation as "group employers" and to pay to the Commissioner the amount of tax instalments deducted from the salary or wages of employees, in accordance with section 221C of the Principal Act. In particular, subsection 221F(5) outlines certain duties of employers including, by paragraph 5(a), the duty of paying the deductions to the Commissioner no later than the seventh day of the month succeeding the month of deductions.

Subclause 5(a) of the Bill will omit existing paragraph 221F(5)(a) of the Principal Act and substitute a new paragraph (5)(a) requiring early remitters (as defined) to pay to the Commissioner on a twice-monthly basis the amount of tax instalment deductions made from the salary and wages of their employees . Group employers who are not early remitters will continue to be required to remit deductions monthly.

New subparagraph 221F(5)(a)(i) will require early remitters who, in relation to a month, have made tax instalment deductions in the first 14 days of that month to pay the deductions to the Commissioner no later than the twenty-first day of the month.

Where the group employer is an early remitter in relation to a particular month and tax instalment deductions were made in the balance of a month after the fourteenth day, those tax deductions are to be paid to the Commissioner no later than the seventh day of the next month (subparagraph 221F(5)(a)(ii)). Also under this subparagraph, employers who are not early remitters will continue to pay to the Commissioner by the seventh day of a month all tax instalment deductions made in the preceding month.

Subclause 5(b) will further amend section 221F of the Principal Act by inserting new subsections (12A) and (12B).

Under new subsection 221F(12A), a group employer will be guilty of an offence where the employer :

- is an early remitter in relation to September of a particular year, as a result of meeting the requirements of proposed paragraph 221EC(1)(a) or (b)(refer to the earlier notes on clause 4 in relation to those paragraphs) (paragraph (a)); and

- was not an early remitter in respect to August of that year - that is, the employer becomes an early remitter because of the level of tax instalment deductions made in the financial year just ended (paragraph (b)); and

- does not give to the Commissioner, on or before 14 August in that year, a notice in accordance with

regulations made for the purposes of the subsection (paragraph (c)).

If convicted, a fine not exceeding $50 may be imposed in respect of each day from (and including) 15 August of the relevant year until the day on which the employer gives the required notice in accordance with paragraph (12A)(c).

The obligation to furnish a notice to the Commissioner in accordance with paragraph (12A)(c) will first be required of group employers who become early remitters because they have met the conditions of paragraphs 221EC(1)(a) or (b) in relation to the financial year ending 30 June 1990.

New subsection 221F(12B) affords a defence to any proceedings under, or arising out of, new subsection 221F(12A). It is a defence if, in respect of a particular day, the defendant is able to show that it did not know, and could not reasonably be expected to have known at least 7 days before that day, that the employer concerned was an early remitter in relation to the month (September) to which the offence relates. This defence is available both to the employer and any other person who may be charged with an offence arising from a failure to comply with subsection 221F(12A).

If after 14 August of the relevant year, the employer becomes aware that it should have furnished a notice under paragraph 221F(12A)(c), it will have 7 days in which to meet the requirements of the paragraph before committing an offence.

Clause 6 : Provisional tax for 1989-90 year

This clause will amend the Principal Act to insert a new section - section 221YCAA - the primary purpose of which is to specify the basis for calculating the 1989-90 provisional tax payable by provisional taxpayers who do not "self-assess" by seeking a variation of provisional tax on the basis of an estimate of income for the relevant year.

In the past, a measure in this general form has been included in an amending Bill in each Budget Sittings, but has not formed part of the Principal Act. This has required the Parliament to consider largely repetitious rules each year. To streamline this process section 221YCAA will facilitate the calculation of provisional tax on a continuing basis from year to year, but subject to normal amendment to update its application each year and to make any adjustments that may be necessary.

In its proposed form, subsection 221YCAA(1) requires that provisional tax for 1989-90 is to be calculated by applying 1989-90 rates of tax (without regard

to the arrangements for pro-rating of the tax-free threshold) and Medicare levy to 1988-89 taxable income increased by 10 per cent.

With the exception of the rebates of tax discussed below, 1988-89 rebates are to be taken into account as allowed in 1988-89 assessments.

For taxpayers allowed rebates in their 1988-89 assessments for a dependent spouse, daughter-housekeeper, invalid relative, parent or parent-in-law (section 159J of the Principal Act), a housekeeper (section 159L) or as a sole parent (section 159K), the new subsection will require provisional tax to be calculated after adjusting the rebates on the basis of the increase in the level of rebate to be allowed in 1989-90.

Adjustments will also be made to any rebate allowed in a 1988-89 assessment of a taxpayer because he or she is resident in an isolated area (section 79A of the Principal Act), is a Defence Force member serving overseas (section 79B) or is a civilian serving with the United Nations (section 23AB). The provisional tax will be calculated after increasing any such rebate by 20 per cent of the adjustment made to the taxpayer's 1988-89 concessional rebate claim, as discussed in the previous paragraph.

For taxpayers entitled to a rebate of tax in respect of franked dividends received during 1988-89, subsection 221YCAA(1) will require that, for the 1989-90 provisional tax calculation, those rebates will be increased by 10 per cent after applying a factor of 39/49ths to the rebates to take account of the reduction in the rate of company tax. Both the uplift and the fall in the rate of company tax will be taken into account by a factor of 429/490 (ie, 39/49 x 1.1).

Where an amount of a net capital gain has been included in a taxpayer's 1988-89 assessable income by virtue of Part IIIA of the Principal Act, the provisional tax for 1989-90 will be calculated by reference to the amount that would have been the taxable income for 1988-89 if the net capital gain amount had not been included in the taxpayer's assessable income for that year.

Where a taxpayer chooses to "self-assess", the provisional tax will be, basically, the amount calculated by applying 1989-90 rates of tax and Medicare levy to the taxpayer's estimated taxable income for that income year and deducting estimated 1989-90 rebates. By virtue of subsection 221YDA(1AA) of the Principal Act, an estimate of taxable income for this purpose is to be made on the basis that the assessable income will not include the amount of any net capital gain that may be included in the taxpayer's assessable income by virtue of Part IIIA of the Principal Act.

For taxpayers deriving a notional income as specified by section 59AB (depreciation recouped) or section 86 (lease premiums) of the Principal Act, provisional tax, before deduction of rebates, is to be calculated by applying to 1988-89 taxable income increased by 10 per cent, the 1989-90 rate of tax applicable to their 1988-89 notional income.

Taxpayers who were under 18 years of age at 30 June 1989 were liable for tax for 1988-89 under the special provisions applying to minors if, in the case of a non-resident, the minor had any eligible taxable income for the purposes of Division 6AA of Part III of the Principal Act for that year or if, in the case of a resident, that eligible taxable income exceeded $416. For the purposes of the 1989-90 provisional tax calculation, the portion of a minor's taxable income, as increased by 10 per cent, that is to be taken as eligible taxable income is to be in the same proportion as that which the 1988-89 eligible taxable income of the taxpayer bore to his or her taxable income for that year.

Where the 1988-89 eligible taxable income of a taxpayer to whom the provisions of Division 6AA of Part III of the Principal Act applied for that year included a net capital gains amount, the eligible taxable income for that year is, for the purposes of the 1989-90 provisional tax calculation, to be adjusted to the amount that would have been the taxpayer's eligible taxable income if that net capital gains amount had not been included in the taxpayer's 1988-89 assessable income.

In respect of a taxpayer who is an eligible person for the purposes of Division 16A of Part III of the Principal Act - that is, an artist, composer, inventor, performer, production associate, sportsperson or writer entitled to income averaging - the taxpayer's provisional tax liability is to be calculated on the basis that his or her eligible taxable income for the purposes of section 158H of the Principal Act is increased by 10 per cent.

For primary producers who do not "self-assess" subsection 221YCAA(1) will require that, for provisional tax purposes, any averaging rebate to which the primary producer is entitled is to be recalculated using 1988-89 taxable income (as adjusted for any income equalisation deposit withdrawals, capital expenditure on a qualifying Australian film or subscription to shares in licensed management and investment companies) increased by 10 per cent. 1989-90 rates of tax will be applied in the calculation on the basis of the average income used for 1988-89 assessment purposes. Average income will not be recalculated to reflect the notional 10 per cent increase in taxable income for provisional tax purposes.

A primary producer may qualify for a partial averaging benefit in 1988-89 because his or her income other than from primary production in that year exceeded $5,000. In such a case the new section will ensure that the proportion of the averaging adjustment - the same proportion as income from primary production bears to total taxable income - to be taken into account in calculating 1989-90 provisional tax is the same as the 1988-89 proportion. That is, it is not to be reduced to reflect the notional 10 per cent increase in income other than from primary production.

Where an amount of income tax or Medicare levy was payable in 1988-89, an amount additional to the provisional tax (if any) otherwise payable representing Medicare levy for 1989-90 is to be incorporated in the 1989-90 provisional tax calculation. In these situations the Medicare levy component of provisional tax will be calculated by applying the 1989-90 year Medicare levy rate of 1.25 per cent to 1988-89 taxable income as increased by 10 per cent. The increased low income thresholds to apply for levy purposes in 1989-90 will be taken into account. In addition, wherever a part or full exemption from levy was obtained by an individual in his or her 1988-89 assessment, the same exemption will be provided in the calculation of levy for 1989-90 provisional tax purposes.

Foreign tax credits allowed in 1988-89 will be uplifted by the same rate of 10 per cent as is applied to foreign income.

For a taxpayer whose 1988-89 taxable income reflects a deduction allowed for capital moneys expended in producing a qualifying Australian film or for subscriptions to shares in licensed management and investment companies, 1989-90 provisional tax will be calculated as if no such deduction had been allowed, with the taxable income so adjusted increased by 10 per cent.

Subsection 221YCAA(2) is a drafting measure which ensures that the basis of calculation of 1989-90 provisional tax provided for in this section applies to provisional tax that is payable under both the single payment system and the instalment system that first operated in the 1987-88 year.

Clause 7 : Notification of instalments of provisional tax

Section 221YDAA of the Principal Act sets out, among other things, the requirements of the law concerning the notification of instalments of provisional tax. Subsection 221YDAA(4) specifies two sets of circumstances in which taxpayers are not liable to pay instalments of provisional tax.

By paragraph 221YDAA(4)(b), a taxpayer is not required to pay provisional tax instalments in respect of a year of income where his or her "previous year's provisional tax amount" is $5,000 or less at the date on which the first instalment notice for the year would have otherwise have issued.

The term "previous year's provisional tax amount" is defined in subsection 221YA(1) in relation to a particular date in relation to a year of income to mean, broadly, the provisional tax liability of the taxpayer at that date in relation to the preceding year of income.

Under the amendment to be made by this clause, the $5,000 threshold is to be increased to $8,000. This will mean that a taxpayer whose provisional tax liability in respect of the preceding year (i.e. the "previous year's provisional tax amount") is $8,000 or less, as at the date on which the first instalment notice for the current year of income would have issued, will not be liable to pay provisional tax by instalments in relation to income of that year. Such taxpayers will be subject to provisional tax on a single payment basis.

This amendment will apply for the charging of provisional tax instalments for the 1989-90 and subsequent years of income (see later notes on subclause 10(1) of the Bill).

Clause 8 : Provisional tax to be credited against other tax

By this clause, section 221YE of the Principal Act is to be amended to preclude the application of any excess provisional tax credit in respect of a year of income to provisional tax instalments of the succeeding year not yet due for payment.

Broadly, existing section 221YE of the Principal Act requires the Commissioner of Taxation, on making an assessment, or in determining that no income tax is payable for a year of income, to apply provisional tax paid by the taxpayer in respect of that year in payment successively of -

(a) any income tax liability for the year (paragraph (a));

(b) any provisional tax liability notified to the taxpayer in respect of the succeeding income year (paragraph (b)); and

(c) any other income tax or withholding tax liability of the taxpayer (paragraph (c)).

The Commissioner is required to refund to the taxpayer any amount of provisional tax not so credited.

Paragraphs (a) and (b) of clause 8 will amend section 221YE to ensure that the section will apply to all taxpayers who have paid provisional tax in respect of income of a particular year of income, whether that provisional tax was paid by way of instalments or under the single payment (lump sum) system.

These amendments are drafting adjustments consequent on the repeal of subsection 221YE(2) of the Principal Act by the Income Tax (Arrangements with the States) Repeal Act 1989 (No.73 of 1989). By the repeal, section 221YE ceased to apply in respect of an instalment of provisional tax.

The amendments made by paragraphs 8(a) and (b) will restore the operation of section 221YE in respect of an instalment of provisional tax.

By clause 10 of the Bill, section 221YE is to be taken to have had this effect from the date of Royal Assent of the Income Tax (Arrangements with the States) Repeal Act 1989 until the commencement of this Bill.

Paragraph 8(c) will omit paragraph 221YE(1)(b) and substitute a new paragraph (1)(b) to ensure that excess provisional tax credit remaining after the payment of the income tax liability in respect of income of a year of income will next be credited in payment of provisional tax (but not an instalment of provisional tax) notified to the taxpayer (subparagraph (b)(i)), or to any instalment of provisional tax due and payable by the taxpayer (subparagraph (b)(ii)) in respect of income of the following year of income. As a result, excess provisional tax credit in respect of a year of income will not be offset against any instalment of provisional tax in respect of income of the subsequent year which is not due for payment as at the date on which the assessment of income tax of the first-mentioned year is made.

The amendments made by clause 8 will apply where an assessment of income tax in respect of income of any year of income is made on or after the day on which this Bill receives the Royal Assent.

Clause 9 : Amendments consequential on the reduction in the provisional tax uplift factor

Clause 9 proposes consequential amendments to sections 221YHAAC and 221YHAAD of Division 3 of Part VI of the Principal Act providing the basis for self-assessing provisional tax. The amendments are set out in a Schedule to the Bill. Sections 221YHAAC and 221YHAAD are part of the anti-avoidance measures which operate to overcome arrangements using family partnerships or family trusts

by which partners or beneficiaries could avoid or reduce liability for provisional tax.

Subsection (2) of each of sections 221YHAAC and 221YHAAD sets out and quantifies what is to be regarded as the obtaining of a provisional tax benefit under an arrangement. In quantifying the benefit account is taken of the taxpayer's share of relevant partnership or trust income of the year preceding the year in which the taxpayer is determined to have received a provisional tax benefit. In the calculations, the preceding year's income is uplifted by a factor which corresponds with the provisional tax uplift factor that applies generally in the calculation of provisional tax for the year in which the provisional tax benefit is to be determined.

The uplift factor to be used in the calculation of 1989-90 provisional tax is proposed to be 10 per cent - refer to the earlier notes on clause 6 of this Bill. As a consequence, it is necessary to introduce a new component, reflecting the 10 per cent uplift factor, into formulae in each of sub-subparagraphs 221YHAAC(2)(e)(i)(A), (ii)(A) and (iii)(A) and subparagraph 221YHAAD(2)(e)(iii) of the Principal Act.

By subclause 10(2) of the Bill these amendments apply in relation to provisional tax in respect of the 1989-90 income year and all subsequent years of income.

Clause 10 : Application of amendments

This clause contains application provisions relevant to certain of the amendments to be made by the Bill.

Subclause 10(1) specifies that the amendment made by clause 7 of the Bill to the threshold for the payment of provisional tax by instalments (paragraph 221YDAA(4)(b) of the Principal Act) applies to instalments of provisional tax in respect of income of the year of income commencing on 1 July 1989 and of all subsequent years of income.

By subclause 10(2) the amendments made by clause 9 of the Bill to sections 221YHAAC and 221YHAAD of the Principal Act relating to provisional tax avoidance arrangements apply for provisional tax in respect of the year of income commencing on 1 July 1989 and of all subsequent years of income.

Clause 11 : Transitional - section 221YE of the Principal Act

This clause is relevant to the amendment to section 221YE of the Principal Act by clause 8 and overcomes an unintended consequence of the removal of subsection 221YE(2) of the Principal Act by the Income Tax (Arrangements with the States) Repeal Act 1989 (Act No.73 of 1989) with effect from 21 June 1989.

INCOME TAX AMENDMENT BILL (No.2) 1989

Introductory Note

This Bill will amend the Income Tax Act 1986 to formally impose - at the rates already declared by the Income Tax Rates Act 1986 - the tax payable for the 1989-90 financial year and, until the Parliament otherwise provides, the 1990-91 financial year by -

- individuals and trustees generally;
- companies, registered organizations, corporate unit trusts and public trading trusts, and certain other trusts; and
- trustees of superannuation funds, approved deposit funds and pooled superannuation trusts.

The general rates of tax for resident taxpayers for 1989-90 are as follows :

For Parts of Taxable Income

Exceeding	But Not Exceeding	Rate
$	$	%
0	5,100	Nil
5,100	17,650	21
17,650	20,600	29
20,600	35,000	39
35,000	50,000	47
50,000	-	48

The rate of 48 per cent on income exceeding $50,000 is a composite rate that reflects the reduction in the marginal rate applying to that range of income from 49 per cent to 47 per cent from 1 January 1990.

Tax payable by resident taxpayers may be calculated from the following table :

Parts of Taxable Income

Exceeding	Tax on Total Taxable Income	But Not Exceeding
$	$	%
0	5,100	NIL
5,100	17,650	NIL plus 21 cents for each dollar of taxable income in excess of $5,100.
17,650	20,600	$2,635.50 plus 29 cents for each dollar of taxable income in excess of $17,650.
20,600	35,000	$3,491 plus 39 cents for each dollar of taxable income in excess of $20,600.
35,000	50,000	$9,107 plus 47 cents for each dollar of taxable income in excess of $35,000.
50,000	-	$16,157 plus 48 cents for each dollar of taxable income in excess of $50,000.

The general rates of tax for non-residents for 1989-90 are :

Parts of Taxable Income

Exceeding	But Not Exceeding	Rate
$	$	%
0	20,600	29
20,600	35,000	39
35,000	50,000	47
50,000	-	48

Tax payable by non-resident taxpayers may be calculated from the following table :

Parts of Taxable Income

Exceeding $	Not Exceeding $	Tax on Total Taxable Income
0	20,600	29 cents for each dollar of taxable income.
20,600	35,000	$5,974 plus 39 cents for each dollar of taxable income in excess of $20,600.
35,000	50,000	$11,590 plus 47 cents for each dollar of taxable income in excess of $35,000.
50,000	-	$18,640 plus 48 cents for each dollar of taxable income in excess of $50,000.

Other rates for 1989-90 include :

- 48 per cent for further tax payable under section 94 of the Income Tax Assessment Act 1936 (the "Assessment Act") on uncontrolled partnership income;
- 48 per cent on income assessed to a trustee under section 99A of the Assessment Act;
- 48 per cent, subject to shading-in arrangements above $416, on the unearned income of resident minors under the provisions of Division 6AA of Part III of the Assessment Act.

The rate of tax for companies generally, corporate unit trusts and public trading trusts payable in respect of 1988-89 income is 39 per cent.

The rates on the various components of the 1988-89 income of life assurance companies and registered organisations are as follows :

- the component referable to policies held by complying funds or in respect of rollover annuities - 15 per cent;
- the component referable to policies held by non-complying funds - 49 per cent;

- the component referable to other life assurance and to accident and disability insurance

  - life assurance companies - 39 per cent

  - registered organisations - 30 per cent

- the non-statutory fund component (life assurance companies only). - 39 per cent

A rate of tax of 15 per cent applies to the standard component of the taxable incomes of complying superannuation funds, approved deposit funds and pooled superannuation trusts. The rate in respect of any special component of taxable income is 49 per cent.

Notes on the clauses of the Bill are set out below.

Clause 1: Short title etc.

By subclause (1) of this clause, the amending Act is to be cited as the Income Tax Amendment Act (No.2) 1989.

Subclause (2) facilitates references to the Income Tax Act 1986 which, in this Bill, is referred to as the Principal Act.

Clause 2 : Commencement

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

Clause 3 : Levy of Tax

Clause 3 will amend section 7 of the Principal Act which operates to formally levy the tax imposed by section 5 of that Act. By this clause, paragraph 7(a) of the Principal Act will be extended so that tax, at the rates declared by the Income Tax Rates Act 1986, is to be levied and payable for the 1989-90 financial year. Following this amendment, paragraph 7(b) of the Principal Act will operate so that tax will be levied and payable for the 1990-91 financial year, until the Parliament otherwise provides.

MEDICARE LEVY AMENDMENT BILL 1989

This Bill will amend the Medicare Levy Act 1986 to impose Medicare levy for the financial year commencing on 1 July 1989 and, until the Parliament otherwise provides, the financial year commencing on 1 July 1990. The Bill

will also increas the level of the income thresholds b low which levy is not payable.

Clause 1 : Short title etc.

By subclause (1) of this clause, the amending Act will be cited as the Medicare Levy Amendment Act 1989.

Subclause (2) facilitates references to the Medicare Levy Act 1986 in this Bill as the Principal Act.

Clause 2 : Commencement

This clause provides for the Act to commence on the day on which it receives the Royal Assent. But for this clause, subsection 5(1A) of the Acts Interpretation Act 1901 would bring it into operation on the twenty-eighth day after the date of Assent.

Clause 3 : Amendment of Principal Act

By clause 3 the Principal Act is to be amended as set out in the Schedule. The particular amendments are discussed below.

Levy in Cases of Small Incomes (section 7)

Section 7 of the Principal Act gives relief from Medicare levy to taxpayers on low incomes and phases in the levy for those taxpayers with taxable incomes that exceed the threshold below which no levy is payable.

The Schedule proposes amendments of subsections 7(1) and (2) of the Principal Act to omit the references therein to $9,560 and to substitute references to $10,330. As a consequence of the amendment of subsection 7(1), a taxpayer whose taxable income is $10,330 or less will not be required to pay Medicare levy in the 1989-90 financial year.

An amendment of subsection 7(2) proposes to omit a reference to $10,197 and to insert a reference to $11,018. The levy for a taxpayer whose taxable income exceeds $10,330 but does not exceed $11,018 will be limited to 20 per cent of the excess of the taxable income over $10,330.

By clause 4 of the Bill the amendments to section 7 of the Principal Act apply for the financial years commencing on or after 1 July 1989.

The amount of levy ascertained in this way is further reduced by any reduction to which the person is entitled by reason of the family income threshold provisions in section 8 of the Principal Act, or because the taxpayer is exempt from payment of the levy for part of the year of income (section 9 of the Principal Act).

Amount of Levy - Person who has Spouse or Dependants (section 8)

Section 8 of the Principal Act grants full relief from Medicare levy in respect of a year of income to a person who has a family if two conditions are satisfied -

- the person is married or is de facto married (as defined) on the last day of the year of income or the person is entitled to a rebate in his or her assessment in respect of the year of income for a daughter-housekeeper or a housekeeper or as a sole parent; and

- the family income of the person in respect of the year of income (i.e., the taxable income of the person plus that of his or her spouse, if any) does not exceed the family income threshold in relation to the person.

By the Schedule, the basic level of the "family income threshold" for a taxpayer - defined in subsection 8(5) of the Principal Act - is to be increased from $16,110 to $17,400. The level of that threshold in a year of income will continue to be increased by a further $2,100 for each dependent child or student in respect of whom the taxpayer or his or her spouse, if any, would have been entitled to an income tax dependant rebate in that year if those rebates had not been replaced by family allowances.

The amendment proposed by the Schedule to a component of the formula in subsection 8(2) of the Principal Act will ensure the continued operation of that subsection and subsections (3) and (4) in shading-in the amount of Medicare levy payable by a couple, or a sole parent, where the couple or sole parent is not entitled to exemption from levy by subsection 8(1), because the family income exceeds the family income threshold by a small or moderate amount. The formula limits the levy payable by a taxpayer (before any reduction under section 9 to which the taxpayer is entitled as a part year prescribed person) to 20 per cent of the excess of the family income over the family income threshold.

The Schedule also proposes an amendment to subsection 8(6) of the Principal Act to account for the increase in the basic level of the family income threshold to $17,400.

Financial Years for which Levy is Payable (section 11)

By the amendment proposed to paragraph 11(a) of the Principal Act, the Medicare levy - imposed by section 5 of the Principal Act - is payable for the 1989-90 financial year. Following this amendment, paragraph 11(b) of the Principal Act will operate so that Medicare levy will be payable for the 1990-91 financial year, until the

Parliament otherwise provides.

Clause 4 : Application of threshold amendments

By this clause the amendments to sections 7 and 8 of the Principal Act will apply for financial years commencing on or after 1 July 1989.