

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

PART A

(Circulated by authority of the Minister Assisting
the Treasurer, The Hon. Chris Hurford MP)

Part A of this memorandum contains explanations designed to provide a broad guide to the legislation that has been introduced to give effect to measures foreshadowed by the Treasurer in the 1984-85 Budget to strengthen existing mechanisms for the collection of tax, to increase the levels of penalty for breaches of the taxation laws, and modernise provisions for prosecution for such breaches. Part B of the memorandum will contain a clause by clause explanation of the Bill.

General Outline

The Taxation Laws Amendment Bill 1984 will amend the various Commonwealth taxation laws:

Offence and prosecution provisions

- . to increase ten-fold the maximum level of court imposed penalties and implement a tiered structure of penalties for second and subsequent offenders;
- . to enable all prosecutions of taxation offences punishable by fine and not imprisonment to be instituted in a court of summary jurisdiction;
- . to extend the jurisdiction of summary courts to taxation offences punishable by a term of imprisonment not exceeding 12 months;
- . to allow a person prosecuted for an offence punishable by a fine exceeding \$5,000 (\$25,000 for companies), to elect trial in the Supreme Court;
- . to prevent a court of summary jurisdiction from imposing a penalty in excess of \$5,000 on a natural person or \$25,000 in any other case;
- . to make directors and other persons concerned in the management of a company punishable for taxation offences committed by the company, other than where the person can show that he or she was not implicated in the particular act or omission;
- . to increase to \$1,000, the penalty for failure to comply with a notice (garnishee order) issued by the Commissioner to collect money owing to a taxpayer and empower a court to order payment of the amount specified in the order to the Commissioner;
- . to increase the levels of fines for companies to five times those that could be imposed on an individual for taxation offences also punishable by a term of imprisonment;
- . to repeal provisions of the various taxation laws containing offences for evasion and create new offences of making false or misleading statements, incorrectly keeping records, or falsifying or concealing identity;

- . to repeal the provisions of the income tax, sales tax, A.C.T. pay-roll tax and wool tax laws by which persons may be imprisoned for non-payment of fines imposed by courts for taxation offences, and to enact appropriate transitional provisions;
- . to consolidate in the Taxation Administration Act 1953 the new and revised offence and prosecution provisions applicable to the various taxation laws administered by the Commissioner of Taxation.

Penalty tax provisions

- . to repeal existing penalty tax provisions in the income tax law relating to income omissions and false deduction and rebate claims - and in corresponding provisions of other taxation laws - and substitute new provisions to impose a penalty where tax is sought to be avoided by furnishing false or misleading information (including the omission of income);
- . to extend to the sales tax law provisions comparable to the additional tax provisions of the income tax law applicable to participation in specific tax avoidance schemes;
- . to ensure that, where a liability for unpaid tax is reduced (e.g. on objection to an assessment) penalty tax for late payment will be based on the reduced tax;
- . to increase the rate of statutory additional tax for late payment of taxes, duties or charges payable under taxation laws (other than the income tax law) from 10% to 20% per annum and limit the circumstances under which the Commissioner of Taxation may remit such late payment penalties;
- . to provide clear authority in the law for the recovery in a court of penalty tax, including late payment penalty, imposed under the various taxation laws;
- . to provide that penalty tax for late payment continues to accrue after judgment has been obtained, but reduced by the amount of any interest payable in respect of the judgment debt;

- . to restrict the right of a taxpayer to have a decision of the Commissioner to remit statutory additional tax reviewed by a Taxation Board of Review to cases where the unremitted amount exceeds 20% per annum of the tax avoided.

Collection and recovery procedure improvements

- . to extend the garnishee provisions of the income tax law to amounts payable by an employer to the Commissioner of Taxation in respect of P.A.Y.E. deductions and deductions under the prescribed payments system;
- . to extend the garnishee provisions of the various taxation laws to enable deposits to building societies to be called on to meet taxation debts;
- . to remedy deficiencies in the law relating to the imposition of additional tax for under-estimation of instalments of company tax;
- . to strengthen, in a manner consistent with the additional tax provisions applicable to the prescribed payments system, income tax provisions requiring deduction of P.A.Y.E. tax instalments from salaries or wages and their remittance to the Commissioner or their application to purchase tax stamps;
- . to increase the rate of penalty tax for under-estimation of income for provisional tax purposes from 10% to 20% of the provisional tax shortfall;
- . to increase the rate of penalty for failure to deduct mining withholding tax from a specified mining payment or to make a deduction from a specified withdrawal from an Australian Film Industry Trust Fund account;
- . to authorize the Commissioner of Taxation to prevent, subject to certain appeal rights, the departure from Australia of a person with a taxation liability until the tax has been paid or satisfactory arrangements are made for its payment.

Other amendments

- . to remove certain limitations on the jurisdiction of Territory Supreme Courts in taxation appeals;
- . to authorise a single special appropriation of the Consolidated Revenue Fund for refunds of taxes, duties and charges and related payments under the various taxation laws;
- . to provide a mechanism for the arrest and detention of offenders against the Crimes (Taxation Offences) Act 1980 and extend jurisdiction of the Act to the external territories and off-shore installations;
- . to make clear that any pecuniary penalty, additional tax or amount imposed on a person for failure to comply with a provision of a law shall not be an allowable deduction for income tax purposes;
- . to remedy deficiencies in the income tax, sales tax, A.C.T. pay-roll tax, tobacco charges and wool tax laws relating to the appointment of public officers of companies and trust estates with non-resident trustees;
- . to suspend for a minimum of three months the registration of a tax agent convicted of certain offences under the new provisions;
- . to ensure that the established legislative basis for the issue of tax clearance certificates applies to the revised tax screening arrangements that came into effect when new foreign exchange dealers were authorized on 25 June 1984; and
- . to authorize the Commissioner of Taxation to pay interest on certain refunds of sales tax, A.C.T. stamp duty, estate duty, gift duty, A.C.T. pay-roll tax, tobacco charges and wool tax following the resolution of a dispute in favour of the taxpayer.

Financial Impact

The nature of the measures contained in this Bill to strengthen the collection and recovery provisions of the

various taxation laws, including increases in penalties for late payment and other breaches of the law, is such that a reliable estimate of their effect on the revenue cannot be made. It can be expected, nevertheless, that the revenue will gain substantially, not only from the increased amounts of penalty, but from a greater level of compliance with the taxation laws.

Main Features

The main features of the Bill are as follows:

Maximum penalties

(Clauses 22, 41, 72, 89, 163, 202, 231, 297, 348 and 380)

The Bill proposes a ten-fold increase in the maximum monetary penalties for all taxation offences. In addition, existing imprisonment penalties are being increased in a number of cases. A tiered structure of maximum penalties for existing offences of failing to lodge returns or furnish information or refusing to give evidence is being implemented for second and subsequent offences.

A first offence will be punishable by a fine of \$2,000, and a second within 5 years of the previous conviction, by a fine of \$4,000. A conviction for a third or subsequent offence within 5 years will be punishable by a fine of up to \$5,000 or imprisonment for 12 months, or both.

In determining whether a previous offence has been committed by the person, an order by a court that it is satisfied that a charge is proved but that, due to circumstances, it does not see fit to convict, will be taken as representing a previous conviction. A similar rule will apply in relation to offences leading to tax evasion that are dealt with later in these notes.

Other offences for which maximum penalties are to be increased include failure to comply with a court order to comply with a taxation requirement (\$5,000 or 12 months imprisonment, or both), obstructing a taxation officer (\$2,000 or 6 months imprisonment, or both), failure to register as a group employer or to appoint a public officer (\$50 for each day the offence continues), and forging tax stamps or dies (\$20,000 or 10 years imprisonment, or both). The schedules to the Bill detail other penalty variations.

Offences punishable by fine and not imprisonment

(Clause 297)

An existing provision of the Income Tax Assessment Act 1936 enables the Commissioner of Taxation to institute proceedings in a court of summary jurisdiction for an offence where the penalty prescribed does not exceed \$1,000 or, if over \$1,000, the Commissioner does not seek a penalty over \$1,000. By the proposed amendments, the Commissioner will be able to institute proceedings in a court of summary jurisdiction irrespective of the level of pecuniary penalty. As offences committed by companies are

only punishable by pecuniary penalties, all prosecutions against companies will be capable of being instituted in a court of summary jurisdiction.

Prosecutions in courts of summary jurisdiction
(Clause 297)

Along with proposed increases in the levels of penalties for taxation offences, the Bill will, within limits, permit the Commissioner of Taxation to institute in a court of summary jurisdiction a prosecution for what otherwise would be an indictable offence. To that end, it is proposed that a taxation offence carrying a penalty of imprisonment for a period not exceeding 12 months will be one punishable on summary conviction.

Penalty limits and election of trial in the Supreme Court
(Clause 297)

Related to the proposal to allow the Commissioner to institute prosecutions for certain taxation offences in courts of summary jurisdiction, it is also proposed that where the maximum penalty for an offence exceeds \$5,000 for a natural person or \$25,000 for a company, the person or company being prosecuted may elect to have the matter tried in a Supreme Court.

Where a person or company does not exercise the right of election and the case is heard in a court of summary jurisdiction, the maximum penalty will be a fine not exceeding \$5,000 for natural persons or \$25,000 for companies.

Liability of officers of corporations
(Clause 297)

To ensure that persons responsible for breaches by companies of the taxation laws are appropriately dealt with, a person who is concerned in, or takes part in, the management of a company will be deemed to have committed any taxation offence committed by the company. The person will thus become liable for any penalty the law prescribes for that offence. Liability will follow whether or not the person is an officer of the company and regardless of any title by which the person is referred to within the company, e.g. it will apply to a director, secretary, receiver or manager, official manager or any other person directly concerned in the affairs of the company. It shall be a defence if the person is able to show that he or she did not aid or abet in the act or omission of the company that constituted the offence and was not, directly or indirectly, knowingly concerned in that act or omission.

Penalty for breach of garnishee requirement
(Clauses 22, 163, 202, 231 and 380)

Under the existing law, the Commissioner of Taxation is generally authorized to collect from persons owing money to a taxpayer amounts of tax owed by the taxpayer to the Commissioner. The penalty for failure to comply with a garnishee requirement under the relevant provisions is to be increased to \$1,000 and, in addition, the offender may be required by the court to pay the amount sought by the Commissioner. The amendment is designed to prevent arrangements being entered into, particularly in cases where large sums are subject to a garnishee requirement, to frustrate compliance with the requirement with only the risk of a monetary fine.

Penalties for corporations
(Clause 297)

Under existing provisions, where a taxation offence is capable of being committed by either an individual or a company and the penalty for the offence is a fine and a term of imprisonment, the maximum penalty that can in practice be imposed on conviction of a company is the maximum fine prescribed for the offence. Thus, the penalty that can be effectively imposed on a company is substantially less than could be imposed on a natural person. To bring the deterrent effect of those penalties closer together, the monetary penalty to be imposed on companies is to be five times that applicable to an individual for offences which also carry a term of imprisonment.

Offences leading to evasion of tax
(Clause 297)

The taxation laws contain penalties of varying severity for offences dealing with evasion or with practices indicative of evasion. For example, it is an offence to make a false income tax return or to knowingly and wilfully understate income or fraudulently avoid tax. Technical difficulties in the application of some of the provisions have become evident and, in relation to the maximum penalties they prescribe, they are generally out of date. In addition the kind of conduct rendered unlawful is in some instances less than comprehensive in the light of present day evasion practices. Accordingly, it is proposed to repeal the existing offence provisions and introduce into the Taxation Administration Act 1953 a new regime of taxation offences covering evasion and related matters.

The first category of offences is one of strict liability dealing with the making of false or misleading statements or the keeping of records that do not correctly record and explain the matters contained in that record.

The latter offence will cover accounts, accounting records and records of business transactions. However a person would be able to avoid conviction by establishing that he or she did not know and could not reasonably be expected to have known, that the statement was false or misleading or that the records did not correctly record the facts.

The second category of offences will be where a person recklessly or knowingly makes a false or misleading statement or keeps records incorrectly.

The third category of offences relates to the keeping of records (i.e. accounting and similar records), that are illegible, incapable of identification or are mutilated, destroyed or concealed. Such acts or omissions will fall into the third category of offences where they have been done with the intent of deceiving, hindering, obstructing or defeating the purposes of a taxation law. A complementary measure will make it an offence to falsify or conceal the identity of, or an address, place of residence or business of, a person with the intention of deceiving, hindering, obstructing or defeating the purposes of a taxation law. As proposed in relation to the offence of failing to lodge returns, there is to be a tiered structure of penalties for successive offences of evasion.

The first category (strict liability) of offences will be punishable by pecuniary penalties of up to \$2,000 (\$4,000 for subsequent offences), while the second category will be subject to penalties for second and subsequent offenders of \$5,000 or 12 months imprisonment, or both.

The third category of offences relating to the falsifying of records or identity will be punishable by a fine of \$5,000 or 12 months imprisonment, or both, for first offenders and a fine of \$10,000 or 2 years imprisonment, or both, for second and subsequent offenders.

In relation to companies, the penalty is to be 5 times the maximum pecuniary penalty applicable to a natural person.

In addition, courts will be empowered to order persons convicted to pay to the Commissioner an amount equal to double or treble (according to the nature of the offence) the amount of tax sought to be avoided through the false or misleading statement or incorrect records.

Taxation Administration Act 1953
(Clause 297)

So as to provide a uniform code for offences against the various taxation laws, the new offences and prosecution provisions are being consolidated in a new Part III of the Taxation Administration Act 1953. For that

purpose, a number of existing provisions are being formally repealed and re-enacted in that Act. They relate to the following matters -

- . formalities as to the place where an offence is committed;
- . enforcement of court orders for payment of various amounts;
- . imposition of penalties not to relieve a person from the related tax liability;
- . prosecutions to be in accordance with usual court practice and procedure;
- . rules as to protection of witnesses;
- . averment rules in respect of taxation prosecutions;
- . evidence of delegated authority to institute proceedings in courts; and
- . the allocation of court costs.

Improved statutory additional tax provisions

(Clauses 10, 33, 69, 88, 152, 196, 227, 346 and 376)

A provision of the existing income tax law imposes statutory additional tax on a taxpayer who fails to furnish a return or information, omits any assessable income, claims a deduction or rebate in excess of expenditure incurred or provides false information in respect of claims for certain rebates. The provision also applies in respect of tax sought to be avoided by participation in tax avoidance schemes or through transfer pricing arrangements.

That provision is to be repealed, and in its place several new provisions inserted that will impose additional tax of up to double the amount sought to be avoided, with a minimum of \$20, in the following circumstances:

- . the refusal or failure, when required, of a person to furnish a return of income or information relating to the affairs of a person;
- . the making of a statement in connection with the operation of the income tax law that is false or misleading in a material way;
- . the omission of income from a return;
- . the participation in a tax avoidance scheme in respect of which there is specific anti-avoidance legislation; and

the participation in any scheme to which the general anti-avoidance provisions (Part IVA) of the income tax law apply.

The new provisions will enable penalties to be imposed in respect of various acts or omissions that were either not previously penalisable or in respect of which there is some doubt as to whether application of the existing penalty provision would be successful. Examples include the misdescription, for the purpose of maximising a tax deduction, of expenditure that was actually incurred, the claiming of a share in a partnership loss where there is false information in the partnership return, and the use of objection procedures to claim a deduction under a tax avoidance scheme that was not claimed at the time of lodgment of the relevant income tax return. In a case where a trustee makes a false or misleading statement that affects the tax payable by a beneficiary the trustee will be personally liable to pay additional tax equal to double the affected amount.

Under the existing income tax law, participants in tax avoidance schemes in respect of which there is specific anti-avoidance legislation - unlike those involved in schemes to which Part IVA of the Income Tax Assessment Act applies - are not generally exposed to additional tax in respect of the tax sought to be avoided under the scheme. By these amendments, penalty tax equal to double the difference between the tax properly payable and the tax that would have been payable if the scheme were successful will be imposed, subject to a general power of remission to be exercised by the Commissioner.

In regard to international profit shifting arrangements, the existing income tax law provides that additional tax of 10% per annum is payable where the Commissioner has adjusted a taxpayer's declared income or claimed deductions to counter the avoidance of tax through transfer pricing or profit shifting arrangements. Under proposed amendments the additional tax payable will be (subject to a general power of remission by the Commissioner) either 200% flat or 25% per annum. Additional tax of 200% will be payable where the arrangements are blatant schemes to avoid Australian tax - that is, schemes entered into with the sole or dominant purpose of avoiding tax. Additional tax at the rate of 25% per annum will be payable in other cases - that is, where tax avoidance is not the key purpose of the arrangements. Where a taxpayer's tax liability is increased under corresponding provisions of a double tax agreement where, but for the agreement, the profit shifting tax avoidance provisions would have applied to the same effect, the appropriate additional tax will also be payable.

Additional tax will also be imposed where provisions of the Sales Tax Assessment Acts (Nos 1-4 and 6-8) 1930 apply to counter specific tax avoidance practices. A taxpayer will be liable to pay an amount of additional tax equal to double the amount of tax sought to be avoided.

In order to maintain, as far as practicable, uniformity of penalty provisions in the various taxation laws, provisions similar to those proposed in relation to the income tax law will also be enacted as appropriate in relation to the -

- . Australian Capital Territory Taxation (Administration) Act 1969;
- . Bank Account Debits Tax Administration Act 1982;
- . Estate Duty Assessment Act 1914;
- . Gift Duty Assessment Act 1941;
- . Pay-roll Tax (Territories) Assessment Act 1971;
- . Sales Tax Assessment Act (No. 1) 1930;
- . Tobacco Charges Assessment Act 1955; and
- . Wool Tax (Administration) Act 1964.

Reduction of penalty tax where assessed tax is reduced

(Clauses 11, 14, 34, 37, 38, 53, 56, 77, 87, 101, 108, 183, 195, 210, 226, 341, 362 and 375)

The various taxation laws are being amended to make clear that, where tax remains unpaid and there is a subsequent reduction (e.g. by amendment of an assessment on appeal) in the tax, any penalty tax for late payment that accrues from the original due date for payment will be based on the reduced amount of tax. Previously, that result could be achieved by the Commissioner exercising his powers of remission, but under the more restricted remission powers that he now has under the income tax law in relation to late payment penalty, and which are to be extended to the various other taxation laws by this Bill in conjunction with a general increase in the rate of late payment penalty to 20%, such a remission would not always be available.

Additional tax for late payment of tax

(Clauses 15, 59, 81, 185, 214, 338, 357, 383 and 384)

A number of Acts administered by the Commissioner of Taxation will be amended by this Bill to increase from 10% per annum to 20% per annum the rate by which additional amounts, additional charges, additional duty or tax may be imposed for late payment. The measures are consistent with

those provisions of the Income Tax Assessment Act 1936 relating to the imposition of additional tax for late payment which have applied since 1983.

Additional tax of 20% per annum may be imposed in respect of the late payment of:

- (i) duty payable on an instrument or tax assessed under the Australian Capital Territory Taxation (Administration) Act 1969;
- (ii) estate duty assessed under the Estate Duty Assessment Act 1914;
- (iii) gift duty payable under the Gift Duty Assessment Act 1941;
- (iv) pay-roll tax payable under the Pay-roll Tax (Territories) Assessment Act 1971;
- (v) sales tax payable under the Sales Tax Assessment Acts (Nos 1-9) 1930;
- (vi) tobacco charge payable under the Tobacco Charges Assessment Act 1955; and
- (vii) wool tax payable under the Wool Tax (Administration) Act 1964.

Coupled with the above amendments, the Bill proposes to restrict the power of the Commissioner of Taxation to remit all or part of an amount payable as an additional amount, additional charge, additional duty or tax to cases where late payment is due to special circumstances beyond the control of the taxpayer.

The increased rate of late payment penalty will not take effect until a date two months after the date on which the amendments become law.

Recovery of additional tax

(Clauses 13, 15, 17-20, 55, 57, 60-68, 79-84, 86, 107, 109-117, 119-120, 184-190, 192-195, 208, 210-223, 226, 237, 243, 249, 254, 261, 267, 279, 330, 338, 340-345, 356-357, 359, 361-372 and 375)

The various taxation laws are being amended to make clear that the Commissioner of Taxation may sue in a court of competent jurisdiction for the recovery of amounts of unpaid penalty tax including penalty imposed for late payment of primary tax.

Interest on judgment debts

(Clauses 15, 39, 59, 81, 97, 112, 129, 140, 142, 146, 150, 185, 214, 338 and 357)

The various taxation laws are being amended to ensure that penalty tax for late payment continues to accrue in respect of unpaid tax notwithstanding that judgment for payment of the unpaid tax has been given or entered in a court. Where, in such a case, the judgment debt itself carries interest, the penalty tax otherwise payable is to be reduced by the amount of the judgment debt interest that relates to the unpaid tax.

Extension of the garnishee provisions

(Clauses 18, 119, 194, 223 and 372)

Under the income tax, A.C.T. pay-roll tax, sales tax, A.C.T. stamp duty or tax and wool tax laws, the Commissioner of Taxation is able to collect tax due from persons who owe money to the taxpayer without having to proceed to judgment and issue execution. The provisions are proposed to be extended in two ways.

First, for income tax purposes, the Commissioner will be able to recover by garnishee action any amounts that are payable to him in respect of P.A.Y.E. deductions or deductions made under the prescribed payments system.

Secondly, all of the existing garnishee provisions will be amended to rectify a deficiency that exists in relation to amounts that a tax debtor may have on deposit in a building society. Where the contractual relationship that exists between the debtor and the society is such that the money is credited to a share account and held in the form of withdrawable or redeemable shares, the money is not, in strict legal terms, held on account but represents share capital of the society. As such, it cannot be recovered by garnishee action. That situation is to be remedied by treating such money as being an amount due to the taxpayer by the building society.

Jurisdiction of Territory Supreme Courts

(Clauses 35, 36, 104, 105, 224, 225, 304, 309, 373 and 374)

Under the existing income tax law, the jurisdiction of Territory Supreme Courts in taxation appeals is limited to those proceedings arising out of assessments where the taxpayer at the time of institution of the proceedings, or during the whole or part of the year of income concerned, was ordinarily resident, or had his or her principal place of business, in the Territory. This

limitation also applies to proceedings under the Bank Account Debits Tax Administration Act 1982, the Sales Tax Assessment Act (No. 1) 1930, the Taxation Administration Act 1953 and the Wool Tax Administration Act 1964.

A recent income tax case has made it plain that the present jurisdiction is restrictive and, for example, does not extend to a case where a taxpayer becomes a resident of a Territory between the time the appeal was instituted and the court hearing.

As a result of this Bill, the jurisdiction of the Territory Supreme Courts in taxation appeals will in future be on the basis of a clear nexus with the Territory concerned.

Appropriation of taxation refunds

(Clauses 40, 98, 99, 132, 141, 143, 147, 151, 168, 314, 327 and 331)

An amendment of the Taxation Administration Act 1953 will provide a single general authorization for refunds of taxes and related payments by the Commissioner of Taxation to be made out of the Consolidated Revenue Fund, and will make a single special appropriation of the Fund for those purposes. At the same time, existing specific appropriation provisions contained in the various taxation laws are to be repealed.

Amendments to the Crimes (Taxation Offences) Act 1980

(Clauses 43 to 46)

Amendments are proposed to the Crimes (Taxation Offences) Act 1980 to provide arrest and detention powers in respect of persons who have committed offences under the Act. The amendments will enable a person to be charged, arrested and remanded in custody or on bail notwithstanding that the Attorney-General or a person authorized by the Attorney-General has not consented to the commitment of the person for trial on indictment. The courts will be authorized to discharge a detained accused if proceedings are not continued within a reasonable time. Technical amendments also propose to extend the application of the Act to Australia's external territories and to certain off-shore installations.

Pecuniary penalties not to be allowable deductions

(Clause 95)

Under the general deduction provision of the income tax law, deductions are allowable in respect of expenditure necessarily incurred in gaining or producing

assessable income or in carrying on a business for the purpose of gaining or producing assessable income. It is to be made clear that the provision does not authorise a deduction for any pecuniary penalty or additional tax imposed on a person by reason of the person's failure to comply with a provision of a law. While the necessity to pay such amounts may arise out of commercial considerations that would normally bring into play the operation of the general deduction provision, public policy denies the right to a deduction on the principle that it would frustrate the intent of the legislature by diminishing or lightening the effect of a statutorily imposed penalty.

Review by the Boards of Review of remissions of additional tax

(Clause 106)

Under the income tax law, a Taxation Board of Review has power to review a decision of the Commissioner to remit additional tax that is imposed for failure to furnish a return or information, the omission of income, the making of false deduction or rebate claims, etc., or the participation in a tax avoidance scheme to which Part IVA applies where, broadly, the additional tax after remission exceeds the greater of \$2 or 10% per annum of the tax in question. Those principles will be generally carried through to penalty taxes that will be imposed under new Part VII of the Income Tax Assessment Act 1936 that is proposed to be inserted by this Bill, except that the existing minimum \$2 or 10% per annum additional tax review limits will be increased to \$20 and 20% respectively. Those new limits will apply to penalties imposed under proposed new sections 222 (failure to furnish a return), 223 (false or misleading statements), 224 (participation in specific tax avoidance schemes), 225 (avoidance by transfer pricing) and 226 (participation in tax avoidance schemes to which Part IVA applies).

Instalments of company tax

(Clauses 121 to 124)

Under the company tax instalments collection system, a company is liable to pay three instalments of tax in respect of the income of each year of income. The amount of each instalment is fixed at one-quarter of the amount of "notional tax", which is an amount equal to the tax assessed on the company's taxable income of the previous year.

A company may apply to have an amount otherwise payable as an instalment of tax varied according to its own estimate of the income tax it expects to pay on its taxable income of the year to which the instalment relates.

Additional tax at the rate of 20% per annum is imposed where a company has applied for a variation of a notified instalment of tax and has under-estimated the amount of tax payable. However, in cases where a company has estimated the tax payable on its estimated taxable income to be nil or less than \$1,000, the Commissioner of Taxation does not issue any further instalment notices for that year of income.

This means that some companies have been able to avoid the receipt of subsequent instalment notices - and hence any penalty tax that would have been applicable in respect of any under-estimate on those notices - by routinely estimating their taxable incomes below \$1,000.

The proposed amendments will remedy this deficiency by imposing additional tax in cases where, by reason of such an under-estimate, further instalment notices are not issued with the result that the company pays less tax by way of instalments than it would have if the estimate had fairly reflected its income position.

Additional tax for breaches of the P.A.Y.E. tax instalments provisions

(Clauses 125 to 129)

It is proposed that those provisions of the income tax law that require deduction of P.A.Y.E. tax instalments from salaries or wages and timely remittance of such deductions to the Commissioner, or their application to the purchase of tax stamps, be strengthened in line with the additional tax provisions contained in the prescribed payments system.

Under the new rules, the following penalties will be imposed:

- . for failure to make the appropriate deduction of tax in respect of salary or wages : a penalty equal to the undeducted amount plus 20% per annum of the amount unpaid;
- . for failure to remit to the Commissioner an amount deducted from salary or wages : a penalty of 20% per annum on government employers and, on non-government employers, a penalty of 20% flat of the unremitted amount, plus late payment penalty (calculated on both amounts) of 20% per annum;
- . for failure by an employer to affix tax stamps of a face value equal to the amount deducted from salary or wages : late payment penalty on government employers of 20% per

annum and, on non-government employers, a penalty of 20% flat of the unaffixed amount plus late payment penalty (calculated on both amounts) of 20% per annum.

Other amendments will authorize the Commissioner to remit the various statutorily imposed additional taxes under rules equivalent to those that apply in relation to the prescribed payments system.

Additional tax for under-estimation of provisional income
(Clause 134)

Under the provisional tax system, a taxpayer who is notified of a liability to pay provisional tax is permitted to provide an estimate of his or her taxable income for the year for the purpose of varying his or her provisional tax liability. Where the estimated income proves to be a significant under-estimate, additional tax of 10% of the resulting provisional tax under-payment is imposed. That rate of additional tax is to be increased to 20% in relation to estimates of income of the 1984-85 income year and subsequent years.

Penalty for failure to deduct mining withholding tax
(Clause 145)

Under the mining withholding tax system, a person who makes certain payments for the use of Aboriginal land for mining or mineral prospecting purposes has an obligation to deduct from the payments an amount on account of mining withholding tax payable in respect of those payments. Failure to do so renders the person liable for an amount equal to any unpaid mining withholding tax and a penalty of 10% per annum in respect of that unpaid amount. The rate of penalty is to be increased from 10% to 20% per annum.

Imprisonment for non-payment of court fines
(Clauses 152, 166, 196, 204, 227, 232, 376 and 382)

The Bill proposes the repeal of those parts of the income tax, A.C.T. pay-roll tax, sales tax and wool tax laws that authorize the imprisonment of persons convicted under the penal provisions of those laws for failure to pay a fine imposed on conviction. As a consequence, persons convicted for non-payment of a fine relating to a taxation offence in a particular State or Territory will be treated, by virtue of section 18A of the Crimes Act 1914, in the same way as persons who have failed to pay fines under the laws of that State or Territory. The use of section 18A of the Crimes Act 1914 in that way will also mean that a full

range of sentences and orders, including community service orders, which are available under the various State and Territory laws for the enforcement and recovery of fines will also be available to deal with taxation offenders.

To cater for any individuals who, at the date of repeal of the relevant provisions, may be imprisoned in pursuance of a court order for non-payment of a fine, transitional provisions will enable the Commissioner of Taxation, the gaoler of the gaol or the person imprisoned, to apply to the court to review the period of imprisonment that the person is, at the time of repeal, still required to serve. It is proposed that each application be assessed by the court having regard to the order that would have been made had section 18A of the Crimes Act 1914 been applied at the date of conviction.

Appointment of public officers

(Clauses 156, 157, 197, 228, 347 and 377)

The Bill will amend the provisions of the income tax, A.C.T. pay-roll tax, sales tax, tobacco charges and wool tax laws relating to the appointment of public officers of companies and certain trust estates.

A public officer, in relation to the various requirements of the law, (e.g. the furnishing of returns or information), is answerable for the doing of all such things as are required to be done by the company or trust estate and, in case of default, is liable to penalties.

The various provisions will be amended so that only natural persons who are not under a legal disability are capable of being appointed as public officers of a company. The same requirement will be imposed under the income tax law in relation to the appointment of public officers of trust estates that do not have a resident trustee.

The income tax law will also prohibit the appointment as public officer of a company or of a trust estate which does not have a resident trustee, a person who is ordinarily resident in an external Territory, unless that company or trust estate has its principal business or income producing activity in that external Territory.

Tax Agents

(Clause 153)

A minimum period of disqualification will be imposed on the registration of a tax agent convicted of an offence of knowingly making a false statement or incorrectly keeping records or falsifying or concealing the

identity of a person with the intention of deceiving or misleading the Commissioner. A similar period of disqualification will be imposed where a tax agent has aided or abetted, or otherwise been knowingly involved in, the commission of such offences by another person. The Tax Agent's Board will be able to impose a longer period of disqualification if it considers it appropriate. A tax agent may appeal to the Administrative Appeals Tribunal against disqualification.

Application for the issue of tax clearance certificates under revised tax screening arrangements
(Clauses 305 to 307)

The Bill will enable applications to be made for tax clearance certificates required for the purpose of revised tax screening arrangements that came into effect when new foreign exchange dealers were authorized as dealers on 25 June 1984 under the comprehensive legislative framework established within the Taxation Administration Act 1953 to deal with tax clearance certificates.

The need for the amendment arose as a consequence of the new foreign exchange arrangements whereby banks, foreign exchange dealers and the public were authorized, subject to conditions - including the sighting of a tax clearance certificate in some circumstances - to effect foreign exchange transactions. Under the previous tax screening arrangements, tax clearance certificates were required to be produced to the Reserve Bank before approval for certain transactions would be given.

This variation meant that the machinery by which, and the rules under which, the Commissioner may issue a tax clearance certificate in Part IV of the Taxation Administration Act 1953 could not apply to all the circumstances in which a tax clearance certificate would thereafter be required.

By the amendment proposed by clause 305 the established basis that applied to the previous tax clearance certificate procedures will extend to tax clearance certificates required under the varied procedures.

Departure from Australia of certain tax debtors
(Clause 312)

The Bill will insert new provisions in the Taxation Administration Act 1953 in order to prevent certain persons with tax liabilities from leaving Australia in order to escape payment of outstanding tax.

The Commissioner of Taxation will be able to serve a departure prohibition order on a person who is subject to a tax liability if the Commissioner reasonably believes there is a likelihood that the person may depart Australia without discharging the outstanding taxation liability or without making satisfactory arrangements for the taxation liability to be discharged. A copy of the prohibition order and other information likely to facilitate the identification of the person in question will be supplied to the Australian Customs Service and the Australian Federal Police and, where the person is not an Australian citizen, to the Secretary of the Department of Immigration and Ethnic Affairs, with a view to detecting and preventing any unauthorized departures from Australia of the person subject to the order. (Consequential amendments to the Migration Act 1958 are also being proposed - see clauses 171-175.)

A departure prohibition order may be revoked or varied by the Commissioner when the Commissioner is satisfied that the person's tax liabilities are likely to be wholly discharged or are completely irrecoverable.

A person in respect of whom a departure prohibition order is in force may apply to the Commissioner for a departure authorization certificate which, if granted, would authorize the person to leave Australia temporarily notwithstanding that a departure prohibition order is in force at that time. Before issuing such a certificate, the Commissioner would need to be satisfied either that the person would return to Australia within a reasonable time and that there was a likelihood of the tax liability being discharged, or that departure should be authorized on humanitarian or general policy grounds.

An appeal will lie to the Federal Court or the Supreme Court of a State or Territory against the making of a departure prohibition order, and the Court may make an order setting aside the departure prohibition order or may dismiss the appeal. Decisions of the Commissioner not to revoke a departure prohibition order on the application of the affected person, or to refuse to issue a departure authorization certificate will be subject to review by the Administrative Appeals Tribunal.

A person in respect of whom a departure prohibition order is in force, who attempts to depart or departs from Australia, will be liable to a penalty of up to \$5,000 or imprisonment for 12 months, or both, unless the departure is authorized by a departure authorization certificate. There are also to be penalties for a person who fails to answer questions of police and customs officers attempting to ascertain whether or not that person is affected by a departure prohibition order (\$1,000 fine).

and for knowingly making a statement in response to such a question that is false or misleading in a material way (\$1,000 fine or 6 months imprisonment, or both).

Interest on overpayments

(Clauses 318 to 327)

This Bill will introduce into the law authority for the Commissioner to pay interest on certain refunds of tax made as a result of a revised decision of the Commissioner or a decision of a Board of Review or a court. The taxes to which these provisions will apply are ones that, under other provisions of this Bill, are exposed to a penalty of 20% per annum if they are not paid by the due date for payment. They are sales tax, A.C.T. stamp duty or tax, estate duty, gift duty, A.C.T. pay-roll tax, tobacco charges and wool tax. Under the existing law, interest is payable only in respect of refunds of income tax, recoupment tax payable under the Taxation (Unpaid Company Tax) Assessment Act 1982 and bank account debits tax.

Interest will also be payable in circumstances where the amount of tax, duty or charge is, instead of being refunded to the taxpayer, applied by the Commissioner of Taxation against any other tax liability of the taxpayer.

Entitlement to interest will accrue in respect of refunds (or applications) of taxes, duties or charges made on or after the day on which additional tax for late payment at the rate of 20% per annum may be imposed in respect of such taxes, duties or charges in accordance with provisions being enacted by this Bill.

