1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TAXATION LAWS AMENDMENT (BUDGET MEASURES) BILL 1995

INCOME TAX RATES AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Treasurer, the Hon Ralph Willis, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS
MADE BY THE HOUSE OF REPRESENTATIVES
TO THE BILL AS INTRODUCED

93974 Cat. No. 95 4934 X ISBN 0644 438371

9 780644 438377

Printed by Authority by the Commonwealth Government Printer

General outline and financial impact

INCOME TAX RATES AMENDMENT BILL ACT 1995

Company tax rate change

Amends the *Income Tax Rates Act 1986* to increase the rate of company tax from 33 per cent to 36 per cent. The increased rate will apply to most companies taxable in Australia (including non-residents) and extend to public trading trusts, corporate unit trusts, corporate limited partnerships which are taxed as companies, and the non-statutory fund income of non-mutual life assurance companies.

Date of effect: The amendments will apply in respect of taxable income of the 1995-96 and subsequent income years.

Proposal announced: 1995-96 Budget, 9 May 1995.

Financial impact: The estimated gain in revenue is $320 million in 1995-96, $1,570 million in 1996-97, $940 million in 1997-98 and $1,140 million in 1998-99.

Compliance cost impact: The compliance cost impacts of this measure are negligible.

TAXATION LAWS AMENDMENT (BUDGET MEASURES) BILL 1995

Amendment of Taxation (Deficit Reduction) Act (No. 1) 1993

Consequential amendments in relation to the company tax rate change

Makes consequential amendments to the *Taxation (Deficit Reduction) Act (No 1) 1993* because the increase in the company tax rate will not apply to the concessional rates of tax that apply to recognised medium credit unions and recognised large credit unions for the 1995-96 and 1996-97 years of income.

Date of effect: 9 May 1995

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: The consequential amendments do not, of themselves, have any financial impact. The financial impact of the rate increase is explained above in relation to the Income Tax Rates Amendment Bill 1995.

Compliance cost impact: None

Amendment of Taxation (Deficit Reduction) Act (No. 2) 1993

Taxation of friendly societies and other registered organisations

Amends the income tax law to freeze the rate of tax imposed on the eligible insurance business of friendly societies and other registered organisations at 33% for the 1995-96 and 1996-97 years of income. The rebate applying to taxable bonuses paid on life insurance policies issued by friendly societies will increase to 33% from 1 July 1995 as scheduled and will be maintained at that level for the year beginning 1 July 1996.

Date of effect: 1 July 1995.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: The cost to revenue is $11 million in 1995-96, $45 million in 1996-97 and $22 million in 1997-98, and a gain to revenue of $4 million in 1998-99.

Compliance cost impact: The proposed amendments are not expected to have any impact on compliance costs.

Amendment of the sales tax laws

Passenger motor vehicles

Makes consequential amendments to the *Sales Tax Assessment Act 1992* because of the increase in the sales tax payable on passenger motor vehicles to the general rate (currently 21 per cent) effected by the Sales Tax (Exemptions and Classifications) Modification Bills.

Date of effect: Applies to dealings with goods after 7.30 pm eastern standard time on 9 May 1995.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: The consequential amendments do not, of themselves, have any financial impact. The financial impact of the rate increase is explained in the explanatory memorandum to the Sales Tax (Exemptions and Classifications) Modification Bills.

Compliance cost impact: The consequential amendments do not, of themselves, impose any new compliance costs for taxpayers. The increased compliance costs associated with the rate increase are explained in the explanatory memorandum to the Sales Tax (Exemptions and Classifications) Modification Bills.

Sales tax refunds

Amends the old and new sales tax legislation to ensure that the only access to credits or refunds of overpaid sales tax is via the provisions of the sales tax law itself.

Date of effect: Applies to liabilities to refund payments arising after 7.30 p.m. eastern standard time on 9 May 1995. With regard to liabilities arising at or before that time, it will apply where legal proceedings were commenced after 7.30 p.m. eastern standard time on 9 May 1995.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: Not quantifiable.

Compliance cost impact: There will be no impact on taxpayer compliance costs.

Tax advantaged computer programs

Amends the *Sales Tax Assessment Act 1992* to confine the tax advantaged computer program concession to goods other than microchips except for certain programs on microchips in cartridges.

Date of effect: Applies to dealings with goods after 7.30 pm eastern standard time on 9 May 1995.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: Gain to revenue:

1994-95	$10 million
1995-96	$150 million
1996-97	$160 million
1997-98	$170 million
1998-99	$185 million

Compliance cost impact: The removal of the tax advantaged computer program concession will take away the costs incurred by taxpayers in valuing programs, identifying qualifying microchips and maintaining the required records of transactions involving goods containing tax advantaged computer programs.

Provisional tax uplift factor

Amends the definition of provisional tax uplift factor in the *Income Tax Assessment Act 1936* so that the factor is 8% for the 1995-96 year of income and 10% for later years of income unless the Parliament provides otherwise.

Date of effect: The amendments apply to the calculation of provisional tax (including instalments) for the 1995-96 year of income and later years of income.

Proposal announced: 1995-96 Budget, 9 May 1995

Financial impact: None

Compliance cost impact: None, as uplift factor is unchanged from the previous three years.

Chapter 1

Company tax rate change

Overview

1.1 The Income Tax Rates Amendment Bill 1995 will amend the *Income Tax Rates Act 1986* (the Rates Act) to increase the rate of company tax from 33 per cent to 36 per cent for taxable income of the 1995-96 and subsequent income years.

1.2 The increased rate will apply to most companies taxable in Australia (including non-residents) and extend to public trading trusts, corporate unit trusts, corporate limited partnerships which are taxed as companies, and the non-statutory fund income of non-mutual life assurance companies.

1.3 The change in tax rate will not apply to the statutory fund income (including life insurance and superannuation business) of non-mutual life assurance companies, to mutual life assurance companies, to pooled development funds (PDFs), to registered organisations, or to trustees of superannuation funds, approved deposit funds (ADFs), or pooled superannuation trusts (PSTs).

1.4 The Income Tax Rates Amendment Bill 1995, together with the Taxation Laws Amendment (Budget Measures) Bill 1995 (which will amend the *Taxation (Deficit Reduction) Act (No.1) 1993*), ensures that the concessional rates of tax that apply to recognised medium credit unions and recognised large credit unions for the 1995-96 and 1996-97 years of income are preserved.

Summary of amendments

Purpose of the amendments

1.5 To increase the company tax rate.

Date of effect

1.6 The increase in the company tax rate will apply for taxable income of the 1995-96 and subsequent income years.

Background to the legislation

1.7 Currently under the Rates Act the following entities are subject to the company tax rate of 33 per cent on their taxable income:

- public companies;
- private companies;
- corporate limited partnerships;
- trustees of corporate unit trusts;
- trustees of public trading trusts; and
- trustees to whom subsection 98(3) of the *Income Tax Assessment Act 1936* (the Assessment Act) applies (where a non-resident company is a presently entitled beneficiary).

1.8 The rate of tax on these entities is to be increased to 36 per cent.

1.9 In addition, the non-fund component of non-mutual life assurance companies which is currently subject to the company tax rate of 33 per cent will be subject to tax at 36 per cent.

1.10 The increased rate will not affect the various rates that apply to the entities listed below:

- registered organisations;
- non-mutual life assurance companies on taxable income other than in respect of the non-fund component;
- mutual life assurance companies;
- PDFs (SME and unregulated investment component);
- trustees of superannuation funds;
- trustees of ADFs; and
- trustees of PSTs.

Explanation of the amendments

Companies generally

1.11 Subsection 23(2) of the Rates Act provides the rate of tax for companies generally. This rate is to be increased from 33 per cent to

36 per cent, effective in respect of the taxable income of the company for 1995-96 and subsequent income years. Section 94J of the Assessment Act ensures that this rate will also apply to corporate limited partnerships. ***[Item 1; amended subsection 23(2)]***

1.12 Paragraph 23(3)(a) of the Rates Act provides the rate of tax for taxable income of private companies. This rate is to be increased from 33 per cent to 36 per cent, effective in respect of the taxable income of the company for the 1995-96 and subsequent income years. ***[Item 2, amended paragraph 23(3)(a)]***

Life assurance companies

1.13 Subparagraph 23(4A)(c)(ii) of the Rates Act provides that the rate of tax on the non-fund component of the taxable income of non-mutual life assurance companies is 33 per cent. This rate will increase from 33 per cent to 36 per cent. The rate of tax on the non-fund component of mutual life insurance companies under subparagraph 23(4A)(c)(i) of the Rates Act will remain unchanged at 39 per cent. ***[Item 3, amended subparagraph 23(4A)(c)(ii)]***

Pooled development funds

1.14 Under paragraph 23(4C)(c) of the Rates Act a company which is registered as a PDF during the year and remains a PDF at the end of the year will be taxed as an ordinary company at 33 per cent up to the day it is registered as a PDF. The tax rate applicable to the period up to the day on which it becomes registered as a PDF will be increased from 33 per cent to 36 per cent. Where a company is not a PDF at the end of a year of income, it is taxed at the ordinary company tax rate for the whole of the income year. ***[Item 4, amended paragraph 23(4C)(c)]***

Non-profit companies

1.15 Subsection 23(5) of the Rates Act phases in the full company tax rate for non-profit companies (other than registered organisations) where taxable income is between $416 and $1,039 by ensuring tax payable does not exceed 55% of the excess over $416. The phasing-in threshold will be increased from $1,039 to $1,204 to take account of the increase in the company tax rate (tax payable on $1,204 at 36 per cent is the same as tax at 55 per cent on the excess over $416). ***[Item 5, amended subsection 23(5)]***

Credit unions

1.16 Subsection 23(6) of the Rates Act phases in the full company tax rate for medium credit unions where taxable income is between $50,000 and $150,000 by ensuring tax payable does not exceed 49.5 per cent of the excess over $49,999. The amendments will increase 49.5 per

cent to 54 per cent to take account of the increase in the company tax rate (tax payable on $150,000 at 36 per cent is the same as tax at 54 per cent on the excess over $49,999). ***[Item 6, amended subsection 23(6)]***

1.17 The amendment to subsection 23(6) will not apply to recognised medium credit unions until their 1997-98 income year. The increased company tax rate will also not take effect for recognised large credit unions until the 1997-98 income year. For prior years the concessional rates of tax that were introduced by the *Taxation (Deficit Reduction) Act (No.1) 1993* apply. Subitems 10(2) and 10(3) of the *Income Tax Rates Amendment Bill 1995* and the amendments to the *Taxation (Deficit Reduction) Act (No.1) 1993* to be made by Schedule 1 of the Taxation Laws Amendment (Budget Measures) Bill 1995 will preserve these concessional rates. ***[Subitems 10(2) and 10(3) of the Income Tax Rates Amendment Bill 1995; Schedule 1 of the Taxation Laws Amendment (Budget Measures) Bill 1995, amended subsections 37(3) and 37(4) of the Taxation (Deficit Reduction) Act (No. 1) 1993]***

Other entities

1.18 The rate increase will also apply to:

- trustees of corporate unit trusts ***[item 7, amended section 24]***;
- trustees of public trading trusts ***[item 8, amended section 25]***; and
- trustees to whom subsection 98(3) of the Assessment Act applies ***[item 9, amended section 28]***.

Chapter

2 Taxation of friendly societies and other registered organisations

Overview

2.1 The amendments contained in ***Schedule 2*** of the Taxation Laws Amendment (Budget Measures) Bill 1995 propose to freeze the rate of tax imposed on the eligible insurance business of friendly societies and other registered organisations at 33% for the 1995-96 and 1996-97 years of income. The rebate applying to taxable bonuses paid on life insurance policies issued by friendly societies will increase to 33% from 1 July 1995 as scheduled and will be maintained at that level for the year beginning 1 July 1996.

Summary of the amendments

Purpose of the amendments

2.2 In the 1995-96 Budget the Government announced a review of the taxing arrangements that apply to the life insurance business of friendly societies and life assurance companies. The review will consider alternative taxation arrangements for life insurance which improve equity, efficiency and certainty and will provide an opportunity to resolve a number of issues that have been raised with, or by, the industries.

2.3 The review will be conducted by Treasury and the Australian Taxation Office in consultation with the industries and is expected to be completed in time for a decision to be announced prior to, or in, the 1996-97 Budget.

2.4 The Government is concerned that the review not interfere with the conduct of life insurance business. Accordingly the trustee rates that applied during the 1994-95 income year to the eligible insurance business of life assurance companies (39%) and friendly societies and other registered organisations (33%) will be maintained until the 1997-98 year of income while the review is undertaken. The tax rates that apply to the life insurance business of life assurance companies and friendly societies and other registered organisations will be aligned as an outcome of the review.

2.5 The proposed amendments are necessary to defer the scheduled increase in the rate of tax imposed on the eligible insurance business of friendly societies and other registered organisations to 36% in the 1995-96 income year and to 39% in the 1996-97 income year. Consequently, the rebate applying to taxable bonuses paid on life insurance policies issued by friendly societies will increase to 33% from 1 July 1995 as scheduled and will be maintained at that level for the year beginning 1 July 1996.

Date of effect

2.6 The amendments will commence with effect from 1 July 1995.

Background to the legislation

2.7 Paragraph 23(4)(b) of the *Income Tax Rates Act 1986* declares that the rate of tax on the eligible insurance business component of the taxable income of a company that is a registered organisation is 33%. A registered organisation is defined to include trade unions, friendly societies and certain employee associations. Section 19 of the *Taxation (Deficit Reduction) Act (No 2) 1993* increases that rate to 36% for the 1995-96 year of income. Section 20 of that Act further increases the rate to 39% for the 1996-97 and later years of income.

2.8. Section 26AH of the *Income Tax Assessment Act 1936* includes bonuses received on life insurance policies that are surrendered within 10 years in the assessable income of the policyholder. If such an amount is included in a policyholder's assessable income, a rebate is available under section 160AAB to compensate the policyholder for the tax paid by the life assurance company or registered organisation.

2.9. Currently, if the life insurance policy was issued by a friendly society, that rebate is 30% of the amount included in assessable income under section 26AH (see paragraph (a) of the definition of *statutory percentage* in subsection 160AAB(1)). Section 13 of the *Taxation (Deficit Reduction) Act (No 2) 1993* increases the rebate to 33% for the 1995-96 year of income. Section 14 of that Act increases the rebate to 36% for the 1996-97 year of income. Section 15 further increases the rebate to 39% for the 1997-98 and later years of income.

Explanation of the amendments

Rate of tax imposed on the eligible insurance business of friendly societies and other registered organisations

2.10 The proposed amendments will freeze the rate of tax imposed on the eligible insurance business of friendly societies and other registered organisations at 33% for the 1995-96 and 1996-97 years of income while

the review of the taxing arrangements that apply to life insurance business is undertaken.

2.11 To achieve this outcome, the Bill will amend the *Taxation (Deficit Reduction) Act (No 2) 1993* to:

- remove the scheduled increase in the rate of tax imposed on the eligible insurance business of registered organisations to 36% in the 1995-96 year of income ***[item 6]***;

- defer the scheduled increase in the rate of tax imposed on the eligible insurance business of registered organisations to 39% until the 1997-98 and later years of income ***[items 4, 5 and 6; new section 19 of Taxation (Deficit Reduction) Act (No 2) 1993]***.

2.12 The provisions to increase the rate of tax imposed on the eligible insurance business of registered organisations to 39% in the 1997-98 and later years of income will commence on 1 July 1997. ***[Item 1; new paragraph 2(3)(b) of Taxation (Deficit Reduction) Act (No 2) 1993]***

Rebate on bonuses paid on the surrender of a life assurance policy issued by a fri ndly society

2.13 The rebate available to policyholders under section 160AAB of the *Income Tax Assessment Act 1936* will increase to 33% from 1 July 1995 as scheduled and will be maintained at that level for the year beginning 1 July 1996. ***[Items 2 and 3]***

2.14 The provisions to increase the rebate to 33% will commence on 1 July 1995 ***[item 1; new subsection 2(2) of Taxation (Deficit Reduction) Act (No 2) 1993]***. The provisions to increase the rebate to 39% in the 1997-98 and later years of income will commence on 1 July 1997 ***[item 1; new paragraph 2(3)(a) of Taxation (Deficit Reduction) Act (No 2) 1993]***.

Chapter

3 Sales tax - passenger motor vehicles

Overview

3.1 The Sales Tax (Exemptions and Classifications) Modification Bills increase the sales tax payable on passenger motor vehicles from 16 per cent to 21 per cent. This increase results in several consequential amendments to the *Sales Tax Assessment Act 1992* and the Sales Tax (Deficit Reduction) Acts which are given effect to by ***Schedules 3, 4, 5, 6, 7 and 8*** of the Taxation Laws Amendment (Budget Measures) Bill 1995.

Summary of the amendments

Purpose of the amendments

3.2 The Bill repeals section 42A and inserts a new section 42A to outline the method by which the substituted taxable value of a luxury motor vehicle is calculated. It also amends the five Sales Tax (Deficit Reduction) Acts to ensure that the legislated rate increase from 16 per cent to 17 per cent for passenger motor vehicles currently scheduled for 1 July 1995 is removed.

Date of effect

3.3 The amendments to section 42A will apply to dealings after 7.30 pm, eastern standard time, on 9 May 1995 ***[subclause 2(1) and item 4 of Schedule 3]***. Further amendments apply to dealings on or after 1 July 1995 which is when the 21 per cent rate is scheduled to increase to 22 per cent ***[subclause 2(3) and item 6 of Schedule 3]***. The amendments to the five Sales Tax (Deficit Reduction) Acts commence on 9 May 1995 ***[subclause 2(1)]***.

Background to the legislation

3.4 Passenger motor vehicles with a wholesale value in excess of the luxury threshold are currently taxed at the 16 per cent rate on the value of the vehicle below the luxury threshold, and at the special rate of 45 per cent on the amount above the threshold. Other motor vehicles (such as

four wheel drive vehicles) with a wholesale value in excess of the luxury threshold are currently taxed at the 21 per cent rate on the value of the vehicle below the luxury threshold, and at the special rate of 45 per cent on the amount above the threshold.

3.5 The luxury threshold for the purposes of sales tax is 67.1 per cent of the motor vehicle depreciation limit. For the year ending 30 June 1995 this figure is $51,271, therefore the luxury threshold is $34,403.

3.6 Section 42A of the *Sales Tax Assessment Act 1992* (STAA) provides a method by which the substitute taxable value of a luxury motor vehicle is calculated. It does this by reducing the taxable value of the motor vehicle so that when the applicable rate of 45 per cent (the rate specified for luxury motor vehicles) is applied to the reduced value it will equal the amount worked out by adding:

- 16 per cent of the motor vehicle's taxable value (or 21 per cent for motor vehicles that are not passenger motor vehicles) below the luxury threshold; and
- 45 per cent of the taxable value above the luxury threshold.

3.7 As part of the 1993-94 deficit reduction budget package, the sales tax rate applicable to passenger motor vehicles rose 1 per cent to 16 per cent on 18 August 1993 and was to rise a further 1 per cent to 17 per cent on 1 July 1995.

3.8 The rate increase for sales tax on passenger motor vehicles contained in the Sales Tax (Exemptions and Classifications) Modification Bills will render the increase to 17 per cent redundant. The rate increase is explained in greater detail in the explanatory memorandum for those Bills.

Explanation of the amendments

3.9 The increase in sales tax applicable to passenger motor vehicles coupled with the fact that all motor vehicles will now be subject to the general rate, necessitates amendments to section 42A of the STAA to alter both the structure of the section and the formulae contained in the section.

3.10 Since the number of rates relevant to the calculation of sales tax on luxury cars is reduced to two, (ie. 21 per cent and 45 per cent), there is no longer any need for the distinction between passenger motor vehicles and other vehicles as is currently effected by subsections (2) and (3) of section 42A. Consequently, section 42A is repealed and replaced with a new 42A that contains only one formula for calculating the substitute taxable value for luxury motor vehicles. ***[Item 3 of Schedule 3]***

3.11 The formula provides that to calculate the substitute taxable value of a luxury motor vehicle, the wholesale value of the vehicle is reduced by an amount equal to 35.787 per cent of the relevant motor vehicle depreciation limit.

3.12 The amendments to section 42A apply to dealings with goods after 7.30 pm eastern standard time on 9 May 1995. ***[Item 4 of Schedule 3]***

3.13 On 1 July 1995 the general rate of sales tax increases to 22 per cent. To reflect this increase, the formula in the new section 42A will require further amendment to provide that to calculate the substitute taxable value of a luxury motor vehicle for 1 July 1995 and later, the wholesale value of the vehicle is reduced by an amount equal to 34.296 per cent of the relevant motor vehicle depreciation limit. ***[Items 5 and 6 of Schedule 3]***

3.14 Item 2 of Schedule 2 of each of the *Sales Tax (Customs) Deficit Reduction Act 1993*, the *Sales Tax (Excise) Deficit Reduction Act 1993*, the *Sales Tax (General) Deficit Reduction Act 1993* and the *Sales Tax (In Situ Pools) Deficit Reduction Act 1993* all provide that the rate of sales tax applicable to passenger motor vehicles will increase from 16 per cent to 17 per cent on 1 July 1995. Since the rate of sales tax applicable to passenger motor vehicles is being increased to 21 per cent with effect from 9 May 1995, the increase to 17 per cent is now redundant. Consequently, the amendments contained in Schedules 4, 5, 6 and 7 omit each item 2 ***(item 1 of Schedules 4, 5, 6 and 7)***. Schedule 8 contains a further minor technical amendment to the *Sales Tax Assessment (Deficit Reduction) Amendment Act 1993* consequential on the above amendments to section 42A ***(item 1 of Schedule 8)***.

Chapter

4 Sales tax refunds

Overview

4.1 ***Schedule 9*** of the *Taxation Laws Amendment (Budget Measures) Bill 1995* (the Bill) will amend the sales tax laws to ensure that the procedures prescribed by the sales tax refund provisions are the only method by which refunds of sales tax can be obtained.

Summary of the amendment

Purpose of the amendment

4.2 The old and the new sales tax laws provide for refunds to be paid if certain conditions are satisfied. These amendments will ensure that claimants who do not satisfy those conditions will not be entitled to refunds.

Date of effect

4.3 The amendments will apply to:

- liabilities to pay refunds arising after 7.30 pm. eastern standard time on 9 May 1995; and
- liabilities to pay refunds arising at or before 7.30 pm eastern standard time on 9 May 1995, if legal proceedings to enforce payment of the refunds were commenced after that time. ***[Item 3]***

Background to the legislation

4.4 Both the *Sales Tax Assessment Act 1992*, and the various Sales Tax Assessment Acts and associated regulations and legislation which it replaced (referred to as the old sales tax law), allow refunds of sales tax or amounts that have been paid as sales tax, on certain specified grounds. The *Sales Tax Assessment Act 1992* applies to dealings with goods after 1 January 1993, and the old sales tax applies to transactions before that date.

4.5 Under both the old sales tax law, and the current law, the statutory right to a refund is subject to conditions. Firstly, there is a 3 year limitation on claims. There is no entitlement to a credit, unless the claim is lodged within 3 years of the transaction which gave rise to the claim.

4.6 Another condition is designed to prevent windfall gains, and to ensure, as far as is practical, that the person who bore the tax actually receives the refund. In many cases, a taxpayer will not be entitled to a refund, if the taxpayer has recouped the amount of the tax from another person in the price charged for the goods, and not returned the amount to that person.

4.7 The sales tax laws do not expressly exclude rights to refunds under the general law or other legislation; however, the refund provisions of the sales tax law are intended to be the only basis on which a refund can be claimed. The conditions relating to the payment of refunds provide a degree of certainty with regard to administration, and limit the extent to which sales tax refunds can give rise to windfall gains. Claims or rights to refunds under either the general law, or legislation other than the sales tax law, would not be subject to those same conditions. The Commonwealth is by no means certain that such rights exist, or that such claims would succeed, but wishes to place the matter beyond doubt. These amendments will ensure that the only access to refunds of sales tax is through the refund provisions of the sales tax law. ***[Item 4]***

Explanation of the amendments

4.8 These amendments are in two parts - an amendment to the current sales tax law, and an amendment affecting the old sales tax law.

Amendment to the Assessment Act

4.9 Schedule 9 of the Bill will insert a new section 130A into the *Sales Tax Assessment Act 1992* (the Assessment Act). The new section will ensure that the Commonwealth is not liable to pay refunds, if the liability to the refund does not arise under the provisions of the Assessment Act. ***[Item 1 - new subsection 130A(2)]***

4.10 The section refers to two different grounds for payment of refunds:

- refunds of sales tax that was legally payable (for example, sales tax paid on goods which were the subject of a later exempt dealing); and
- refunds of amounts paid as sales tax which was not legally payable (a similar concept to that found in CR1 in Table 3 in Schedule 1 to the Assessment Act).

Together, these two grounds actually cover all possible situations in which an entitlement to a refund might arise. ***[Item 1 - new paragraph 130A(1)(a)]***

4.11 The Commonwealth will be relieved of liability to refund a payment if the liability does not arise under the Assessment Act, but arises by virtue of the operation of the common law or for any other reason. This could include the common law of restitution for unjust enrichment, any other common law principle or an implication from any other statutory provision. ***[Item 1 - new paragraph 130A(1)(b)]***

Amendment in relation to the old sales tax law

4.12 Part 2 of Schedule 9 of the Bill will insert a new section 4A into the *Sales Tax Amendment (Transitional) Act 1992* (the Transitional Act). The Transitional Act provides that the old sales tax law continues to apply to in respect of transactions which occurred before the Assessment Act came into effect.

4.13 The new section will ensure that the Commonwealth will not be liable to refund sales tax that was paid or overpaid under the old law, if the liability to the refund does not arise under the provisions of the old sales tax law. ***[Item 2 - new subsection 4A(2)]***

4.14 New section 4A will operate in the same way as the amendment to the Assessment Act described above. Sales tax "overpaid" includes an amount that was not legally payable. ***[Item 2 - new subsection 4A(1)]***

4.15 These amendments do not affect the liability of the Commonwealth to refund sales tax, or amounts paid as sales tax, if the refund is claimed in accordance with the provisions of the sales tax laws.

Chapter

5 Sales tax - tax advantaged computer programs

Overview

5.1 The Bill will amend the *Sales Tax Assessment Act 1992* to confine the tax advantaged computer program concession to goods other than microchips except for certain programs on microchips in cartridges.

Summary of amendments

Purpose of amendments

5.2 To remove the concessional treatment afforded goods which contain computer programs embodied in non-permanent microchips.

Date of ffect

5.3 The amendments will apply to dealings with goods occurring after 7.30 pm. eastern standard time on 9 May 1995. ***[Subclause 2(1) and item 4 of Schedule 3]***

Background to the legislation

5.4 An amendment to allow a reduction in the value of goods on which tax is calculated for goods containing computer programs on non-permanent microchips, was considered by Parliament in September 1992 as part of the debate on the Sales Tax Assessment Bill 1992. The amendment effectively removed the value of any computer program embodied in a reprogrammable microchip from the taxable value of goods. The tax reduction proposed was equal to the amount of tax otherwise payable on the value of the program.

5.5 The amendment became effective on 1 January 1993.

5.6 The concession has caused a number of difficulties for taxpayers. While the concession was intended to encourage technological innovation in Australia, it has instead encouraged wastefulness as manufacturers added non-permanent microchips to their goods just to

qualify for the concession. The Government is currently losing significant sales tax revenue as a result of the concession and it is anticipated that, given likely advances in technology, the loss will increase. It has also been found that the concession causes anomalies and facilitates tax avoidance.

Explanation of the amendments

5.7 The reduction in taxable value for goods incorporating computer programs on non permanent microchips will be removed by changing the definition of 'tax-advantaged computer programs' in subsection 14(1) and subsection 14(2) of the *Sales Tax Assessment Act 1992*. By omitting the word 'permanent' from each subsection, the new definition will restrict the concession to programs embodied in goods other than microchips except for goods covered by subsection 14(2). This returns the treatment of computer programs for sales tax purposes to how it was before the September 1992 amendments. ***[Item 2 of Schedule 3]***

5.8 The exception in subsection 14(2) will continue to allow concessional treatment for programs marketed exclusively for entertainment or educational use or a combination of both, that are embodied in microchips and enclosed by cartridges, for use in personal computers or home electronic devices or combinations of both. ***[Item 2 of Schedule 3]***

5.9 The definition of *permanent microchip* in Section 5 of the *Sales Tax Assessment Act 1992* will be omitted because there is no longer a need for a distinction between permanent microchips and non-permanent microchips. ***[Item 1 of Schedule 3]***

Chapter 6

Provisional tax uplift factor

Overview

6.1 This amendment provides for the existing definition of 'provisional tax uplift factor' contained in the *Income Tax Assessment Act 1936* (the Act) to be repealed and replaced so that the factor applicable for the 1995-96 year of income is 8% and 10% for later years of income unless the Parliament provides otherwise.

Summary of the amendments

Purpose of the amendments

6.2 The amendment will amend the Act so that the provisional tax uplift factor is 8% for the 1995-96 year of income and 10% for later years of income.

Date of effect

6.3 The amendment will apply in relation to the calculation of provisional tax (including instalments) payable for the 1995-96 year of income and later years of income. ***[Item 2 of Schedule 10]***

Background to the legislation

6.4 Income subject to provisional tax for a year is obtained by uplifting the preceding year's taxable income by the provisional tax uplift factor. Provisional tax is then calculated by applying the tax rates and Medicare levy to the uplifted income and allowing for rebates and credit entitlements (such as tax instalments deducted) which are expected to be claimed or allowed in the provisional year of income (section 221YCAA).

6.5 The level of the uplift factor is intended to be a reasonable reflection of the growth in income of provisional taxpayers. The level cannot be predicted with accuracy so it is preferable not to place undue emphasis on a specific forecast or estimate in setting the factor. Matters such as inflation effects are taken into account. The factor is intended, on

average, over time and across taxpayers, to reflect the expected increase in provisional income.

6.6 The uplift factor for the calculation of 1995-96 provisional income currently stands at 10% (definition of 'provisional tax uplift factor' in subsection 221YA(1)). In the 1995-96 Budget statement the Treasurer announced that the uplift factor of 8% used to calculate 1994-95 provisional income would be retained for the purpose of calculating 1995-96 provisional tax.

Explanation of the amendment

6.7 The amendment to the *Taxation Laws Amendment (Budget Measures) Bill 1995* proposes to amend subsection 221YA(1) of the Act so that a provisional tax uplift factor of 8% will be used in ascertaining provisional tax payable (including instalments) for the 1995-96 year of income and, unless the Parliament otherwise provides, 10% for later years of income. ***[Item 1]***