

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION (INTEREST ON OVERPAYMENTS) BILL 1983

EXPLANATORY MEMORANDUM

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

General outline

This Bill will -

- . authorise the Commissioner of Taxation to pay interest on certain refunds of income tax, recoupment tax and bank account debits tax made following a successful objection or appeal by a taxpayer;
- . set the initial rate of interest to be paid at 14.026% per annum; and
- . provide that there will be no entitlement to interest on amounts refunded in those cases where the Commissioner has under administrative procedures applying prior to 13 December 1982 agreed to remit additional (penalty) tax accruing on unpaid amounts pending the determination of an objection or appeal.

Main features

This Bill will introduce into the law authority for the Commissioner of Taxation to pay interest on certain refunds of tax made as a result of a successful objection or appeal by a taxpayer against an assessment or other decision of the Commissioner. The taxes to which these provisions will apply are ones that are, under the existing law, exposed to a penalty tax of 20% per annum if they are not paid by the due date for payment. They are: income tax determined by assessment or similar procedure (including provisional 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 involved is, instead of being refunded to the taxpayer, applied by the Commissioner of Taxation against any other tax liability of the taxpayer.

The rate at which interest is to be calculated is initially to be set in the Bill at 14.026% per annum. The rate of 14.026% per annum is the rate determined as the weighted average of yields of the longest term Treasury Bonds contracted for in the most recent bond tender, the results of which were announced on 19 April 1983. Subsequent variations in the rate of interest will be able to be made by regulation.

Entitlement to interest will accrue in respect of refunds (or applications) of tax made on or after 14 February 1983, which is the date on which the increased rate of 20% per annum for late payment of tax commenced to apply.

The Bill specifically provides that there will be no entitlement to interest where the Commissioner of Taxation and the taxpayer concerned have, before 13 December 1982, arranged that, pending the outcome of the objection or appeal and provided the taxpayer pays a specified proportion (usually one-half) of the tax involved in the objection or appeal, the balance of the tax may remain outstanding and the Commissioner will remit the additional (penalty) tax imposed in respect of the late payment of that balance in the event that the taxpayer is unsuccessful in his or her objection or appeal. Arrangements of this kind ceased to be open to the Commissioner by virtue of amendments to the income tax law made by the Income Tax Assessment Amendment Act (No. 6) 1982 which came into operation on 13 December 1982. This Act restricted the power of remission previously vested in the Commissioner to a limited range of cases involving specified or special circumstances.

Detailed explanations of the Bill follow.

PART I - PRELIMINARY

Clause 1 : Short title, etc.

By this clause the Act is to be cited as the
Taxation (Interest on Overpayments) Act 1983.

Clause 2 : Commencement

This clause will deem the Act to have come into operation on 14 February 1983 with the effect that interest will be payable on eligible refunds of tax made on or after that date. But for this clause the Act would, by reason of sub-section 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of Assent.

Clause 3 : Interpretation

Sub-clause 3(1) defines a number of terms used in the Bill:

"Board of Review" means one of the independent Taxation Boards of Review established for the purposes of reviewing decisions of the Commissioner of Taxation.

"Commissioner" means the Commissioner of Taxation appointed to administer the various taxation laws of the Commonwealth.

"Decision to which this Act applies" means:

- . a decision by the Commissioner on an objection lodged by a person (see below for an explanation of the term "objection");
- . a decision by a Board of Review where a taxpayer dissatisfied with a decision by the Commissioner on an objection has requested that the Commissioner's decision on the objection be referred to a Board of Review for review; and
- . a decision by a Supreme Court of a State or Territory, the Federal Court or the High Court, where:
 - a taxpayer dissatisfied with a decision by the Commissioner on an objection has requested that the objection be treated as an appeal and forwarded to a Supreme Court of a State or Territory; or

- there has been an appeal to a Supreme Court from a decision of a Board of Review.

"Deputy Commissioner" means a Deputy Commissioner of Taxation.

"Income tax" has its basic meaning of income tax as assessed under the Income Tax Assessment Act together with the health insurance levy assessed under the presently inoperative Part VIIB of the Income Tax Assessment Act.

"Objection" refers to objections against assessments, determinations or other similar decisions of the Commissioner of Taxation made in accordance with the provisions specified in the definition and which, if successful, would give rise to a refund of tax previously paid. It is in these cases that a taxpayer would be entitled to a payment of interest in respect of the refund.

Paragraph (a) of the definition of objection, in addition to its basic meaning of an objection made by a person against an income tax assessment under the Income Tax Assessment Act, includes an objection against:

- . the refusal by the Commissioner to issue in respect of certain loans, a certificate, which would have the effect of exempting from withholding tax interest paid in respect of the loans (sub-section 128P(1) of the Income Tax Assessment Act);
- . a determination by the Commissioner of the amount of tax payable on the redemption of Drought Bonds (section 159F of the Income Tax Assessment Act);
- . a determination by the Commissioner of the amount of credit to which a person is entitled for tax paid on foreign source income (sub-section 160AL(1) of the Income Tax Assessment Act);
- . an assessment of recoupment tax made under the Taxation (Unpaid Company Tax) Assessment Act (sub-section 4(1) of that Act);
- . notional assessments of company tax or undistributed profits tax served in accordance with section 15 of the Taxation (Unpaid Company Tax) Assessment Act (sub-section 15(9) of that Act); and

- a notice of assessment of company tax or a copy of a notice of assessment of company tax served in accordance with section 18 of the Taxation (Unpaid Company Tax) Assessment Act (sub-sections 18(3) and 18(8) of that Act).

Paragraph (b) includes in the definition of objection, an objection made against -

- a decision by the Commissioner on a request by a person for the allowance of an income tax deduction for certain payments made in respect of promoters recoupment tax assessed under the Taxation (Unpaid Company Tax) Assessment Act;
- a decision by the Commissioner on a request by a person for the amendment of an assessment to allow a deduction or tax rebate previously disallowed because of the operation of the expenditure recoupment provisions of Subdivision D of Division 3 of Part III of the Income Tax Assessment Act;
- a decision by the Commissioner on a request by a person for a consequential adjustment in accordance with the international profit shifting provisions of Division 13 of Part III of the Income Tax Assessment Act;
- a decision by the Commissioner on a request by a person for a consequential adjustment where an income tax avoidance scheme has been struck down by the general anti-avoidance provisions of Part IVA of the Income Tax Assessment Act; and
- an income tax assessment in respect of income derived by a deceased taxpayer prior to death, where probate has not been granted or letters of administration have not been taken out within 6 months after death, by a person claiming an interest in the estate.

By paragraph (c) of the definition of "objection", an objection by a person who is dissatisfied with a prescribed decision or an assessment made by the Commissioner under the Bank Account Debits Tax Administration Act will be an objection for the purposes of the proposed Act.

"Person" is widely defined to include, in addition to a natural person, a body politic (a government body), a company, a partnership and any other unincorporated association or body of persons.

"Provisional tax" is given its usual income tax meaning.

"Relevant tax" is the term used in the Bill to identify the kinds of tax which, if refunded as a result of an objection or appeal, will give rise to an entitlement to interest. Taxes concerned are:

- . income tax according to its basic meaning of income tax as assessed under the Income Tax Assessment Act and, in addition includes amounts of additional tax imposed for late or no or incorrect returns and provisional tax;
- . withholding tax payable under the Income Tax Assessment Act in respect of interest paid to non-residents;
- . amounts payable under the Income Tax Assessment Act relating to the collection of withholding tax on interest paid to non-residents;
- . promoters recoupment tax and vendors recoupment tax as assessed under the Taxation (Unpaid Company Tax) Assessment Act;
- . additional tax imposed for the failure of a person to furnish information requested by the Commissioner in respect of recoupment tax assessed under the Taxation (Unpaid Company Tax) Assessment Act;
- . bank account debits tax payable under the Bank Account Debits Tax Administration Act; and
- . additional tax imposed on a person liable to pay bank account debits tax as a result of a default assessment.

"Second Commissioner" means a Second Commissioner of Taxation.

"Year of income" is given its usual income tax meaning which is -

- for a company, the financial year next preceding the financial year for which income tax is levied; and
- for an individual, the financial year for which income tax is levied.

Sub-clause 3(2) is a measure which explains the meaning of references in the proposed Act to a "liability of a person to the Commonwealth". This expression is to mean liabilities to the Commonwealth that arise under a taxation Act administered by the Commissioner of Taxation, which may or may not be a liability for relevant tax.

PART II - ADMINISTRATION

Clause 4 : General Administration of the Act

Under this clause, the Commissioner of Taxation is, as is the case under other taxation laws, to be responsible for the general administration of the Act.

Clause 5 : Second Commissioner

Sub-clause (1) will ensure that the Second Commissioners of Taxation will on the terms usual in taxation legislation of which the Commissioner has the general administration, also have powers and functions of the Commissioner.

Sub-clause (2) will limit the general powers of a Second Commissioner by excluding from the powers of the Commissioner that may be exercised by a Second Commissioner the responsibility for the general administration of the Act and for reporting to the Minister on the working of the Act.

Sub-clauses (3) and (4) will make it clear that the Commissioner retains his powers and responsibilities in relation to the administration of the Act, notwithstanding the exercise of powers or performance of functions under the Act by a Second Commissioner.

Clause 6 : References to Commissioner

Under this clause, a reference to the Commissioner is to be read as a reference to a Second Commissioner, a Deputy Commissioner or any other person upon whom powers and functions are proposed to be conferred respectively by clause 5 or by delegation under the Taxation Administration Act 1953. This recognises the practical position that a number of the specific powers and functions to be given by this Bill to the Commissioner will have to be exercised by Deputy Commissioners and other authorised officers.

Clause 7 : Annual report

This clause will, as is customary in taxation Acts, require the Commissioner to furnish to the Minister for presentation to the Parliament an annual report on the working of the Act.

Clause 8 : Secrecy

This clause contains secrecy provisions of a kind appearing in other Commonwealth taxation Acts. The provisions will apply to officers who, in the performance of their duties related to the administration of the Act, acquire information with respect to the affairs of a person. Except where the performance of his or her duties otherwise require, such an officer will be obliged to keep such information confidential and may not be compelled to give to any court information relating to the affairs of a person, but may do so in the course of carrying into effect the provisions of the legislation. An officer may also communicate information about a person to another officer performing duties under another taxation Act administered by the Commissioner.

The maximum penalty on summary conviction for an offence against this section is to be \$5,000 or imprisonment for one year, or both.

PART III - ENTITLEMENT TO INTERESTClause 9 : Entitlement to Interest

This clause is the operative provision of the Bill and specifies the circumstances in which interest becomes payable.

Sub-clause 9(1) will operate, subject to clauses 11 and 12, (see later for an explanation of these clauses), where a person has paid to the Commissioner an amount of relevant tax and the amount paid is, after resolution of an objection or appeal concerning the person's liability to pay that amount, found to be in excess of the amount that is correctly payable.

In these circumstances there will be an entitlement to interest in respect of the overpaid amount of tax that, by reason of the adjustment necessary to give effect to the decision on the objection or appeal, is either refunded to the person or applied against another taxation liability of the person.

Sub-clause 9(2) deals with the case where an amount of relevant tax has been paid to the Commissioner in instalments. For the purpose of sub-clause 10(1) (the provision under which the amount of interest is calculated) each instalment is to be treated as a separate payment of relevant tax.

Sub-clause 9(3) will mean that, where only a part of relevant tax is to be refunded to a person or applied against another taxation liability of a person and the relevant tax has been paid to the Commissioner in instalments, the amount refunded or applied is to be attributed to the most recently paid instalments, i.e., the last in, first out principle is applied. The sub-clause thus ensures that interest accrues only in respect of instalments that result in an overpayment of relevant tax.

Sub-clause 9(4) operates where the Commissioner has applied an amount paid to him by one person, against the liability of another person to pay an amount of relevant tax, for example, where PAYE deductions are paid to the Commissioner by an employer and applied against an employee's tax liability. The sub-clause deems the person on whose account the tax is paid, the employee in the above example, to have paid that amount to the Commissioner on the day on which the amount was applied by the Commissioner against that person's liability, typically, the day on which the assessment of tax concerned was made.

Sub-clause 9(5) concerns situations where a taxpayer has paid provisional tax that has been credited against tax assessed for the year to which the provisional tax relates, or has been refunded to the taxpayer. If there has been a successful objection or appeal against an assessment for the preceding year, and assessed tax for the preceding year has in consequence been refunded or applied, the taxpayer concerned will under the Bill be entitled to interest in respect of that overpaid tax.

The problem with which sub-clause 9(5) deals arises against the background that when the assessed tax for that preceding year is refunded or applied, the provisional tax for the next year (which usually will be based on the income of that preceding year) is not adjusted. That is because it has already been credited (or refunded) in the assessment for that next year.

Without the sub-clause, the taxpayer would for this reason not be entitled to interest, based on the "excess" provisional tax, even for the period between its payment and the time of its crediting against tax assessed for the next year.

To deal with the situation, sub-clause 9(5) will have the effect of entitling the taxpayer to interest in respect of that part of the provisional tax as exceeds the amount of provisional tax that would have been payable had it been calculated on the basis of the tax liability for that preceding year, determined in accordance with the decision on the objection or appeal. The period for which interest is payable will run to the date when the provisional tax was credited (or refunded) in connexion with the assessment for the next year.

Clause 10 : Amount of interest

Clause 10 sets out the manner in which the amount of interest on overpaid tax is to be calculated.

Paragraph (1) (a) of clause 10 specifies that the period for which interest is to be paid is to commence on the latest of:

- . the day of issue of the assessment, determination or decision objected against;
- . the day on which the tax was paid to the Commissioner of Taxation; or
- . 14 February 1983 (this date being the date on or after which the increased rate of 20 per cent per annum applies for late payment of relevant tax);

and is to end on the day that the amount of overpaid tax is refunded to the person or applied against any other taxation liability of the person.

Paragraph (1) (b) requires that, subject to sub-clause 10(3), interest payable is to be calculated at such rates as are set from time to time by regulations made under the Act.

By sub-clause 10(2), where the rate of interest payable is varied by regulation, the varied rate will be applicable for such period as is specified in the regulation. This means that the rate of interest payable on a particular amount refunded or applied against another taxation liability can fluctuate during the accrual period, to reflect changes in benchmark interest rates.

Sub-clause 10(3) will set the rate of 14.026% per annum as the rate to be initially used for the calculation of interest. This rate will continue until such time as a different rate is prescribed by regulation. The rate of

14.026% per annum is the rate determined as the weighted average yield of the longest term Treasury Bonds contracted for in the most recent bond tender, the results of which were announced on 19 April 1983.

Sub-clause 10(4) is a drafting measure to require that, where a fraction of a cent results from an interest calculation, the fraction will be rounded up or down, as the case requires, to the nearest whole cent.

Clause 11 : Small amounts of interest not to be paid

By this clause, amounts of interest of less than 50 cents which it will not be cost-effective to refund or apply will not be payable. Elimination of amounts of less than 50 cents is consistent with provisions of the income tax law which provide that such small amounts of tax are not required to be paid or refunded.

Clause 12 : Certain agreements etc. to remit additional tax

The purpose of clause 12, which is a transitional measure, is to prevent an entitlement to interest arising in those cases where a taxpayer is freed from a potential liability to penalty tax of 20% per annum, in respect of tax outstanding pending the resolution of a disputed income tax assessment, under administrative arrangements in force prior to 13 December 1982 that had become known as the "50/50" rule.

The clause is designed to ensure that there will be no entitlement to interest under the proposed Act where, prior to 13 December 1982, the Commissioner of Taxation has agreed to remit additional (penalty) tax imposed for late payment of income tax. The cases concerned are identified by paragraph (a) of clause 12 as those that involve disputed assessments in respect of which, under administrative arrangements operative prior to the commencement of the Income Tax Assessment Amendment Act (No. 6) 1982 on 13 December 1982, the Commissioner arranged with the taxpayer that, provided a proportion (usually one-half) of the amount of tax in dispute was paid, the balance of the disputed tax would be allowed to remain unpaid free of penalty tax pending the resolution of the dispute.

If a taxpayer, in pursuance of such an arrangement, paid a part of the tax in dispute (paragraph (b)) and the amount paid, or a part of the amount, is refunded or applied against another taxation liability of the taxpayer following resolution of the dispute (paragraph (c)), the clause will operate so that there will not be an entitlement to interest in respect of the amount refunded or applied.

PART IV - MISCELLANEOUS

Clause 13 : Commissioner may apply interest as credit

This clause will enable the Commissioner to apply an amount of interest payable to a person against any other liability of the person arising under a taxation Act which the Commissioner administers.

Clause 14 : Payments to be made out of Consolidated Revenue Fund

By this clause the necessary appropriation of the Consolidated Revenue Fund for the purpose of enabling payment of interest is to be made.

Clause 15 : Regulations

This clause will authorise the Governor-General in Council to make regulations prescribing matters permitted to be prescribed or necessary or convenient for administering the proposed Act. In particular, future variations in the rate of interest payable under the proposed Act will be made by regulation (see earlier notes on clause 10).

