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Economics Section

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Tax Laws Amendment (2012 Measures No. 3) Bill 2012

Income Tax (Seasonal Labour Mobility Program Withholding Tax) Bill 2012

Tax Laws Amendment (Income Tax Rates) Bill 2012

Date introduced: 24 May 2012

House: House of Representatives

Portfolio: Treasury

Commencement: The primary Bill in this package of Bills is the Tax Laws Amendment (2012 Measures No. 3) Bill 2012 (the Bill). Schedule 1 to the Bill commences on the day of Royal Assent, but will not commence unless the Income Tax (Seasonal Labour Mobility Program Withholding Tax) Bill 2012 (the Seasonal Labour Bill) receives Royal Assent. Schedules 2 to 4 to the Bill commence on Royal Assent. Schedule 5 to the Bill commences on 1 July 2012.

Sections 1 and 2 of the Income Tax (Seasonal Labour Mobility Program Withholding Tax) Bill 2012 (the Seasonal Labour Bill) commence on Royal Assent. Sections 3 and 4 will commence at the same time that Schedule 1 to the Bill commences.

Sections 1 to 3 and Part 1 of Schedule 1 to the Tax Laws Amendment (Income Tax Rates) Bill 2012 (the Income Tax Rates Bill) will commence on Royal Assent. Part 2 of Schedule 1 to this Bill (which will be inserted into the Bill by Government amendments) will commence immediately after Royal Assent or on 1 July 2015, whichever is later.

Links: The links to the Bills, its Explanatory Memorandum and second reading speeches can be found on the Bills’ home pages for the Tax Laws Amendment (2012 Measures No. 3) Bill 2012 and Income Tax (Seasonal Labour Mobility Program Withholding Tax) Bill 2012 and Tax Laws Amendment (Income Tax Rates) Bill 2012, or through http://www.aph.gov.au/bills/. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The Bill contains five schedules, each with a different purpose:

- to create a new final withholding tax regime that applies to income derived by non-resident workers participating in the Seasonal Labour Mobility program (Schedule 1)
- to amend the Excise Act 1901 so that blends of the same types of gaseous fuels or the same types of aviation fuels, where each amount of the gaseous fuel or each amount of the aviation fuel has been taxed at a different rate as a result of time-related excise phase-in arrangements or time-related carbon price changes, are not treated as excise manufacture and therefore subject to additional duty. Currently, the blending of fuels taxed at different rates is treated as

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‘excise manufacture’ under the Excise Act and requires payment of additional duty, unless an exemption applies. The amendments in Schedule 2 of the Bill will provide excise exemptions for certain blends of gaseous fuels and aviation fuels (Schedule 2)

- to amend the Income Tax Assessment Act 1936 to ensure that where a trustee is assessed on the income of a minor, the trustee will not have access to the low income tax offset in circumstances where the income is considered to be unearned income of that minor (Schedule 3)
- to amend the Income Tax Assessment Act 1997 to exempt clean energy payments made to recipients of payments under the ABSTUDY scheme, Veterans’ Children Education Scheme, Military Rehabilitation and Compensation Act Education and Training Scheme, the transitional family farm payment and exceptional circumstances relief payment from income tax (Schedule 4) and
- to amend the Income Tax Assessment Act 1997 so that access to the employment termination payment (ETP) tax offset and the amount of offset received takes into account an individual’s taxable ETP as well as any other taxable income in the year they receive the ETP. The ETP offset will not be available for any part of a termination payment that takes the recipients’ annual taxable income above $180,000 (Schedule 5).

In addition, there are two associated Bills to give effect to the imposition of tax. Two separate Bills are required for this purpose, due to the requirements of section 55 of the Australian Constitution, which states:

Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

The imposition of withholding tax rate of 15 per cent on income under the Seasonal Labour Mobility Program is contained in the Seasonal Labour Bill.

The Income Tax Rates Bill amends the Income Tax Rates Act 1986 to align more closely the personal income tax rates for non-residents with the personal income tax rates for Australian resident taxpayers by:

- merging the first two personal marginal tax rate thresholds for non-residents into a single threshold and
- aligning the rate for this threshold to the second marginal tax rate for residents (32.5 per cent from 1 July 2012, increasing to 33 per cent from 1 July 2015).

Committee consideration

Provisions of the Bills have been referred to Senate Economics Committee for inquiry and report by 18 June 2012. Two submissions have so far been received.

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Policy position of non-government parties/independents

The Coalition will not be opposing these Bills.¹ There are no other comments from any other parties.

Background

- As each of the five schedules to the Bill deals with a discreet issue, the background to, and key provisions of, each Schedule are discussed in turn, below.

Schedule 1–Seasonal Labour Mobility Program

Background

In August 2008, the Australian Government introduced the Pacific Seasonal Worker Pilot Scheme (Pilot Scheme) as part of a strategy to advance Australia’s engagement in the Pacific Island region. The Pilot Scheme was a key element of the Pacific Engagement Strategy that the Government followed after the March 2008 Port Moresby Declaration.

The key objectives of the Pilot Scheme were to:

- assist Australian horticulturalists to source seasonal workers
- encourage both skills transfer between Australia and the Pacific Islands, and remittances home to Pacific Islands and
- support Australia’s Pacific Engagement Strategy and Pacific Partnerships.

The Government announced changes to the taxation of participants in the Pilot Scheme in the 2011–12 Budget to:

- improve remittance outcomes and
- address equity concerns raised by high effective tax rates.²

These changes reduced the marginal tax rates for non-resident workers participating in the Pilot Scheme from 29 per cent to 15 per cent for the first dollar of income up to $37 000. All other marginal tax rates for Pacific Seasonal Workers remained unchanged. The new rate applied for the 2011–12 income year only.

Accordingly non-resident workers who participate in the Pilot Scheme are subject to a 15 per cent final withholding tax rate. The 15 per cent final withholding tax rate reflects the marginal tax rate that would usually apply to Australian residents earning a similar level of income to participants in

http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=BillId_Phrase%3A%22r4831%22%20Dataset%3Ahansardr,hansards%20Title%3A%22second%20reading%22;rec=0


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the scheme. Eligible workers who have no other Australian income do not need to lodge a tax return.3

**Policy development**

On 18 December 2011, the Government announced that the Pilot Scheme would be extended to an ongoing program known as the Seasonal Labour Mobility Program (SLMP). The new program has been extended to include seasonal workers from East Timor, and will be on an ongoing basis in the horticultural sector, and will also be trialled in the broader agricultural and fisheries sectors and the tourism industry. The tenure of seasonal work will be demand driven and for minimum period of 14 weeks (with a maximum seven months in a twelve month period), and workers will be employed on average 30 hours per week.4

The tax changes made under the Pilot Scheme have now been extended to the Program.

The Program will commence on 1 July 2012 with the following countries invited to participate: East Timor, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

Employers will only be able to recruit seasonal workers if they can demonstrate that they have an unmet demand for labour and a demonstrated commitment to Australian job seekers. Up to 12 000 places over four years will be available, with 10 450 places available in the horticultural industry and 1550 places over three years trialled in the broader agriculture, fisheries and tourism industries.5

**Basis of policy commitment**

Schedule 1 of the Bill implements a measure announced in the 2012–13 Budget.6

**Financial implications**

The cost of the measures in the Bill is $18.0 million over four years. Funding for this measure includes $7.2 million from the provision within the Contingency Reserve for expanded aid funding and $10.8 million from within the existing resources of the Department of Education, Employment and Workplace Relations, the Fair Work Ombudsman, the Department of Immigration and

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6. Ibid.

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Citizenship, the Department of Foreign Affairs and Trade and the Australian Agency for International Development.\textsuperscript{7}

The Government expects that this measure will also result revenue gain of $3.7 million over four years, resulting from increased numbers of visa application fees.\textsuperscript{8}

**Main issues**

Schedule 1 to the Bill implements a final withholding tax rate of 15 per cent to seasonal workers in the Program, with effect from the 2012–13 income year. This rate only applies to holders of a Special Program Visa (subclass 416) who are employed by ‘approved employers’ under the Program.

The Schedule also imposes an obligation on an entity (payer) to withhold amounts from payments of salary, wages, commission, bonuses or allowances paid to employees under the Program. The final withholding tax only applies to salary, wages, commission, bonuses or allowances derived by employees under the Program. Other Australian sourced income remains assessable.\textsuperscript{9}

**Key provisions**

**Amendments to the Taxation Administration Act 1953 (TAA 1953)**

Item 10 of Schedule 1 to the Bill inserts proposed Subdivision 12-FC into Schedule 1 of the TAA 1953 to impose an obligation on an entity to withhold an amount from salary, wages, commission, bonuses or allowances it pays to individuals who are non-resident workers who hold a Special Program Visa (subclass 416) and are employed by ‘approved employers’ under the Program. The amount to be withheld is a final SLMP withholding tax of 15 per cent worked out under the Taxation Administration Regulation 1976.\textsuperscript{10}

**Amendments to the Income Tax Assessment Act 1997 (ITAA 1997)**

Item 4 of Schedule 1 to the Bill inserts proposed section 26-25A into the ITAA 1997, which provides that an entity is not entitled to a deduction for payments of salary, wages, commission, bonuses or allowances that it has paid to the extent that it fails to withhold an amount that it is required to withhold under the SLMP, or, after withholding the amount, fails to pay the amount to the Commission of Taxation. This is designed to encourage compliance with the withholding requirements.

Item 5 of Schedule 1 to the Bill inserts proposed subdivision 840-S into the ITAA 1997 to establish the rules for ascertaining whether there is a liability to pay SLMP withholding tax. Proposed section 840-905 imposes on foreign residents who hold a Special Program Visa (subclass 416) (the

\textsuperscript{8} Ibid.
\textsuperscript{9} Explanatory Memorandum, p. 9.
\textsuperscript{10} Explanatory Memorandum, p. 10

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employee) a liability to pay SLMP withholding tax in respect of salary, wages, commission, bonuses or allowances paid to them under the Program. However, the employee will be entitled to a credit equal to the amount of SLMP withholding tax withheld by the payer. **Proposed subsection 840-910(1)** provides that SLMP withholding tax is payable within 21 days following the end of the income year in which the employee derived the income to which the tax relates.

**Comments**

The measure is expected to significantly reduce the compliance costs for seasonal workers and simplify administration for the Australian Taxation Office (ATO) by removing the requirement for workers participating in the Program to lodge a tax return.

The extended Program will also assist producers in Australia’s agricultural sector to alleviate wage cost pressures due to tight labour market conditions resulting from the mining boom. The measures are strategic in engaging the Pacific Island countries in integrating with Australia’s dynamic economy.

**Schedule 2—Excise exemptions for certain blends of gaseous fuels and aviation fuels**

**Background**

Schedule 2 to the Bill amends the *Excise Act 1901*, which currently treats the blending of fuels taxed at different rates as ‘excise manufacture’, which can only occur in licensed premises and requires payment of additional duty, unless exemption applies.

**Date of effect:** The amendments will apply from 1 July 2012.

**Proposal announced:** These amendments are technical in nature and ensure that the 2011 Alternative Fuels and Clean Energy legislation works as intended. They have not been announced.11

**Financial impact:** Nil.12

**Policy development**

The blending of fuels is treated as excise manufacture of a fuel and hence subject to excise, unless the fuels have been taxed at the same rate, in which case an exemption applies. A phase in of excise and excise equivalent customs duty was implemented when gaseous fuels became subject to excise and excise equivalent customs duties from 1 December 2012. On 1 July each year an increased rate of excise applies, until 1 July 2015 when the final rate of excise applies.

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12. Explanatory Memorandum, p. 4

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The new law will ensure the treatment of blends in certain circumstances will not be an excise manufacture and therefore subject to additional duty.\(^{13}\)

**Basis of policy commitment**

The blending issues were unintended consequences of two sets of legislation. First, the alternative fuels legislation, which provided for the phase in of duty on gaseous transport fuels. The phase in provided the possibility of inadvertent excise manufacture when fuel taxed at one rate is delivered into a tank containing fuel taxed at another rate.

Second, the clean energy legislation applied an effective carbon price on aviation fuels and non-transport gaseous fuels using the fuel tax system. This provided the possibility of inadvertent excise manufacture when the carbon price, and hence the fuel tax, changed.\(^{14}\)

The amendments will ensure that the law works as intended. They have not been previously announced, and will have nil revenue impact.

**Committee consideration**

There is a submission from LPG Australia on this part of the Bill, which broadly supports the Government measures in the Bill.

LPG Australia supports the parts of the Tax Laws Amendment (2012 Measures No. 3) Bill 2012 and related bills that seek to exclude the blending of gaseous fuels, where the same rate of tax does not apply to each amount in the blend, from being treated as excise manufacture and subject to additional duty. Moreover, LPG Australia considers these proposed amendments would achieve their objective.\(^{15}\)

**Main issues**

Excise and excise equivalent customs duty was applied to Liquid Petroleum Gas (LPG), Liquid Natural Gas (LNG) and CNG (Compressed Natural Gas) (which are referred to collectively as the gaseous fuels) intended for use in an internal combustion engine for road transport on 1 December 2011. Non-transport LPG and LNG is also subject to duty. However, the duty, under current law is fully remitted via a customs or excise remission. CNG manufactured for a non-transport use is exempt and therefore not subject to excise or excise equivalent customs duty.

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\(^{13}\) Explanatory memorandum, p. 19


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Excise and excise equivalent customs duty on the transport gaseous fuels is to be phased in over the period 1 December 2011 to 1 July 2015, with the final full rate applying from 1 July 2015.

A situation of blends of fuels taxed at different rates giving rise to additional fuel tax arises when an effective carbon charge is applied to non-transport use LPG and LNG using the fuel tax system. In this circumstance, the full remission that currently applies is reduced to a partial remission from 1 July 2012 to 30 June 2013. Around the beginning and end of this period, under current law, the blending would constitute excise manufacture and the resultant blend would be subject to duty. (For further discussion of this issue, please see the Explanatory Memorandum).  

**Key provisions**

**Amendments to the *Excise Act 1901***

Item 1 of Schedule 2 to the Bill inserts proposed subsections 77H(2A) and 77H(2B) into the Excise Act. Subsection 77H(2A) provides that blends of a ‘relevant fuel’ (a definition of which is inserted into subsection 77H(5) of the Excise Act by item 3 of this Schedule) will not be subject to additional duty if the fuel is not subject to a remission (either in full or in part) of duty, and payable duty has been paid.

Proposed subsection 77H(2B) applies to blends of LPG or LNG that are subject to remission or are not subject to duty. (Such blends would not be covered by subsection 77H(2A) as they would not meet the requirements of paragraph 77H(2A)(a)). These blends will not be subject to additional duty if either:

(a) the amount is subject to a remission (whether in full or in part) of excise duty or a duty of Customs on the grounds that the amount is not used, or intended for use, in an internal combustion engine in either a motor vehicle or a vessel;

(b) the amount is not subject to excise duty or a duty of Customs because the amount was manufactured, produced or imported before 1 December 2011.

Item 3 of Schedule 2 to the Bill inserts a definition of ‘relevant fuel’ into subsection 77H(5) of the Excise Act, to provide that relevant fuel means:

- gasoline or kerosene for use in aircraft
- LPG
- LNG
- CNG classified to subitem 10.19C of the Schedule to the *Excise Tariff Act 1921*.

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Application

The amendments to the Excise Act and the Excise Tariff Act made by this Schedule apply in relation to goods that are the product of the blending of amounts of relevant fuel if the blending occurs on or after 1 July 2012 (whether the amounts of relevant fuel being blended were manufactured, produced or imported before, on or after that day).17

Schedule 3–Low-income taxpayer rebate

Background

In the 2011–12 Budget, the Government removed the ability of minors to access the low income tax offset to reduce tax payable in their unearned income. This measure was designed to discourage income splitting between adults and children, including through the use of trusts. The amendment contained in Schedule 3 ensures that this policy applies where a trustee is assessed for tax on trust income of a beneficiary who is a minor, which is considered unearned income of that minor.

This Schedule amends the Income Tax Assessment Act 1936 (ITAA 1936) to ensure that where a trustee is assessed on the income of a minor, the trustee will not have access to the low income tax offset in circumstances where the income is considered to be unearned income of the minor.18

Policy development

Part III of the ITAA 1936 sets out the income tax liability of specified groups. Division 6AA of Part III relates to the liability to tax of the income of certain children. Currently the application of Division 6AA of Part III of the ITAA 1936 is not taken into account to determine whether the low income tax offset can apply to a trustee who is assessed on a share of the trust’s net income in respect of a beneficiary’s income. The proposed changes will ensure that a trustee who is assessed under section 98 of the ITAA 1936 on a share of the trust’s net income in respect of a beneficiary is not entitled to the low income tax offset to the extent that the income share is subject to Division 6AA of Part III of the ITAA 1936.

Basis of policy commitment

This measure was originally announced in the 2011–12 Budget and applies from the 2011–12 income year.19

18. Explanatory Memorandum, p. 25.

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Last year the Government announced the removal of the ability of minors (children under 18 years of age) to access the low income tax offset (LITO) to reduce tax payable on their unearned income, such as dividends, interest, rent, royalties and other income from property, with effect from 1 July 2011. This measure was intended to discourage income splitting between adults and children. Income earned by minors from work will still be eligible for the full benefit of the LITO. Unearned income of minors who are orphans or disabled, as well as compensation payments and inheritances received by minors, would not be affected by this measure. This measure would have an ongoing gain to revenue, estimated at $740 million over the period of three years ending in 2014–15.  

Position of major interest groups

Some tax advisory groups have asserted that this measure would impede the motivation of minors in some discretionary trusts to save their inherited wealth. One advisor has suggested that trustees consider changing their distribution patterns from 1 July 2011 and inform affected stakeholders:

This should be easy to achieve, but be wary of the impact of the change in distribution pattern on important tax concessions like the CGT small business relief...

... Where minors are generating investment income in their own names, whether directly or indirectly via some type of fixed trust:

- investigate whether the income is "excepted assessable income". For example, earnings from investments that accumulated from the minor’s personal earnings will be excepted assessable income;

- consider re-arranging investments so that they do not create as much assessable income. For instance, disposing of assets in the 2010-11 year, when LITO is still available, may limit any capital gains tax. Any new investments could be then focused on capital growth which may not be realised until after the minor has turned 18.  

Financial implications

Nil.  

Main issues

Grant Thornton, a tax advisory group put the context as follows:

Since 1980, minors have been taxed at the prevailing top marginal rate on passive or unearned income pursuant to Division 6AA of the Income Tax Assessment Act 1936. This would include

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20. Ibid.
22. Explanatory Memorandum, p. 4.

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dividends, interest, rent and family trust distributions. Prior to this, family groups could have all members of the family, including minors, take advantage of graduated tax scales.

Initially, a Division 6AA threshold of $1,040 applied which reduced to $416 from 1 July 1983. However, from 1 July 1993, a low income tax rebate of $150 applied to effectively boost this threshold to $643. Since 2003, the rebate (or its successor LITO) has progressively increased enabling more income to be split to the minor tax effectively. 23

Who is affected?

The proposed changes to LITO would affect income derived by minors from 1 July 2011 onwards to the extent that their income was already subject to Division 6AA. Division 6AA broadly applies to all persons under 18 years of age (called "prescribed persons") unless they are "excepted persons" or to the extent their income is "excepted assessable income".

An "excepted person", who is not impacted by Division 6AA at all and thus would not be affected by these changes, includes:

- Minors in full-time employment.
- Minors with certified disabilities, including where certain specified allowances or pensions are provided.
- Minors who are double orphans.

For minors not in such categories, certain "excepted assessable income" would also continue to benefit from the offset. This includes:

- salary and wage or business income;
- income from a deceased estate;
- income earned on assets devolving from a deceased estate to the minor;
- superannuation income streams that are death benefits;
- income derived from investment of other excepted assessable income.

Practically, these changes will have most impact on people who are not using LITO as a tax minimisation vehicle. Minors that have had money genuinely set aside for them will only be able to accumulate around $6900 of investment funds before they commence to pay tax on the income generated assuming a 6 per cent return annually.


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These changes will result in an additional tax burden to a family group in 2012 of $1356 per minor or $2355 if income is fully franked (excluding flood levy and assuming the income will be taxed at the top marginal rate).  

**Key provisions**

**Item 1** of **Schedule 3** to the Bill inserts **proposed subsection 159N(6)** into the ITAA 1936, to provide that a trustee who is liable to be assessed under section 98 of the ITAA 1936 in respect of a share of the net income of a trust estate in respect of a beneficiary is not entitled to a tax rebate to the extent that Division 6AA of Part III of the ITAA 1936 applies to that share.

**Application**

The amendment made by Schedule 3 to the Bill applies to assessments for the 2011-12 year of income and later years of income.

**Schedule 4—Clean energy payments**

**Background**

Schedule 4 to the Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to provide that clean energy payments made to recipients of payments under the ABSTUDY scheme, Veterans’ Children Education Scheme, Military Rehabilitation and Compensation Act Education and Training Scheme, the transitional farm family payment and exceptional circumstances relief payment are income tax exempt.

Clean energy payments are being provided to recipients of pensions, allowances and family payments to assist with the cost of living impacts of putting a price on emissions of carbon dioxide and other greenhouse gases.

This schedule will also implement income tax exemptions for payments in lieu of the clean energy advance and supplements to recipients of transitional farm family payments; and exceptional circumstances relief payments.

**Policy development**

Under the current law no specific exemptions are provided for clean energy payments made to recipients of payments under the ABSTUDY scheme, Veterans’ Children Education Scheme, Military Rehabilitation and Compensation Act Education and Training Scheme, the transitional farm family

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25. Explanatory Memorandum, p. 29.
payment and exceptional circumstances relief payment, but such payments are not currently being made. The new law will make such payments income tax exempt.  

Basis of policy commitment

The measure was announced in a media release by the Deputy Prime Minister and Treasurer on 10 July 2011, and is in line with the previous legislation that exempted clean energy payments to pensioners and Newstart recipients from income tax.  

Key provisions

Item 5 of Schedule 4 to the Bill repeals and replaces existing subsection 52-65(1G) of the ITAA 1997 to provide that clean energy payments under the Veterans’ Entitlements Act 1986 and clean energy payments under the scheme prepared under Part VII of that Act (about educating veterans’ children), are exempt from income tax.

Item 7 of Schedule 4 to the Bill repeals and replaces existing table item 16 in section 52-114 of the ITAA, to provide that education and training, or a payment, under the education scheme for certain eligible young persons, is exempt from income tax if the payment is a clean energy payment.

Item 13 of Schedule 4 to the Bill inserts proposed table item 4D into section 53-10 of the ITAA 1997, to provide that payments made under the transitional farm family payment program that are in lieu of the clean energy advance or by way of clean energy supplement, are exempt from income tax.

Application

The amendments commence on the day the Act receives Royal Assent. The amendments apply to income tax assessments for the 2011–12 and later income years, other than the amendments made by items 3 and 13, which apply to income tax assessments for the 2012–13 and later income years.

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28. Explanatory Memorandum, p. 32.

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Schedule 5—Better targeting of the employment termination payment tax offset

Background

Schedule 5 to the Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) so that access to the employment termination payment (ETP) tax offset, and the amount of offset received, takes into account an individual’s taxable ETP as well as any other taxable income in the year they receive the ETP. From 1 July 2012, any taxable component of an ETP that takes a person’s total taxable income in a year above $180,000 will be taxed at marginal rates.29

An employment termination payment is a payment, or property in lieu of a payment, given to an employee, or another person, as a consequence of the termination of that employee’s job (section 82-130 of the ITAA 1997). Further details on ETPs are provided at page 33 of the Explanatory Memorandum to the Bill.30

Basis of policy commitment

The Government introduced this measure in order to make the taxation of employment termination payments fairer by scaling back concessions for large termination payments that are not linked to hardship, such as golden handshakes. These large payments are typically received by senior executives as part of their overall remuneration.

High income earners are twice as likely as low-income earners to receive taxable ETPs and, on average, receive payments that are more than forty times as large.

To make the taxation of ETPs fairer, the Government announced in the 2012-13 Budget that it would scale back the tax offset applying to ETPs, such as gratuities, while keeping the existing offset for ETPs relating to hardship.31

Financial implications

This measure provides savings of $196.4 million over the forward estimates period.32

Main issues

A clear outline of the main issues can be found at pages 34-35 of the Explanatory Memorandum.

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32. Explanatory Memorandum, p. 6.

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Key provisions

Item 1 of Schedule 5 to the Bill repeals subsection 82-10(4) of the ITAA 1997 and substitutes proposed subsections 82-10(4)-(8) to provide for ETP tax offset applies to the taxable component of an ETP that does not exceed the smallest of the amounts worked out under the ETP cap or the new whole-of-income cap of $180,000. The amendments will apply only to life benefit termination payments, while death benefit termination payments will continue to receive their existing tax treatment.

Proposed subsection 82-10(6) provides that the whole-of-income cap arrangements do not apply to people who receive a genuine redundancy payment or early retirement scheme payment; who lose their job due to invalidity; or who receive an ETP which is paid principally to compensate a person for a genuine dispute arising out of personal injury, unfair dismissal, harassment or discrimination.

Application and transitional provisions

These amendments apply to employment termination payments received on or after 1 July 2012.

Associated Consequential Bills

Income Tax (Seasonal Labour Mobility Program Withholding Tax) Bill 2012

The Seasonal Labour Bill imposes income tax on income to which section 840-905 of the ITAA 1997 applies, at a rate of 15 per cent. Section 840-905 is inserted into the ITAA by item 7 of Schedule 1 to the primary Bill.

Tax Laws Amendment (Income Tax Rates Bill) 2012 - Aligning the non-resident tax rates

The Income Tax Rates Bill amends the Income Tax Rates Act 1986 (Rates Act) to better align the personal income tax rates for non-residents with those applying to resident taxpayers.

Clause 1 of Part II of Schedule 7 of the Rates Act currently requires that taxpayers who are non-residents for tax purposes in Australia pay tax on their ordinary taxable income according to the following schedule of rates and thresholds:

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### Tax rates for non-resident taxpayers

<table>
<thead>
<tr>
<th>Item</th>
<th>For the part of the ordinary taxable income of the taxpayer that:</th>
<th>The rate is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>does not exceed $37,000</td>
<td>29%</td>
</tr>
<tr>
<td>2</td>
<td>exceeds $37,000 but does not exceed $80,000</td>
<td>30%</td>
</tr>
<tr>
<td>3</td>
<td>exceeds $80,000 but does not exceed $180,000</td>
<td>37%</td>
</tr>
<tr>
<td>4</td>
<td>exceeds $180,000</td>
<td>45%</td>
</tr>
</tbody>
</table>

Source: Explanatory Memorandum, p. 45

The tax rates for non-residents are currently aligned with the tax rates and thresholds for resident taxpayers, which are given in Clause 1 of Part I of Schedule 7 of the Rates Act, from the second marginal tax rate of 30 per cent and above.

The *Clean Energy (Income Tax Rates Amendments) Act 2011* amended the personal income tax rates and thresholds for resident taxpayers as part of the Government’s Clean Energy Future Plan, which included raising the statutory tax free threshold and increasing the second marginal tax rate for residents to 32.5 per cent from 1 July 2012, and again to 33 per cent from 1 July 2015.34

Under the current law, non-residents are taxed at 29 per cent on the part of their ordinary taxable income that does not exceed $37 000.

From the second marginal rate and threshold and above, ordinary taxable income for non-residents is taxed according to the same rates and thresholds that resident taxpayers face.

The new law stipulates that the first two personal marginal tax rate thresholds for non-residents are merged into a single threshold.

### Tax rates for non-resident taxpayers

<table>
<thead>
<tr>
<th>Item</th>
<th>For the part of the ordinary taxable income of the taxpayer that:</th>
<th>The rate is:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2011-12</td>
</tr>
<tr>
<td>1</td>
<td>does not exceed $37,000</td>
<td>29.0%</td>
</tr>
<tr>
<td>2</td>
<td>exceeds $37,000 but does not exceed $80,000</td>
<td>30.0%</td>
</tr>
<tr>
<td>3</td>
<td>exceeds $80,000 but does not exceed $180,000</td>
<td>37.0%</td>
</tr>
<tr>
<td>4</td>
<td>exceeds $180,000</td>
<td>45.0%</td>
</tr>
</tbody>
</table>

Source: Explanatory Memorandum, p. 46.

Ordinary taxable income that exceeds this threshold is taxed according to the same rates and thresholds that resident taxpayers face.

The Government subsequently introduced consequential amendments to this Bill in relation to the $732 threshold for non-resident minors. The threshold will be reduced from $732 to $663 as a result of the changes to the tax rates legislated to take effect from the 2012-13 year of income. Another

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34. Explanatory Memorandum, p. 45.

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Government amendment will further reduce the threshold amount from $663 to $653 as a result of the changes to the tax rates legislated to take effect from 1 July 2015.\textsuperscript{35}