Taxation Laws Amendment Bill (No. 3) 1987

Date Introduced: 23 September 1987
House: House of Representatives
Presented by: The Hon. Clive Holding, M.P., Minister for Employment Services and Youth Affairs and Minister Assisting the Treasurer

Digest of Bill

Purpose
The principal amendments contained in this Bill relate to anti-avoidance in relation to inter-corporate dividends; minor alterations in the capital gains tax relating to the cost base for bonus units in unit trusts and bonus shares; the maintenance of deductibility for private superannuation contributions; the removal of the exemption for allowances received in respect of children 16 years and over under certain schemes; the alteration of rebates for certain welfare beneficiaries; the calculation of 1987-88 provisional tax; and the effect of limitations laws.

Background
The majority of the amendments contained in this Bill were foreshadowed in draft legislation released on 4 June 1987. It had been intended that the legislation would be introduced in June, however the dissolution of Parliament delayed its introduction. Other amendments were announced by the Treasurer in press releases and in the Budget.

Basically, the inter-corporate dividend rebate works as follows. A resident company receiving a dividend from another is allowed a rebate (the amount of which varies depending on whether the company is private or public and other reasons) on the tax that would otherwise be payable on that dividend when included in the company's assessable income. Similarly, where a franking credit has arisen in relation to a dividend paid to a company, the recipient company will be able to include the credit in its own franking account and so pass the benefit on to its shareholders.

Dividend stripping occurs where a company purchases another that has accumulated profits that are easily realised, pays a capital sum to the shareholders of the latter company that represents the profits, and then pays to itself a dividend from the realised profits. As such schemes, combined with the inter-corporate dividend rebate would result in tax not being paid on the profits, Part IVA of the Income Tax Assessment Act 1936 (the Principal Act) provides that no tax benefits are to be allowed as a result of such schemes. In addition, sections 46A and 46B of the Principal Act are specifically directed at denying the rebate where such a scheme has been entered into. However, these provisions have not prevented all variations of avoidance in this area, particularly as regards capital gains.
Main Provisions

Section 23 of the principal Act specifies classes of exempt income. This section will be amended by clause 5 to remove the exemption for income received under the Assistance for Isolated Children scheme and the Veterans' Children Education Scheme in respect of students 16 and over.

Clause 6 will amend section 46A (which relates to dividend stripping) of the Principal Act in respect of property acquired on or after 20 September 1985. Deductions (which are used to offset the dividend and so determine the net income or gain from dividends and the amount of rebate) in respect of property acquired after this date (other than trading stock) will be determined in accordance with proposed sub-section 46A(12A). Basically, under the proposed sub-section, the deductions will be the greater of the cost base of the property (calculated at the time of disposal if disposed of in the same income year as acquired or at the end of the year of income in other cases) or the amount calculated in accordance with existing sub-sections 46A(11) and (12) as if those sub-sections continued to apply. (Proposed sub-section 46(10B) states that sub-sections 46(11) and (12) will not apply to relevant property acquired on or after 20 September 1985.) The term ‘cost base’ will have the same meaning as in the capital gains tax provisions. The amendments will apply to dividends paid after 4 June 1987 (the date of announcement) other than dividends declared on or before that date (sub-clause 38(3)).

Clause 7 will amend section 46B of the Principal Act to extend the section to associated property (i.e., certain property acquired by an associated person) acquired by the associated person on or after 20 September 1985. This will extend the section to capital gains and losses as well as income.

Clause 8 will insert a new section 46E, which will deal with dividends paid out of profits arising from the re-valuation of certain assets, into the Principal Act. An asset of a company will be taken to be a re-valued asset where (a) the company has paid a dividend from profits of re-valuation and had the company disposed of the asset immediately after re-valuation, the profit or loss would be included in assessable income or as a deduction or (b) was acquired on or after 20 September 1985 and the profit or loss would be subject to the capital gains provisions (or would be except under the rollover relief provisions in relation to that tax). Under proposed sub-section 46E(12), a rebate under sections 46 or 46A will not be allowed in respect of an asset re-valuation dividend where the company taxpayer has obtained a capital tax benefit in connection with an arrangement which, having regard to the nature of the arrangement, was entered into or carried out to enable the company to obtain the capital tax benefit.

Clause 11 will amend section 78 of the Principal Act to make gifts to the Lionel Murphy Foundation, made on or after 24 April 1987, or gifts made to the Australian-Hellenic Memorial Trust Fund between 1 April 1987 and 30 June 1989, tax deductible.

Sections 82AAS and 82AAT provide that a person will be able to deduct superannuation payments to a maximum of $1500 provided that no other person contributes to the benefits. Clause 12 will amend section 82AAS to allow such deductions, even though a contribution is made to a superannuation scheme that has been ratified in accordance with the Conciliation and Arbitration Commissions superannuation principles (or is identical or nearly identical to a ratified scheme) by another person.
Current sections 108 and 109 of the Principal Act will be repealed and new sections substituted by clause 15. The sections, which deal with when a loan, payment etc. to a shareholder or directors of private companies will be taken to be dividends to prevent tax avoidance, will be strengthened and new provisions dealing with imputation inserted. The major strengthening amendment will be to include transfers of assets in the range of transactions which may be declared to be dividends. Regarding imputation, where a subsequent dividend is distributed to satisfy the amount deemed to be a dividend, the unfranked part of the offset will be deemed not to be a dividend to avoid double taxation of the receipt (i.e., as a deemed dividend and an unfranked dividend in the subsequent distribution).

Section 160AAA of the Principal Act allows rebates of tax where income is below a certain level and includes certain beneficiary payments. The section will be amended to include payments under the Assistance for Isolated Children Scheme and the Veterans' Childrens Education Scheme in the payments eligible for the rebate. The level of income eligible for the rebate and the amount of rebate will be altered so that, for a married person, where income does not exceed $10,350, a rebate of $430 will be available (previously $9436 and $280). For others with an income not exceeding $5850 a rebate of $180 will be available (previously $5669 and $190)(clause 17).

No franking credit will arise in respect of a dividend received as part of a dividend stripping operation (clause 20 which will amend section 160APP of the Principal Act).

Clause 26 will substitute a new section 160ZYG into the Principal Act. As the section currently stands, the time of issue of bonus units in a unit trust for capital gains purposes is the time the original units were issued. Under the proposed section, where bonus units are issued after 1 p.m. on 10 December 1986, the original units were acquired before 20 September 1985 and the bonus units are paid for after the first mentioned date, they will be taken to have been acquired when the liability to pay arises. In other cases, they will be taken to have been issued at the time of the original acquisition. The cost base, indexed cost base and reduced cost base will be calculated on the basis of the market value immediately prior to acquisition (proposed section 160ZYHA which will be inserted by clause 32). Similar provisions will apply in relation to bonus shares (clause 30 which will substitute a new section 160ZYG into the principal Act).

Clause 37 will provide for the calculation of provisional tax for 1987-88 for those who do not self assess. Generally, income will be taken to have increased by 11% over 1986-87.

Clause 42 will amend section 14ZKA of the Taxation Administration Act 1953 to make it clear that limitation laws will not effect the recovery of late payment penalties as well as the primary tax debt. This will reinforce the provision which was inserted by the Taxation Administration Amendment (Recovery of Tax Debts) Act 1986.

For further information, if required, contact the Economics and Commerce group.

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