DATE INTRODUCED: 8 May 1985
HOUSE: House of Representatives
PRESENTED BY: Hon. P.J. Keating, M.P., Treasurer

SHORT DIGEST OF BILL

PURPOSE

To give effect to proposals:

1. To abolish the "30/20 rule" which requires life assurance companies and some superannuation funds to hold specified proportions of their assets in public and Commonwealth securities in order to be eligible for special tax concessions;

2. To counter further tax avoidance schemes of the "expenditure recoupment" type;

3. To phase in personal income tax and to introduce full company tax and Medicare levy on Christmas Island;

4. To permit the Commissioner of Taxation to make available to the Australian Statistician certain information of business taxpayers;

5. To extend the objection and appeal rights to penalties under the PAYE provisions;

6. To correct a drafting error in the provisions entitling de facto spouses to the dependent spouse rebate that has an unintended effect;

7. To exclude social security family income supplement from separate net income of a dependant for tax rebate purposes;

8. To make a number of formal amendments consequential on changes in the machinery of Government;

9. To make some minor drafting changes and to repeal redundant provisions of the ITAA; and
Outline

The Bill will come into operation on the date of Royal Assent (clause 2). An outline of the main provisions of the Bill is set out below. For a detailed explanation of the provisions, refer to the Explanatory Memorandum.

Main Provisions

A. Abolition of the 30/20 Rule

Under the Income Tax Assessment Act 1936 (ITAA) life assurance companies and certain superannuation funds - those to which section 23(ja) or 23F of that Act apply - are at present required to hold at least 30 per cent of their assets in public securities, including at least 20 per cent in Commonwealth securities, in order to qualify for special income tax concessions (the rule is known as the 30/20 rule).

The Government announced on 10 September 1984 its decision to abolish the 30/20 rule as a further step in deregulating Australia's financial system. The Report of the Martin Review Group into the Australian Financial System (and before that the Report of the Campbell Committee) saw the rule as impairing the efficiency of the financial system. The Martin Report saw the rule as having little, if any, effect on the total cost of public sector borrowings in present circumstances. It concluded that the rule "is an inappropriate means of securing funds for public authorities and for subsidising the cost of public services".[1]

Clauses 7, 10, 11, 13, 15 to 27, 29 and 38(1) of the Bill propose the repeal of the 30/20 rule, with effect from 10 September 1984, and consequential amendments (e.g. deletion of references to repealed sections) that follow from that action. With one minor variation, the income tax concessions available to the funds and companies under the 30/20 rule are to continue. The minor variation is that in future the basic deduction allowable to a life assurance company in respect of its calculated liabilities will be one per cent of the relevant liabilities. At present the percentage can be higher than one per cent, where the company overcomplies with the rule, and as low as 0.75 per cent where the company undercomplies. The transitional rules set out in the Bill will ensure that the abolition of the 30/20 rule does not result in retrospective withdrawal
of a higher income tax deduction to which a company would have been entitled under the 30/20 rule.

Practical difficulties pointed out by the Life Insurance Federation of Australia were kept in mind, the Treasurer said, in designing the transitional rules set out in the Bill. However, he said, it had not been possible to adopt all the suggestions put forward by the Federation.

The abolition of the rule is not expected to have any discernible revenue effects.

B. Expenditure Recoupment Schemes

Section 82KL when read with section 82KH of the ITAA denies a tax deduction (or rebate) for certain expenditure incurred after 24 September 1978 as part of a tax avoidance scheme. Broadly, under these schemes, known as expenditure recoupment schemes, the taxpayer (or an associate) receives a compensatory benefit which together with the tax saving sought for the expenditure is equal to or greater than the amount of the expenditure.

The former Treasurer said when he announced legislative action against such schemes on 24 September 1978 that any future legislation dealing with variants of such schemes would be effective from that date.[2] The existing provisions have been amended on a number of occasions to cover variants of the scheme with effect from 24 September 1978.

Clause 14 of the Bill proposes the amendment of section 82KH to extend the existing provisions to cover expenditures formally incurred in respect of industrial property - to which the special deduction provision, Division 10B, applies - or by way of loss or outgoing - to which the general deduction provision, section 51, applies; these being the areas in which the recently discovered variants of the scheme fall.

By clause 38(2) and section 82KH(IF) of the ITAA as amended, the amendments will apply where the expenditure was incurred after 24 September 1978 and before 28 May 1981 - the date from which the general anti-tax avoidance provision (Part IVA) applies. Clause 38(3) is consequential upon the provisions applying from 24 September 1978. It gives a taxpayer who has objected against the disallowance of a tax benefit for expenditure of the kind now being brought within the scope of section 82KL, the right to amend the objection to include the grounds that section 82KL does not apply to the expenditure.
By clause 12 of the Bill it is proposed to amend section 80(5)(m) of the ITAA which precludes the carry forward of losses arising from expenditure recoupment schemes, and other tax avoidance schemes, to cover losses arising under variants that are now being legislated against.

The potential revenue gain from the proposed measures is put at $25m.

C. Taxation - Christmas Island

The Government announced on 10 April 1985 its decision to phase in personal income tax on Christmas Island, from 1 July 1985 and to impose full company tax and medicare levy from that date as part of a package to integrate the Island with the mainland. Clauses 5, 6, 9, 30, 34, 35, 36 and 38(7) of the Bill propose that effect be given to that decision.

Under the proposed amendments the income tax payable by residents of Christmas Island during the phasing-in period will be determined in the same way as if the people were mainlanders living in a special area of Zone A. The tax liability (after the allowance of the special Zone A rebate) to the extent that it relates to income that the Islander was previously not taxable on (i.e., income other than income from mainland Australia) will then be reduced to 25 per cent for 1985-86, 50 per cent for 1986-87 and 75 per cent for 1987-88. In cases where a Christmas Island resident has both mainland and previously exempt income, the latter will be treated as the final component of taxable income thus providing the greatest benefit to the taxpayer.

The amendments will have a consequential effect on residents of Norfolk Island and Cocos (Keeling) Islands. For example, they will now be liable to tax (subject to the "phasing-in" arrangements) on any income they derive from Christmas Island in the same way as they are now liable for tax on income from the mainland.

Revenue effects from the taxation part of the package are put at $1m for 1985-86, $4.4m for 1986-87, $6.4m for 1987-88 and $6m for 1988-89.

D. Disclosure of Taxation Information to Commonwealth Statistician

At present section 16 - the secrecy provision - of the ITAA permits the Commissioner to provide the Australian Statistician with the name, address and industry classification of an employer and the number of his/her male
and female employees. Clause 4 of the Bill proposes to amend section 16 to allow the Commissioner to supply similar details in respect of business taxpayers generally. In addition, the Commissioner will be authorised to provide information about gross receipts of a business that the Statistician requires for periodic industry surveys and other information required by him for purposes of the Australian national accounts.

E. Appeals Against Certain Penalties

Legislation enacted last year brought penalties for breaches of the Pay-as-you-earn (PAYE) provisions into line with those applying to the prescribed payments (PP) system. However, in contrast to the situation in the PP system, that legislation did not give PAYE employers the right to object or appeal against decisions of the Commissioner not to remit, or to remit in part only, "culpability penalties" (that is, the statutory additional tax penalties imposed at a flat percentage of, for example, PAYE deductions not remitted to the Commissioner by the due date). Clause 32 of the Bill proposes that this be now done by the enactment of new section 22IU of the ITAA; while clause 38(6) provides, in effect, for the rights to apply from the date the "culpability penalties" first became effective; 14 December 1984.

Clause 31 is a complementary measure to clause 32. It will require the Commissioner to notify an employer in writing of decisions made by him not to remit, or to remit in part only, "culpability penalties". This notification will form the basis for an objection that is to be allowable under new section 22IU.

It is a basic principle of the income tax law that objection and appeal rights are not available against decisions of the Commissioner regarding the remission of statutory penalties imposed at 20 per cent per annum for late payment of taxes (including PAYE or PP deductions). However, these rights were inadvertently given to Government bodies that fail to make PPS deductions. Clause 33 proposes to amend section 221YHT of the ITAA to withdraw this right.

The amendments will have no discernible effect on revenue.

F. Rebates for Dependents

(a) Dependent spouse rebate - de facto couples

One of the changes, proposed by clause 28, to the dependant rebate provisions is being made to correct a
drafting error in the provisions enacted last year to extend, from 1 July 1984, the dependent spouse rebate to de facto couples.

The proposed amendment, by clause 28(a), to section 159J(5D) will restore the allowance of a partial dependant rebate for a daughter-housekeeper in part year cases. For example, a taxpayer whose dependent daughter kept house for him for part of a year before he commenced a de facto relationship will, under the amendment, be entitled to a daughter-housekeeper rebate, provided the other conditions for the rebate are met, for that part of the year. By clause 38(4) of the Bill the amendment will apply for 1984-85 and subsequent income years.

The change will have no measurable effect on revenue.

(b) Exclusion of family income supplement from separate net income

The other change in the provisions that allow rebates for dependants, that is proposed by clause 28 of the Bill, follows from the change from 1 May 1984 of paying the tax-free social security family income supplement to the family allowances recipient (generally the mother) rather than the primary breadwinner. It is thus necessary that, as proposed by clause 28(b), the allowance be disregarded in determining the amount of the separate net income - as defined in section 159J(6) of the ITAA - of a dependant for income tax rebate purposes, otherwise the allowance could, in effect, be taxed at 25 per cent by way of reduction in the primary breadwinner's dependent spouse rebate.

By clause 38(5) this amendment will apply from the date of the changed method of payment, 1 May 1984.

The changes will result in the foregoing of $7m in a full year (NIL in the current year) in extra tax that would have been collected from the unintended claw-back of the family income supplement.

G. Other Amendments to the ITAA

Clause 37 of the Bill proposes a number of formal amendments to the income tax law to bring Ministerial and Departmental titles mentioned in that law up to date.

Another amendment proposed by clause 37 will repeal redundant provisions relating to the rights of public servants appointed to Taxation Boards of Review. These rights are now provided by section 87TA of the Public Service Act.
H. Amendment of Taxation (Interest on Overpayments) Act

Under the Taxation (Interest on Overpayments) Act interest is paid on amounts refunded to taxpayers following a successful objection or appeal. This is consistent with the taxpayer being charged a penalty for late payment of taxation.

Clauses 40 to 43 of the Bill propose to extend these provisions to cover a refund of a penalty paid by an employer for breaches of the PAYE or PP systems following a successful objection or appeal by the employer against the penalty. The new provisions are to date from 1 September 1983 for refunded PPS penalties that are subject to objection and appeal rights; that being the date the PP System commenced. The commencement date for the payment of interest on refunds of other penalties covered by the new provisions, will be 14 December 1984; that being the date from which these penalties first applied.

The estimated revenue cost of paying interest on these refunds is negligible.

For further information, if required, contact:

Economics and Commerce Group
LEGISLATIVE RESEARCH SERVICE

16 May 1985

References

1. Treasurer's Press Release No. 142, 10 September 1984, Attachment C.