Date Introduced: 18 May 1983
House: House of Representatives
Presented by: Hon. J.S. Dawkins, M.P., Minister for Finance

Short Digest of Bill

Purpose

To initiate deductions of tax at source for certain payments, to provide for depreciation allowances in respect of new non-residential buildings, to amend depreciation and deduction provisions in respect of mining developments, Australian films and taxpayers' equipment generally, and to alter arrangements for collection of tax payable by or on account of certain non-residents.

Background

The Bill implements a number of measures announced by the previous Government but not yet enacted.

The most significant alteration in taxation law is the introduction of a system of taxing payments at source. The Income Tax Assessment Act assesses tax at prescribed rates on "taxable income", defined in general terms as assessable income less expenses incurred in obtaining that income. Administratively, liability to tax is generally determined ex post facto; taxpayers are required to furnish a return of assessable income and deductible expenses at the end of each tax year (generally a financial year).

The PAYE (pay as you earn) system deducts amounts at prescribed rates from wage and salary payments, so that the annual return and supplementary demand or rebate adjusts, but does not greatly alter, the total tax paid.

The provisional tax system fulfils a similar role in respect of non-wage income. Tax is payable during the current year of income rather than at a much later date when the tax year has ended and a sufficient time for finalisation of accounts has elapsed. The amount of provisional tax is calculated on the basis of taxable income during the previous tax year.
The system proposed in the Bill differs from the provisional tax system first in that the amounts payable are a proportion of gross assessable income rather than net taxable income. As such, it is most appropriate to businesses with a high value added component, such as professions and trades. It would be much less appropriate for retail trading businesses.

Secondly, tax payable is to be paid monthly rather than by a single yearly payment.

Thirdly, the liability to pay tax falls not on the taxpayer but the customer, client or contractor liable to pay the taxpayer for services rendered. In this way, the payment for services is taxed "at source".

The motivation for such a system to apply in certain areas of the economy is an estimated high level of "cash economy" transactions, which are not included in tax returns and therefore escape tax. The system supplements existing legal requirements for taxpayers to report all assessable income received.

The source deduction system has been indicated to apply to payments from contractors and sub-contractors within the same industry, and also to two additional areas, the building and construction industry (for projects of value greater than $10,000) and certain road transport arrangements.

The nature of payments to which the provisions apply is not established by the Bill and would be determined by regulations defining "prescribed payments".

Exemptions from requirements to pay tax are possible under section 221YHQ where the Commission is satisfied that specified accounting and taxation standards have been complied with.

Additional measures in the Bill implement a decision of the previous Government to allow more rapid depreciation for certain eligible plant acquired, or commenced to be constructed, after 19 July 1982. The rates on a prime cost basis are 20 per cent where the previous rate was no greater than 20 per cent, and 33 1/3 per cent otherwise.

The proposal of the previous Government has been modified, as announced on 30 March (Media Release, Minister for Finance, Hon. J.S. Dawkins, M.P.). Works of art are excluded, the 19 July 1982 provisions will not apply to certain sale/leaseback arrangements, and the provisions
applying where equipment is acquired by corporate reorganisation will be modified.

Measures of the previous Government announced on 19 July 1982 (Media Release, Prime Minister's Office) and to be implemented by the Bill include depreciation for non-residential income-producing buildings where construction commenced after 19 July 1982. Building extensions and alterations will also qualify. Mining capital expenditure after 19 July 1982 will be deductible on a straight line basis rather than on a diminishing balance basis.

A proposed broadening of the concessions for investment in Australian films, announced by the previous Government on 7 February 1983 (Media Release 1983/24, Treasurer's Office), would be implemented by the Bill, to apply to eligible expenditure incurred under a contract entered into on or after 13 January 1983.

Following changes during 1982 which rendered non-residents non-zero-rated, the Bill proposes that where trust beneficiaries do not reside in Australia, primary liability to tax may be attributed to the trustee.

Main Provisions

Clause 2 provides for commencement at the date of Royal Assent, excepting clause 4 which amends section 26 to include in assessable income any amounts received by the taxpayer under the Taxation (Interest on Overpayments) Act 1983 and is therefore to commence with that Act.

The principal provision for taxation of payments at source is clause 65, inserting Division 3A (sections 221YHA to 221YHZ) of Part VI, to apply from 1 September 1983. The division requires, under section 221YHD, that "eligible paying authorities" deduct the "relevant amount" from each "prescribed payment" and forward it on a monthly basis to the Commission for taxation.

"Eligible paying authority" (subsection 221YHA(4)) includes corporations, "householders" (persons contracting for a "construction project" of value greater than $10,000) and persons making payments not wholly or principally of a private or domestic nature.

The "relevant amount" (subsection 221YHD(5)) may in general be determined by regulations.

A "prescribed payment" (subsection 221YHA) is to be defined by regulations.
Other provisions of the Bill relevant to taxation of payments at source include clauses 56 and 63, defining the scope of "work" for which "prescribed payments" are made, and adjusting calculations for provisional tax.

Accelerated depreciation provisions are covered in clauses 10 and 15. Clause 10, amending section 57AE, implements depreciation provisions for storage facilities for grain, hay or fodder. Where construction was commenced, or a contract to acquire was entered, after 19 July 1982 a 33 1/3 per cent of depreciation rate is allowed. This rate is also permitted for property used for primary production acquired or contracted after 19 July 1982. The new rate is 20 per cent per year for items previously depreciable at 20 per cent or less, and 33 1/3 per cent otherwise. Exclusions under subsection 57AL(2) comprise motor vehicles and works of art.

Initiation of depreciation provisions for certain income-producing buildings is through new Division 10D (sections 124ZF - 124ZK), inserted by clause 54. Deductions are allowable under section 124ZH of 2 1/2 per cent of qualifying expenditure (defined in section 124ZG) per year, and under section 124ZK in respect of the destruction of a building.

Amendments for accelerated depreciation require detailed drafting to apportion capital expenditure appropriately to various time periods in which differing depreciation provisions apply. Where a concessional depreciation rate is expressed to apply for a period, the assets will at the end of the period be at a correspondingly lower written-down value, and must be depreciated in any subsequent period from this "residual capital expenditure" level. In relation to the mining industry, Division 10 (sections 122-122T) of Part III provides for deductions for mining generally; Division 10AA (sections 124-124AR) relates specifically to petroleum mining.

The Bill makes similar provision in respect of each of the two divisions. New sections 122DG (clause 27) and 124ADG (clause 36) provide for straight-line depreciation over ten years or the life of the mine, whichever is the shorter period.

Australian film industry concessions presently grant a 150 per cent deduction for expenditure incurred, under section 124ZAF, where the expenditure is under a contract entered on or after 1 October 1980 and certain other conditions are fulfilled. From 27 May 1981 the
deduction applies in the first year the film is used to produce income. Amendments in the Bill would provide the deduction in the year of investment, for contracts entered into after 12 January 1983 (section 124ZAF(A), clause 48). The amendments further establish an Australian Film Industry Trust Fund and require payments after 30 June 1983 to be paid through film accounts in the fund. Clause 66 inserts new Division 6 (sections 221ZM and 221ZX) in Part VI of the Act dealing with collection and recovery. Although exemption certificates may be obtained, section 221ZN requires that a high proportion of any money withdrawn from a film account and not dealt with in the "prescribed manner" must be paid over to the Commissioner of Taxation. The prescribed manner is defined by subsection 123ZAA(7) added by clause 44.

Altered provisions for collection of tax on income to which non-resident beneficiaries are entitled include new section 98A (inserted by clause 19). The existing position in Division 6AA is that where a beneficiary is not under any legal disability, the beneficiary is assessed to tax under section 97. If the beneficiary is under such disability, the trustee is assessed under section 98. New subsections 98(3) and (4) applying respectively to companies and natural persons, provide that the trustee is assessed to tax on so much of the beneficiary's income as is taxable under Australian law. Under new section 98A, the tax paid by the trustee is offset against the beneficiary's own liability to tax.

Ancillary provisions (clause 64) provide for calculations in respect of provisional tax.

For further information, if required, contact:

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