Short Digest of Bill

Purpose

To amend the treatment for income tax purposes of superannuation funds, short-term life assurance policies, leveraged lease arrangements, special concessions relating to Australian trading ships, certain film income, and special social security benefits paid during the first two weeks following a disaster.

Background

The Bill implements several changes, including some unfinished proposals of the previous Government.

Leasing Arrangements and similar deductions

Outright purchase of an item of plant is a capital transaction, although depreciation at an appropriate rate is an allowable deduction. The involvement of a lessor in a leveraged lease transaction avoids the initial cash drain to the lessee of an outright purchase, substituting a gradual cash flow requirement over the life of the lease. The lessee may deduct leasing costs; the lessor is able to deduct depreciation, repairs, interest etc. incurred in his business of leasing plant.

The Bill alters the taxation treatment of lessors in leveraged leases. In respect of plant where the lessor's financier is secured by a non-recourse debt and has no other rights against the lessor, the depreciation etc. deductions will not be allowable if the property is leased to a non-resident and used overseas, is leased back to the previous owner and user or is leased to a tax-exempt organization. In the last case, a rateable deduction is allowable where the property is used only partly in tax exempt activities. The provision applies to property contracted for or for which construction commenced, after 1 p.m. on 24 June 1982.
Deductions for plant, e.g. depreciation, borrowing costs, etc., will also not be allowable where the property is under the effective control of a non-resident, a tax-exempt organization or the previous owner and user.

**Investment Allowance**

In addition to depreciation etc., an investment allowance for outright deduction of 18 per cent of the cost of certain items of plant is allowable where the plant is used by the owner or lessee exclusively for the purpose of producing assessable income. However, the investment allowance is currently provided in circumstances where property is effectively controlled, but not owned, by a tax-exempt organization. If an exempt organization were the legal owner or lessee, no investment allowance would be available in respect of the plant. The Bill contains measures to deny the investment allowance to the owner where the plant is being used by a tax exempt organization. In this case, as from 18 December 1981 the real owner will be denied the investment allowance.

**Australian Shipping**

The Bill implements special concessions for Australian trading-ships, announced by the previous government on 29 July 1982, following the Crawford Report on the Revitalisation of Australian Shipping in 1981. The report indicated that only 3 per cent of Australia's international trade was being carried by Australian ships, and examined the subsidies provided to foreign shipowners which had enhanced their competitiveness during a period of worldwide downturn in shipping.

The Crawford Committee examined prospects for coastal and overseas trading vessels and expressed concern that the benefits derived from any concessions should remain in Australia. As a result, a set of criteria to determine a trading ship's "Australianness" was suggested by the Crawford Committee and has now been reflected in the current Bill.

Broadly, special allowances (including depreciation over five years) will be available to a ship

(i) registered in Australia;

(ii) engaged exclusively in the coastal or overseas carriage of passengers or cargo;

(iii) wholly owned, used and manned by Australian residents; and
(iv) used exclusively to produce assessable income in Australia.

An eligible trading ship must also be new or constructed or commissioned on or after 29 July 1977.

**Short-term life assurance policies**

A life assurance policy provides, in return for payment of premiums during life, a benefit on the death of the life assured.

Successful investment of premiums by the life office may lead to bonuses during the life of the policy. When paid to the beneficiary, bonuses are assessable (para. 26(i)).

Reversionary bonuses, not actually paid to the beneficiary are not taxable, enhancing the attractiveness of short-term life assurance policies. Early cancellation of the policy would result in the tax-exempt accretions in value being realized in the hands of the taxpayer policyholder. Measures announced on and to apply from 27 August 1982 would make all bonuses received within the first two years fully assessable, reducing in the third and fourth years to be assessable as to 2/3 and 1/3 respectively. To further discourage investment in this form of policy, the period where all bonuses are to be fully assessable is extended by 6 years to 8 years, with effect from 7 December 1983. A rebate at 30 per cent tax rate is introduced in respect of the notional income.

**Superannuation Funds**

The Bill modifies the tax status of certain superannuation funds falling within section 23F of the Assessment Act, to end tax avoidance schemes which involve an employer-managed fund, ostensibly for the benefit of employees, but with the intention of eventual winding-up. Tax benefits are obtained but employees do not collect from the fund because they do not know of the fund or become disentitled through the manner of termination of their employment.

The amendments to the Assessment Act render assessable all benefits, other than those paid in pursuance of an existing right, from a section 23F fund received directly by a taxpayer or his associate, or indirectly through transfer for consideration of a right to receive benefits, with a discretion on the Commissioner to exempt benefits which are not "excessive".
Special Benefits for Disaster Victims

The Assessment Act deals specifically with certain types of benefits payable under social security legislation. Special benefits are in general assessable. The Bill automatically exempts, for the first 2 weeks of receipt, social security special benefit where the Director-General of Social Security considers the disaster a "major disaster which has directly affected a substantial number of people".

Australian Film Investment

It was announced in the Budget Speech that the special deduction for investment in Australian films would be reduced from 150 per cent to 133 per cent, while 33 per cent, rather than 50 per cent, of the net revenue from the film would be exempt from tax\[1\]. The provisions apply to investments after 23 August 1983, except where the investment, although later paid, was underwritten prior to that date. Other amendments facilitate underwriting practice in film investment.

Interest Withholding Tax

Exemption from Australian interest withholding tax enhances the attractiveness of Australian securities in foreign markets. The Bill would extend existing exemptions, applicable to bearer debentures, to cover registered debentures. The exemption applies to debentures issued after 23 November 1983.

Main Provisions

The Bill would commence with Royal Assent (clause 2). As is usual in the Income Tax Assessment Act, amended provisions fully specify relevant dates in their text rather than rely on date of entry into force.

Clause 3 provides for exemption from tax of the first two weeks of special benefit following a major disaster, certified as such by the Director-General of Social Security.

Clause 4 amends section 23H of the Assessment Act consequent upon reduction of deductions for film investment to 133 per cent, and reduction of the exemption for film income to 33 per cent. The amendments provide for calculation of "unrecouped capital expenditure", to cater for film income exempted in income years at the earlier rates. The modified deduction rate is specified in the amendments to sections 124ZAF and 124ZAF A set out in clauses 22 and 23.
Clause 5 adds a new section 26AF to render assessable any excessive benefit received by a taxpayer from the assets of a section 23F fund where no right to the benefit exists. The Commissioner has a discretion to determine that the provision not apply.

Clause 6 adds new section 26AH for the assessability of any amount paid to a taxpayer policyholder or reinvested as he directs. For bonuses increasing the value of the policy, which would be paid over if the policy were terminated, assessability in full is imposed in the earlier years of the policy with a reduced rate for termination within the subsequent two years. The bonus is assessable at these rates over a period of 4 years, or 10 years where the risk commenced after 7 December 1983. Clause 25 adds section 160AAB for a rebate at the standard rate of tax against bonuses assessable under section 26AH.

Clause 8 adds new section 51AD to restrict the deduction available under certain leveraged lease arrangements, with effect from the year of income in which 24 June 1982 occurred.

Clause 24 omits the word "bearer" in subsection 128F(3), so that the withholding tax exemption applies to debentures generally, issued after 23 November 1983.

Remaining clauses of the Bill implement special concessions for Australian trading ships. The amendments authorize depreciation in equal installments over 5 years, and exempt trading ships from the requirement for use in Australia attaching to investment allowance.

For further information, if required, contact:

24 February 1984

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References
