Purpose

To provide legislative authority for double taxation agreements with Malaysia and Sweden.

Background

Australia has double taxation agreements with a number of countries (e.g., U.K., U.S.A., Canada, New Zealand). These are arrangements to prevent the same income being taxed twice as can occur, for example, when a company and one of its shareholders are domiciled in different countries. Alternative ways in which the taxation revenue is apportioned between the parties to double taxation agreements were noted by the Minister in the Second Reading speech (House of Representatives, Hansard, 26 March 1981, p.1004).

A second reason for double tax agreements is to reduce tax evasion. This occurs, for example, when a shareholder does not declare in his or her taxable income, dividends received from companies domiciled abroad. Withholding tax on income paid to overseas residents may reduce the amount of tax evaded and possibly make evasion more difficult.

For further background on foreign tax treaties, see the 1981 Australian Master Tax Guide, pp.600-604.

Provisions

Clauses 4, 5 and 6 are similar in that they require the Treasurer to ensure publication in the Gazette of certain details of agreements made with Canada, Singapore and the Philippines under sections of the double tax agreements made with those countries.

Sub-clause 4(1) provides that following agreement with Canada on changes to the amounts specified in Article 15 of the convention with that country, the Treasurer must
ensure that those changes are published in the Gazette as soon as practicable. The provisions of Article 15(2)(a) and (3) together with the amounts specified in Article 15(2)(a) of the convention with Canada, are explained on page 5 of the Explanatory Memorandum.

Sub-clause 4(2) is designed to ensure that the amendment effected by sub-clause 4(1) does not apply retrospectively.

Clause 5 provides that following agreement with Singapore on fixing a date under Article 18(4) of the agreement with Singapore, the Treasurer must ensure that that date is published in the Gazette as soon as practicable. The provisions of Article 18(4) of the agreement with Singapore are explained on pages 5 and 6 of the Explanatory Memorandum.

Sub-clause 5(2) establishes that the amendment effected by sub-clause (1) does not apply retrospectively.

Clause 6 provides that, following agreement under Article 14(2) of the agreement with the Philippines to vary the amount specified in paragraph 14(1)(c), the Treasurer must ensure that details of the agreed variation are published in the Gazette as soon as possible. The contents of Article 14 of the agreement with the Philippines are explained on page 6 of the Explanatory Memorandum.

Sub-clause 6(2) is designed to ensure that the amendment effected by sub-clause 6(1) does not apply retrospectively.

Clause 7 contains provisions with respect to the new agreements with Malaysia and Sweden set out in Schedules 16 and 17 to be inserted in the Principal Act. First, it gives the force of law to both agreements. In the case of Malaysia, this applies to tax on income (including dividends and interest) derived on or after 1 July 1979. In the case of Sweden, this will apply to withholding tax on dividends or interest derived on or after 1 January (1 July in respect of other taxation) in the calendar year immediately following that in which the agreement enters into force. Second, the Treasurer is required to publish in the Gazette the dates on which the agreements came into force. Third, following agreement with Malaysia on fixing dates under Article 23(7) of the agreement the Treasurer must ensure that those dates are published in the Gazette as soon as practicable. The contents of the Articles referred to are explained on pages 7, 24 and 36 of the Explanatory Memorandum.
Clause 7 makes two additional provisions with respect to the agreement with Malaysia. Sub-clause 7(2) enables the Commissioner of Taxation to amend tax assessments made before the coming into force of the agreement. This is necessary because the Malaysian agreement is, in effect, retrospective because it applies to income deriving on or after 1 July 1979 (i.e., before the agreement was signed and comes into effect). The other provision (sub-section (4) of proposed section 11F) deals with interest or royalties paid by a resident of Australia to a resident of Malaysia. The purpose behind this provision was explained by the Treasurer in the Second Reading speech (House of Representatives, Hansard, 26 March 1981, p.1005). See also pages 7 and 8 of the Explanatory Memorandum.

The main purpose of section 12 is to provide relief from double tax taxation by means of tax credits whereby, for example, tax paid subject to a limit under a double tax agreement in a source country which is not the same as that where the taxpayer resides, is deducted from the taxpayer's liability in his or her country of residence. Clause 8 extends this system to Malaysia and Sweden. The mechanisms of operation of the credit method of double taxation of interest and royalties are explained on pages 8 and 9 of the Explanatory Memorandum.

Under the double tax agreement with Malaysia, Malaysian tax on some interest and royalties deriving from sources in Malaysia, is limited to 15 per cent. Paragraph (ak) ensures that where this income accrues to Australian residents, it will not be exempt from tax in Australia. However, the tax paid in Malaysia is taken into account when assessing the tax payable by Australian residents.

Paragraph (am) will serve a similar purpose in the case of income originating in Sweden. However, at present, Sweden does not, in general, impose tax on interest remitted overseas. The effect of paragraph (am) is that in the event of Sweden imposing such a tax, the double tax agreement would limit the Swedish tax to 10 per cent and a credit would be allowed in Australia to Australian recipients of interest from Sweden.

The main purpose of sub-clause 8(2) is to limit any retrospective increase in the tax liabilities of Australian residents by virtue of the fact that the agreement with Malaysia relates to income earned on or after 1 July 1979.

Sub-clause 8(3) allows the Commissioner of Taxation to amend assessments already issued to take account of the
retrospective element in the agreement with Malaysia.

For further information, if required, contact:

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