Date Introduced: 23 September 1981
House: House of Representatives
Presented by: Hon. J.C. Moore

Short Digest of Bill

Purpose

To impose tax on the income of public unit trusts to which income producing property is transferred, grant tax deductions for gifts to the Victorian Arts Centre Trust and public funds established for the observance of the International Year of Disabled Persons, increase from 6 to 10 years the maximum period for the write-off of new capital expenditure on the development of a mine or oil field, adjust the basis of taxation of friendly society dispensaries and provide the method for calculating provisional income tax for the 1981-82 income year.

Background

In July 1980, the Treasurer announced the Government's intention to legislate against reorganisations by public companies, involving the transfer of income producing property to unit trusts, where shareholders of the company involved in the reorganisation are entitled to units in the unit trusts. The aim of the reorganisations was to avoid the double taxation of income; tax in the hands of the company and, on distribution, in the hands of non-corporate shareholders.

In the absence of the proposed amendments, distributed trust income is only subject to tax in the hands of trust unit holders. The announcement was triggered by the intended transfer of property by several large public companies to public unit trusts, the units in which would be held by the companies' shareholders. The proposed legislation treats such unit trusts as companies for tax purposes and so maintains the classical system of the double taxation of corporate income (in the hands of the company and shareholders).
Legislation is also introduced to give effect to announcements on 26 June 1981 and 17 July 1981, respectively, that gifts of $2 or more made after 30 June 1981 to the Victorian Arts Centre Trust and during the 1981-82 financial year to public funds for the observance of the International Year of Disabled Persons would be deductible.

Budget Proposals

Changes in the basis of taxation of friendly society dispensaries, whereby they are to be taxed on the mutuality principle - receipts from members non-taxable - as with other non-profit companies.

Deductions for capital expenditure on mining and oil field development are a concessional allowance to the mining and oil sector; the expenditure not otherwise being deductible. The maximum deemed life of a mine or oil field, over which expenditure is deductible, is to be increased to 10 years. Recent amendments, (Income Tax (Assessment and Rates) Amendment Bill 1981), increased the previous deemed maximum life from 5 years to 6 years in respect of expenditure incurred between 1 May 1981 and 18 August 1981, inclusive.

As in previous years, amendments are proposed to the method of calculating provisional tax in order to anticipate as accurately as possible 1982 provisional incomes, taking into account the anticipated impact of inflation on incomes. This assists in achieving consistency between provisional taxpayers, and salary and wage earners whose tax is deductible progressively throughout the year.

Main Provisions

Amendments to the Income Tax Assessment Act 1936
(the Principal Act)

Taxation of Public Unit Trusts

Clause 10 of the Bill proposes the insertion of new Division 6B - sections 102D to 102L - into Part III of the Principal Act. New section 102D contains definitions of the terms used in the Division. New Section 102K proposes to tax the net income of a corporate unit trust at the rate declared by Parliament (to be the current rate of corporate tax, 46 per cent). New sections 102E to 102J define the arrangements which constitute the existence of a corporate unit trust, the net income of which is subject to the tax imposed by new section 102K.
New section 102J specifies a corporate unit trust to be, in relation to a relevant year of income:—

(a) where the relevant year of income commenced on either 1 July 1980, 1981 or commencing on 1 July 1982 - a unit trust established after 11 July 1980 which is an "eligible", "public" and either a "resident" in relation to the relevant year of income or was a corporate unit trust in relation to the preceding year of income;

(b) where the relevant year of income commences on 1 July 1983 or a subsequent year, the above conditions apply irrespective of the date of establishment of a trust.

The terms "eligible" unit trusts, "public" unit trusts and "resident" unit trusts are defined in new sections 102 F to H, respectively. The sections are detailed and qualified to prevent abuse. The following is a summary of the intention behind the sections; for detailed explanations refer Explanatory Memorandum, pages 11 to 25.

As defined in proposed new section 102F a unit trust is an eligible unit trust if property becomes the property of the trust pursuant to a prescribed arrangement with a company, and at any time the property was the property of the company or an associate company, or the trustee carried a business, pursuant to a prescribed arrangement, previously carried on by the company or associated company. Prescribed arrangements in relation to a company are broadly defined, by new section 102E, as being where shareholders in the company are entitled to acquire, directly or indirectly, units in a unit trust which in the opinion of the Commissioner of Taxation would be a public unit trust.

A public unit trust (new section 102G) is a unit trust, the units in which are:—

(a) listed for quotation on an Australian stock exchange;

(b) offered to the public; or

(c) held by not fewer than 50 persons.
In addition to the above, safeguards, broadly in the nature of the tests applied by the Principal Act to determine public company status for tax purposes, are specified (new sub-sections 102G(2) to (11)). These include the so called "75 per cent / 20 persons" test which denies public trust status where one or more than 20 persons hold or have rights to acquire units that entitle them to not less than 75 per cent beneficial interest in the income or property of the trust, or not less than 75 per cent of the total moneys paid or credited by the trust was paid or credited to one or not more than 20 persons. New sub-sections 102G(5) to (7) restrict arrangements designed to vary rights to overcome the restrictions of the 75 per cent / 20 persons test.

A resident unit trust is defined by new section 102H as one where either the property or the business carried on is situated in Australia, or residents held more than 50 per cent of the beneficial interests in income or property of the unit trusts. This definition is not unlike the resident company definition in sub-section 6(1) of the Principal Act.

Proposed new section 102L deals with the imposition, assessment and collection of the tax in respect of the net income of a corporate unit trust. The section proposes to amend various sections of the Principal Act in order that they will apply to corporate unit trusts as if they were companies. For example:–

- income distributions will be taxed as company dividends and provisions of the Principal Act in respect of dividend rebates will apply;

- tax payable by unit trusts is payable by instalment;

- income is subject to averaging by primary producers.

Friendly Society Dispensaries

Clause 4 of the Bill amends sub-section 6(1) of the Principal Act by inserting a new definition of a friendly society dispensary. Clause 13 of the Bill proposes the repeal of Division 9A of Part III of the Principal Act, being the division under which friendly society dispensaries are currently taxed. A consequential amendment is proposed by clause 5 to delete reference to Division 9A from sub-section 23(g), which provides that subject to Division 9A the income of non-profit societies, clubs and associations is exempt from tax.
Upon the repeal of Division 9A the income of friendly society dispensaries will be subject to tax under the general provisions of the Principal Act. The mutuality principle - "members cannot make a profit from themselves" - will continue to exempt from tax all receipts from members. Other income will be subject to tax; refer Explanatory Memorandum pages 24 to 25.

Additional consequential amendments are proposed by clauses 11 and 12. Clause 11 proposes to amend sub-paragraph 103A(2)(d)(ii) to effectively enable a friendly society dispensary to continue to be classified as a public company for tax purposes. But for Division 9A, friendly society dispensaries would generally qualify as co-operative companies, as defined by section 117, and be subject to tax under Division 9. Consequent upon the repeal of Division 9A, clause 12 proposes to amend sub-section 117(1) to exclude friendly society dispensaries from the definition of co-operative companies. Clause 14 proposes to amend sub-section 121F(1) to omit the definition of friendly society dispensary which clause 4 proposes to insert in sub-section 6(1), and to amend the definition of public company by omitting the reference to friendly society dispensary.

Gifts

Sub-clause 9(a) proposes the insertion into the Principal Act of new sub-paragraphs 78(1)(a)(lxiv) and 78(1)(a)(lxv) allowing deductions for gifts of $2 or more to the Victorian Arts Centre Trust, and public funds established for the observance of the International Year of Disabled Persons, respectively. Sub-clause 9(b) inserts new sub-section 6AD limiting deductions for gifts in respect of the International Year of Disabled Persons to those made during the year ending 30 June 1982. Gifts made to the Victorian Arts Centre Trust after 1 July 1981 will be deductible.

Capital Expenditure on Mining and Oil Field Development

The amendments proposed by clauses 6 to 8, 15 to 30 and 40, to extend the maximum deemed life of a mine or oil field are lengthy. Accordingly, only the overall effect is discussed below; for a detailed discussion refer Explanatory Memorandum pages 9 to 10, 26 to 39, 44. Capital expenditure incurred in the development of a mining property or oil field will be deductible as follows:
Expenditure Incurred: 

<table>
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<tr>
<th>Deemed maximum life (period of deduction)</th>
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<tr>
<td>i) after 17 August 1976 - on or before 30 April 1981</td>
</tr>
<tr>
<td>ii) on or after 1 May 1981 - on or before 18 August 1981</td>
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<tr>
<td>iii) after 18 August 1981</td>
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The scheme of the mining and petroleum provisions, Divisions 10 and 10AA of Part III of the Principal Act, remains unchanged. Where capital expenditure deductions would produce a tax loss, the amount of the deduction otherwise allowable is restricted to produce nil taxable income, unless an election is executed. Capital expenditure is first deducted from residual (17 August 1976 to 30 April 1981) capital expenditure, then residual (1 May 1981 to 18 August 1981) capital expenditure and finally residual (post 18 August 1981) capital expenditure.

Amendments to the Income Tax (International Agreements) Act 1953 and Income Tax (Rates) Act 1976

Clause 33 to 35 and 36 to 38 propose to amend the abovementioned Acts, respectively, in consequence of the proposed taxation of corporate unit trusts. Refer Explanatory Memorandum pages 41 to 43 for details.

Provisional Tax 1981-82

Clause 39 of the Bill proposes procedures for determining the amount of 1981-82 provisional tax payable. Broadly, provisional tax is calculated on 1980-81 taxable income increased by 10 per cent.

For further information, if required, contact:

Finance, Industries, Trade & Development Group

29 September 1981

LEGISLATIVE RESEARCH SERVICE