Date Introduced: 20 March 1980
House: House of Representatives
Presented by: Hon. J. Howard, M.P., Treasurer

Short Digest of Bill

Purpose

To amend the Income Tax Assessment Act 1936 (the Act) with respect to:

- the definition of a royalty;
- the deductibility of election expenses;
- gifts; and
- rebates for capital subscriptions to companies for petroleum exploration.

Background and Main Provisions

1. Definition of a royalty

The term "royalty" or "royalties" which applies for purposes of taxing royalty payments is presently defined in s.6 to include "any payment ... to the extent to which it is paid ...", for the right to use a copyright, patent, know how etc. The Victorian Supreme Court in Aktiebolaget Volvo v Federal Commissioner of Taxation found that the definition does not extend to an amount that is credited but not paid.

Paragraph (a) of sub-clause 3(1) proposes to remedy this deficiency by having the term royalty defined to include "any amount paid or credited ... to the extent to which it is paid or credited".

It is felt that the Victorian Supreme Court decision could also mean that a payment to a person in return for a forbearance by that person to grant to third persons rights to use property specified in the royalty definition, so that in substance the payer is making a payment for the exclusive right to use the property, may not be a royalty payment as defined.

Paragraphs (b) and (c) of sub-clause 3(1) propose to amend the royalty definition to include amounts paid or
credited in return for total or partial forbearance in respect of the use of, or the right to use, property covered by the definition.

2. Election expenses

Section 74 provides for deductibility of expenditure incurred in contesting elections to the Commonwealth or a State Parliament.

Clause 4 proposes to extend such deductibility to the expenses of candidates for membership of the Legislative Assembly of the Northern Territory.

3. Gifts

i) Paragraph (a) of sub-clause 5(1) proposes to amend section 78 of the Act to allow deductibility for gifts of $2 or more to the Child Accident Prevention Foundation of Australia.

ii) Gifts of property, other than money or an interest in land or buildings, made on or after 1 January 1978 and on or before 31 December 1980 to the Australiana Fund or to a public library, museum or art gallery are eligible for tax deductibility. The deduction is based at present on the average of two or more valuations obtained from approved valuers within 30 days before or after the making of the gift.

Paragraph (b) of sub-clause 5(1) proposes to amend section 78(6B)(b) of the Act to extend the above period from 30 to 90 days.

4. Rebates for capital subscriptions to petroleum companies for onshore exploration

Capital subscribed as paid-up capital to companies and made for the purposes of exploration or development of an offshore petroleum field, is eligible for a taxation rebate equal to 30 cents for each dollar subscribed. The taxation revenue lost through the granting of this rebate is partially offset by the company forgoing its own right to tax deductibility for such expenditure.

Under present legislation the company is required to lodge a declaration with the Commissioner of Taxation that the subscribed capital will be spent on petroleum exploration or mining and that they will be expended within two years of subscription.
The Treasurer announced in the 1979 Budget Speech the extension of these provisions for subscription after 21 August 1979 to onshore exploration and development and the extension of the period within which the capital subscribed is to be spent from 2 to 4 years.

Clause 8 amends section 160ACA of the Act to extend the eligibility for the rebate to capital subscriptions for onshore exploration.

Clause 7 amends section 124AR of the Act to authorise the reduction in a company's entitlements to deductions under the special petroleum provisions of Division 10 of the Act where it has made a declaration under new sub-sections 160ACA (3A), (7A) or (13A) inserted by Clause 8.

Clause 9 amends section 160ACB of the Act to ensure that the existing safeguard provisions with respect to rebates for subscription for offshore exploration apply to subscriptions for onshore exploration.

Finance, Industries, Trade & Development Group
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