Taxation Laws Amendment Bill (No. 5) 1987

Date Introduced: 9 December 1987
House: House of Representatives
Presented by: The Hon. Clyde Holding, M.P., Minister Assisting the Treasurer

Digest of Bill

Purpose
To provide withholding tax exemption for interest payments in respect of offshore banking units; to defer liability for capital gains tax purposes for certain reorganisations of unit trusts; and to make minor adjustments to the treatment of some superannuation payments.

Background
Withholding tax is imposed on interest and dividends received from a resident company by a non-resident who does not conduct business in Australia. On 1 July 1986, the Treasurer announced that interest payments to residents by offshore banking units would be exempt from interest withholding tax. The announcement was further expanded in a press release dated 9 April 1987. The exemption will only apply to wholesale foreign exchange dealers who have been authorised by the Treasurer to conduct such business. It was also announced that anti-avoidance provisions would be introduced to prevent abuse of the new provisions.

Possible deferral of capital gains tax liability for certain business reorganisations was canvassed in a press release by the Treasurer dated 20 March 1986. The matter was expanded on in September 1987, when deferment for unit trusts was announced. Following the introduction of full dividend imputation, a number of unit trusts wished to reorganise by imposing a company between the business and unit holders. Under the scheme, units in the trust would be exchanged for shares in the company. However, this would constitute a disposal of the units and those acquired after the introduction of the capital gains tax would be subject to the tax. As well, the exemption from the tax for units acquired before the introduction of the capital gains tax would be lost when units were disposed of and shares acquired. Under the 29 September 1987 announcement, such tax liability may be deferred or rolled over.

Main Provisions

*Income Tax Assessment Act 1936*
Proposed section 128AE contains the interpretation provisions in relation to offshore banking units. 'Offshore banking unit' is defined to be a person in relation to whom a declaration under proposed sub-section 128AE(2) is
in force. This sub-section allows the Treasurer to publish a notice declaring that a bank, as defined under the Banking Act 1959, a State bank or a person who is authorised to deal in foreign exchange, is an offshore banking unit. 'Offshore borrowing' is defined as borrowing from a non-resident in any currency or from a resident in a currency other than Australian dollars. 'Offshore loan' is defined as a loan to a non-resident where it can reasonably be expected that the person will continue to be a non-resident and the interest would not be an outgoing of a person carrying on business in Australia; or a loan to an offshore banking unit (clause 20).

Interest paid in respect of an offshore borrowing by an offshore banking unit will be exempted from withholding tax by proposed section 128GB which will be inserted into this Act by clause 23. The proposed section also contains anti-avoidance provisions relating to whether the offshore banking unit was merely used as a conduit for the loan.

Where an offshore banking unit transfers 'tax exempt money' (i.e. money in respect of which the interest would be taxable except for proposed section 128GB) other than by way of an offshore loan or the repayment of an offshore borrowing, they will be liable to tax at the rate imposed by the Income Tax (Offshore Banking Units) (Withholding Tax Recoupment) Bill 1987 on the 'lost withholding tax amount'. This latter term is to be calculated in accordance with the formula contained in proposed section 128NB which deals with the rate of tax declared, the amount of tax exempt money transferred, the prevailing borrowing rate at the time and the term of the transfer. The Commissioner may remit all or part of the tax payable under this proposed section if satisfied that the circumstances justify this action. This provision is designed to protect the withholding tax base by ensuring that the exemption applies only to offshore transactions (clause 24).

Clause 30 will insert a new section 160AFAA into this Act. The effect of the new section will be to treat certain foreign dividends as offshore banking income. This will prevent the use of the exemption to avoid withholding tax by paying such income to a foreign company and remitting the income as dividends.

Proposed sections 160ZZPA and 160ZZPB, which will be inserted into this Act by clause 36, deal with the treatment of units exchanged for shares in a company. Briefly, proposed section 160ZZPA will apply where a scheme for the reorganisation of a unit trust is entered into or commenced after 9 December 1987 and all units are disposed of to a company and non-redeemable shares are issued as consideration. In addition, the proportion of each unit holder's unit holding to the total number of units must be the same as their shareholding to the total number of shares after the reorganisation. The company may request that this section apply to the reorganisation and, if it so elects, the following will take effect. Replacement shares acquired in respect of units acquired before 20 September 1985 will be deemed to have been acquired before that date and so be exempt from the capital gains tax. Where some units were acquired
before this date and some after, a percentage of the replacement shares that is in the same proportion as the percentage of exempt units to total unit holdings, will be deemed to have been acquired before that date. The proposed section also contains the formulas for calculating whether there has been a capital gain or loss on the subsequent disposal of the shares which reflect the general capital gains provisions. Proposed section 160ZZPB deals with the situation where units are cancelled, rather than exchanged, in return for shares. Similar rules as contained in proposed section 160ZZPA will apply.

Section 27A of this Act, which contains the interpretation provisions in relation to superannuation, will be amended by clause 11. The principal amendment will be to allow certain superannuation payments made to dependants on the death of the employee, to be treated as lump sum superannuation payments.

For further information, if required, contact the Economics and commerce Group.

16 February 1988
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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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