INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 5) 1979

Date Introduced: 18 October 1979
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:

- carrying forward of certain tax avoidance losses;
- investment allowance; and
- income equalization deposits

Background and Main Provisions

Carrying forward of certain tax avoidance losses

Under section 80 of the Act, a taxpayer who incurs a loss in a year of income may carry that loss forward as an allowable deduction against income of the seven succeeding years. A loss incurred in primary production may, under section 80AA of the Act, be carried forward indefinitely.

The Treasurer, in his statement of 24 May 1979, announced that, as part of the Government's legislative campaign against tax avoidance, it would legislate to deny the carry-forward of losses generated from paper schemes entered into before the commencement of remedial legislation. This announcement was largely prompted by the Government's fear of potentially significant revenue losses.

The Treasurer for example has announced that claims exceeding $1,600m have been made to the Commissioner of Taxation for the deduction of paper losses from tax avoidance schemes entered into in 1977-78 and against which the Government has introduced remedial legislation. The Treasurer estimated that some $1,000m of these claims would, if the claims were to succeed and in the absence of appropriate remedial action, be carried forward for deduction against income of the 1978-79 income year and later years.
Losses resulting from tax avoidance schemes entered into before the date of application of remedial legislation may still be deductible in that year of income if the scheme is held to come within the existing legislation.

Clause 3 amends s.80 of the Act by inserting sub-s.80(5) which provides that from 1 July 1978 in determining whether a deduction is allowable for losses relating to non-primary production, so much of the loss deemed to have been incurred by the taxpayer as a result of entry into certain tax avoidance schemes prior to remedial legislation becoming effective shall be disregarded. The schemes and the dates to which the remedial legislation relates are enunciated in clause 3.

Clause 4 amends s.80AA by inserting sub-s.80AA(9) to ensure that the provisions of clause 3 (that is the proposed sub-s.80(5)) also relate to losses incurred in primary production.

Clause 5, although not amending the Act, contains safeguarding provisions designed to ensure that the amendments proposed by clauses 3 and 4 are not frustrated by arrangements designed to convert prescribed tax avoidance losses into other losses or outgoings that, formally, have a different character.

**Investment Allowance**

A taxpayer is able under s.82AB of the Act to receive a tax deduction for certain capital expenditure incurred in acquiring or constructing an eligible unit of property.

The investment allowance had two phases. The first allowed a 40% rate of allowance for eligible plant which was ordered or its construction commenced, by the taxpayer after 1 January 1976 and before 1 July 1978, and was first used or installed ready for use and held in reserve before 1 July 1979. The second phase reduced the allowance to 20% for eligible plant ordered or constructed before 1 July 1985 and used or installed ready for use before 1 July 1986.

On 3 June 1979, the Treasurer and the Minister for industrial Relations, stated that because significant costs could result from delays in the installation of the plant, employers could be subjected to unreasonable industrial demands. Therefore the Ministers jointly announced that Government intended to allow eligible expenditure incurred up to 3 June 1979 on partially completed plant projects to qualify in certain circumstances for the 40 per cent rate of allowance.
Clause 6 amends s.82AB to enable so much of eligible expenditure incurred on or before 3 June 1979 that is attributable to so much of the plant as has been installed in its operating position at that date to attract the 40 per cent rate of allowance.

This amendment does not affect the eligibility of plant which was first used or is installed ready for use by 30 June 1979. The amendment does extend the plant that is eligible for the investment allowance rate of 40%. This extension of eligibility arises because expenditure incurred prior to 3 June 1979 is eligible for the rate of 40%, whether or not the plant's construction was intended to be completed prior to 30 June 1979.

The Explanatory Memorandum gives examples of deductions claimed under the proposed revised criteria.

Income Equalization Deposits

A taxpayer under s.159GC of the Act is allowed a deduction for deposits made pursuant to the Loan (Income Equalization Deposits) Act 1976. The deduction allowable to a taxpayer in any year of income is limited to 40 per cent of that taxpayer's gross receipts from primary production. The total deduction in respect of Income Equalization Deposits is limited to $100,000.

On 14 June 1979 the Treasurer announced that the Government had decided to raise these limits respectively to 60% and $250,000.

Clause 8 gives effect to these increased limits which are to apply to assessments in respect of the 1978-79 income year and subsequent years.

8 November 1979

Finance, Industries, Trade & Development Group

LEGISLATIVE RESEARCH SERVICE