INCOME TAX ASSESSMENT AMENDMENT BILL 1978

Date Introduced: 7 April 1978
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 so as to counter a number of tax avoidance schemes and also give effect to a number of policy initiatives already announced by the Government, and a number of technical amendments.

Background

In the 1977-78 Budget Speech, delivered on 16 August 1977, the then Treasurer, Rt. Hon. P. Lynch, announced the Government's intention to combat a number of tax avoidance schemes which were being promoted throughout the business and professional community and causing substantial amounts of tax revenue to be either lost altogether or deferred for considerable periods of time.

The tax avoidance schemes which the present Bill is designed to counter include the so-called "Curran scheme", whereby share traders can artificially create a tax deductible loss and thereby reduce their normal taxable income; abuses of the provisions for tax deductibility of certain gifts; and "dividend stripping".

The "Curran" system of tax avoidance was declared legal by the High Court on 4 November 1974. On 1 December 1974, the then Treasurer, Hon. F. Crean, said that the Government was considering amending the income tax law to counteract the effect of the High Court decision. However, no such amendment had been introduced up until the introduction of the present Bill. The amendment applies to bonus shares allocated after 16 August 1977, the date of the 1977-78 Budget Speech. In his Second Reading Speech, the Minister said the Government had taken the unusual step of retrospectivity because "hundreds of millions of dollars of revenue would be lost if the amendment were confined to bonus shares allotted after today".

The Minister also announced, in his Second Reading Speech, that the Government would be introducing further amendments at a later
Main Provisions

Except where otherwise noted, all the following provisions are effective from the date of introduction of this Bill (i.e., 7 April 1978).

Bonus shares ("Curran scheme") - Clauses 3 and 5 of the Bill ensure that tax-free bonus shares allotted after 16 August 1977 (the date of the 1977-78 Budget Speech) shall, for trading stock provisions and income tax assessment purposes, be treated as having no independent cost to the taxpayer.

Exploitation of gift provisions - Clause 12 of the Bill inserts a new section 78A the broad effect of which is to ensure that a tax deduction will no longer be available in respect of gifts made after the specified date (7 April 1978) where

(a) the value of the gift to the recipient fund, authority or institution is less than its value at the time the gift was made;

(b) the donor or an associate obtains any benefit or privilege other than the benefit of the tax saving; or

(c) the recipient fund, authority or institution undertaken to acquire property from the donor is an associate.

Share trading losses - Clauses 6 and 9, which are effective from the date of introduction, are designed to prevent deduction of "manufactured" or artificial losses from trading in certain trading stock (including shares and debentures) by ensuring that such trading stock is, for tax assessment purposes, valued at commercially realistic rates.

Dividend stripping - tax avoidance schemes of this type involve one company buying shares in a company with accumulated profits, stripping those profits by way of dividend and subsequently selling the stripped shares, thereby recouping itself for the initial share purchase.

Whilst amendments were made to the law in 1972 designed to prevent tax avoidance by way of income stripping, companies have since found a way around the amendment. The new scheme involves one company receiving the stripping dividend, but an associated company or trust incurring the apparent loss on sale of the shares.

Clauses 7 and 8 are designed to overcome this new avoidance measure by limiting, and in some cases abolishing, the tax rebate on inter-company dividends received as part of a dividend stripping operation.
Re-imbursement dividends - Under Div. 7, a private company is liable to tax on its undistributed profits if it does not make a sufficient distribution of its income to its shareholders, in the form of dividends. Clause 13 ensures that a dividend will not be credited towards the making of a sufficient distribution if it is paid under an arrangement whereby a compensating benefit approximating the amount of the dividend is to be paid back to the company.

Exploitation of primary producer averaging provisions - Clause 17 ensures that a beneficiary in a primary production trust will thereby qualify for income averaging provisions only if his or her interest in the trust in the income year is at least $1040 or the Commissioner of Taxation is satisfied that the interest was not acquired primarily to gain the benefit of averaging. The amendment will apply in the determination of averaging entitlements in 1978-79 except for people who enter into such schemes after the date of this Bill, for whom the provisions will apply to the current income year.

Expenditure pursuant to franchise - Clause 10 overcomes an existing anomaly in the tax legislation by ensuring that deductions are not available for capital expenditure incurred under the terms of certain franchises granted by the Commonwealth, a State or a public authority. The deduction for franchise holders is being withdrawn in relation to capital expenditure on franchises granted after the date of introduction of this Bill.

Offshore petroleum share rebates - Following the announcement of 24 August 1977 by the Minister for Trade and Resources, Rt. Hon. J.D. Anthony, relating to tax concessions for the development of gas fields on the north-west shelf, clauses 14 to 16, 20 and 24 are designed to ensure that shareholders who, after 24 August 1977, subscribe share capital to a company for the purpose of exploration or development of an offshore petroleum field, will be eligible for a tax rebate, equal to 30 cents for each dollar subscribed. The company itself forgoes its own right to tax deductibility of such expenditure.

Liberalisation of gift provisions - Clause 11 gives effect to the Government's proposal, announced in the 1977-78 Budget Speech, that the gift provisions of the income tax law as they apply to gifts of works of art and comparable property to public libraries, art galleries and museums would be liberalised. The new provisions, which were announced in detail by the Minister for Home Affairs, Hon. R.J. Ellicott, on 30 December 1977, take effect from 1 January 1978, for a trial period of three years.
Isolated children - Clause 19 provides that, as from 1 July 1977, benefits paid under the Isolated Children's Education Assistance Scheme will not be treated as separate net income of a dependent for purposes of calculating entitlement to the zone allowance or other rebates.

Vocation Training Scheme - Clauses 4 and 22 ensure that, in line with payments made under the NEAT scheme, payments under the Former Regular Servicement's Vocational Training Scheme are made taxable, with effect from the scheme's commencement on 1 February 1978.

Averaging - Clause 18 ensures that all taxpayers who had previously elected to withdraw from the averaging system for primary producers will be able to re-enter the system for the 1977-78 income year.

For a more detailed outline of the amendments contained in the Bill, see the associated Explanatory Memorandum.