

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 3) 1984

INCOME TAX (COMPANIES, CORPORATE UNIT TRUSTS AND

SUPERANNUATION FUNDS) AMENDMENT BILL 1984

EXPLANATORY MEMORANDUM

ERRATUM

The attached pages 43 to 46 replace pages 43 to 47 of the explanatory memorandum on these Bills.



which sub-paragraph (b)(1) applies) i.e., expenditure which is not incurred for a profit-making purpose (sub-paragraph (b)(ii)); and

the amount of profit, if any, which was or is to be included in the assessable income of the transferor as a consequence of the transfer to the transferee (sub-paragraph (b)(iii)).

This provision will ensure that, for example, where a taxpayer who has obtained a gift of land acquired by the transferor for the purpose of profit-making by sale, subsequently builds a house in which to live on the land, sub-sections 25A(5) and (9) will apply to include in the assessable income of the taxpayer only that part of any profit on sale which is attributable to the increase in value of the land itself.

Paragraph (c) of sub-section (10) is relevant to the determination - in accordance with sub-section (9) - of the amount of profit to be included in a taxpayer's assessable income where there has been a change in strict legal identity between the property actually acquired for the purpose of profit-making by sale and the property sold.

The provision is designed to express a general rule for application in the many and varied situations in which a taxpayer may sell property which, in a strict legal sense, is not identical with the property acquired for the purpose of profit-making by sale. It would, for example, be relevant for the purpose of determining the assessable profit in a relatively simple case to which sub-section (6) applies where a taxpayer sells only an interest in a property actually acquired for resale at a profit. It would also be relevant where a taxpayer sells property that he or she is deemed to have acquired for the purpose of resale at a profit by a combination of applications of different provisions of section 25A - for example, where a taxpayer sells property, being an interest that was actually acquired by another person for the purpose of profit-making by sale and was transferred to the taxpayer in a manner in which sub-section (5) operates to deem the taxpayer to have acquired that interest for that purpose.

The general rule expressed in paragraph (c) is that, in circumstances where property sold is deemed to have been acquired by the taxpayer by virtue of the application of any provision of section 25A to property which was actually acquired, whether by the taxpayer or by any other person, for the purpose of profit-making by sale, the Commissioner is required to have regard to the extent to which the property sold consists of, or is attributable

to, the property that was actually acquired for that purpose. In so doing, the Commissioner would also have regard to the cost of the last-mentioned property and, if appropriate, the circumstances in which the property sold was obtained and subsequently dealt with by the taxpayer.

As mentioned in the earlier notes on sub-section (4), the provisions of paragraphs (d) and (e) of sub-section (10) are relevant where bonus shares or rights are deemed to have been acquired by a taxpayer for resale at a profit. Paragraph (d) will ensure that the whole of the proceeds of any sale of such rights is included in the assessable income of the taxpayer by virtue of sub-section (9) by deeming those rights to have been acquired at no cost.

In the case of a sale of bonus shares which a taxpayer is deemed by sub-section (4) to have acquired for the purpose of profit-making by sale, paragraph (e) specifies that, for the purpose of calculating the relevant profit in pursuance of sub-section (9), the cost of such shares is to be determined in accordance with section 6BA of the Principal Act. Briefly, that section deems bonus shares to have been purchased as part of the transaction by which the original shares were purchased, and attributes no cost to bonus shares other than such part of the cost of the original shares as the Commissioner determines to be appropriate.

Sub-section (11) sets out the circumstances in which property is to have been transferred to a person (referred to as the "transferee") in the "prescribed manner". This term is relevant for the application of proposed sub-sections (5) and (8) and paragraph (10) (a). Property is transferred in the "prescribed manner" if the conditions in either paragraphs (a) or (b) of sub-section (11) are met. Those conditions are :

- that the property is transferred - by way of gift, or for inadequate consideration (sub-paragraph (a) (i)) - otherwise than as a result of a distribution made from a deceased estate (sub-paragraph (a) (ii));
- the transferee and the person who transferred the property were not dealing at arm's length in relation to the transfer of the property (sub-paragraph (a) (iii)); or
- the property is transferred by way of a distribution to a shareholder of a private company or a beneficiary of an estate and the property is not "excepted property" (as defined in proposed paragraph (12) (a)).

Sub-section (12) is an interpretative provision which explains the meaning of a number of terms used in section 25A.

Paragraph (a) of sub-section (12) defines the term "excepted property" which is excluded from the scope of the property to which paragraph (b) of sub-section (2) and paragraph (b) of sub-section (11) apply. For those purposes the term is to mean:

- . trading stock; or
- . depreciable plant or articles purchased for use in producing assessable income.

These items of property are so excluded because provisions of the Principal Act other than proposed section 25A are applicable to determine the income tax treatment of amounts received on their disposal.

Paragraphs (12) (b) and (c) contain definitions of the terms "private company" and "private trust estate" which are used in proposed section 25A. By paragraph (b), a private company is to mean a company other than one the shares in which are listed for quotation on the official list of a stock exchange in Australia or elsewhere.

Paragraph (c) defines a private trust estate as a trust estate other than, in effect, a public unit trust. This will ensure that the provisions of sub-section 25A(2) will not apply to the sale of shares or units in public companies and public unit trusts. Profit from the sale of these or any other shares or units actually acquired for the purpose of profit-making by sale will, of course, be subject to tax by virtue of sub-section 25A(1).

Paragraph (d) of sub-section (12) will ensure that any reference to property, or to a particular kind of property, in proposed section 25A will include property in which a taxpayer has only an estate or interest. This will mean, for example, that the provisions of sub-section (4) would apply to the sale of a taxpayer's interest in bonus shares, where the shares were issued as a consequence of the taxpayer holding an interest in other shares that was acquired by the taxpayer for the purpose of profit-making by sale.

The measures proposed by clause 10 will, by virtue of sub-clause 60(8) of the Bill, apply to sales of property after 23 August 1983 whether the property was acquired before or after that date. Where the measures do not relate to the sale of property, but to the carrying on or carrying out of any profit-making undertaking or scheme, they will apply from the date of Royal Assent.

Clause 11 : Certain items of assessable income

Consistent with the proposed insertion by clause 10 of new section 25A, sub-section (1) of which will re-enact the term of existing paragraph 26(a), paragraph (a) of this clause will omit paragraph 26(a) from the Principal Act. As indicated in the above note on clause 10, new section 25A will apply to sales of property after 23 August 1983 (by virtue of sub-clause 60(8)), whether the property was acquired before or after that date but, in its application other than in respect of sales of property after that date, paragraph 26(a) will continue in effect until the commencement of new section 25A on the date of Royal Assent of the Bill.

By paragraph (b) of clause 11 it is proposed to repeal paragraphs 26(d) and 26(e) of the Principal Act and to substitute a new paragraph 26(e) which will have, with one exception, substantially the same effect as the paragraph 26(e) it replaces.

With some specified exceptions, existing paragraph 26(d) includes in a taxpayer's assessable income 5% of a lump sum amount paid to the taxpayer in consequence of his or her retirement from, or the termination of, any office or employment. The taxation treatment of such amounts will, where paid on or after 1 July 1983, in future be determined under proposed Subdivision AA to be inserted by clause 15.

The proposed new paragraph 26(e), although substantially in the same form as the paragraph it replaces, reflects more contemporary drafting style and also specifically excludes from its ambit eligible termination payments, (see notes on proposed section 27A)



