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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 5) 1980

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. John Howard, M.P.)

Introductory note

The main feature of this Bill is the proposed legislation announced in the 1980-81 Budget Speech to provide some relief from Australian tax on certain income which Australian residents earn from their personal services overseas. The Bill also proposes the removal of the 31 December 1980 termination date for deductibility of gifts in accordance with the Taxation Incentives for the Arts Scheme, so that the scheme will now continue indefinitely. The extension of that scheme to cover gifts to Artbank is another feature.

Another amendment proposes an increase in the monetary limits that determine how applications for relief from payment of income tax in cases of hardship are to be handled. A further amendment will make it clear that it is mandatory for the Commissioner of Taxation to allow credit to an employee for tax instalments deducted, where the employer has failed to issue a group certificate or a tax stamps sheet. There are also some amendments to correct drafting errors contained in legislation enacted as the Income Tax Assessment Amendment Act (No. 2) 1980.

Comments on each of the main features of the Bill are given below.

Taxation relief for Australians working overseas on approved projects (Clause 3)

A new section is to be inserted in the income tax law to provide for exemption, either wholly or in part, of income derived by Australian resident individuals from personal services performed by them over a continuous period of 3 months

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or more in an overseas country on projects approved by the Minister for Trade and Resources where the income is not taxed in that overseas country : income derived overseas by non-residents of Australia, or such income derived by residents that is taxed in the country of source, is already exempt from Australian tax. The section will apply where services are performed for an Australian resident, the government of an overseas country or certain international bodies and will have effect in relation to income earned on projects which are approved and commence after 19 August 1980.

Gifts, calls on afforestation shares, pensions, etc.
(Clause 6)

The deduction for gifts of property (other than money) under the general gift deduction provisions is limited to property that had been purchased by the taxpayer within the preceding 12 months, and then to the amount for which the taxpayer purchased it. However, gifts of property (other than money, buildings or land) made under the Taxation Incentives for the Arts Scheme, during the trial period of 1 January 1978 to 31 December 1980, towards collections maintained by the Australiana Fund, or by a public library, museum or art gallery are not subject to these limitations.

Clause 6 proposes that the Taxation Incentives for the Arts Scheme be extended indefinitely by removing the present termination date of 31 December 1980. Gifts made on or after 1 July 1979 to the Artbank collection are also to come within the Scheme.

Release of taxpayers from liability in cases of hardship
(Clause 11)

The income tax law contains provisions under which a taxpayer may be released, wholly or in part, from liability to pay tax where a Relief Board considers that payment of the full amount of the tax would entail serious hardship. There the relief applied for is not less than $2,000 the Relief Board must first refer the case to a Taxation Board of Review for examination and report. Clause 11 will increase this amount to $10,000.

Where the amount of tax involved in an application for relief does not exceed $200 the Commissioner of Taxation is empowered to exercise the powers conferred on the Relief Board, and that amount is being increased to $500.

Employer failing to issue group certificate or deliver tax stamps sheet
(Clause 10)

This amendment will make clear that it is mandatory under section 221Q of the Principal Act for the Commissioner of Taxation to allow credit in the assessment of an employee where PAYE tax instalments have been deducted from the salary

or wages of the employee, but the employer has failed either to issue a group certificate or to deliver a tax stamps sheet as required.

A more detailed explanation of the clauses of the Bill is contained in the following notes.

Clause 1 : Short title etc.

By this clause, the amending Act is to be cited as the Income Tax Assessment Amendment Act (No. 5) 1980 and the Income Tax Assessment Act 1936, as previously amended, is referred to as the Principal Act.

Clause 2 : Commencement

Under this clause the amending Act will come into operation on the day on which it receives the Royal Assent. But for this clause the amending Act would, by reason of section 5(1A) of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of Assent. Early commencement is proposed because some of the amendments will have application in assessments in respect of the 1979-80 income year and also because of the need to expedite determinations of applications for relief.

Clause 3 : Exemption of certain income derived in respect of approved overseas projects

Introductory note

Clause 3 proposes the insertion of a new section 23AF into the Principal Act, the purpose of which is to provide total or partial exemption from Australian tax of income derived by an Australian resident individual from the performance by him or her of personal services outside Australia on an approved project, for a continuous period of 3 months or more, where the income is not taxed in the country where the services are performed. To qualify for exemption, it will be necessary that the services be performed for an Australian resident, the Commonwealth, a State or Territory or an authority thereof, the government or an authority of an overseas country, or a designated international body.

The exemption will be available in respect of "eligible foreign remuneration" for "qualifying service" performed on a project commenced after 19 August 1980 that is approved by the Minister for Trade and Resources, upon his being satisfied that the project is in the national interest.

Complete exemption of income attributable to qualifying service will be available where the person is engaged on qualifying service on a particular approved project for a continuous period of not less than 365 days, which need not necessarily fall in the one income year (proposed

sub-section (1)). A proportionate exemption, on a time basis, will be available for a continuous period of from 3 months to 12 months (proposed sub-section (2)).

Rules are provided for calculating the number of days of qualifying service on a project. Broadly, this will comprise days performing personal services abroad on the project, reasonable travelling time between the project site and Australia, periods of absence from work during the above periods due to illness or accident, and leave (other than long service leave) that accrued during the abovementioned periods, taken during or at the end of the assignment, whether in Australia or overseas (proposed sub-sections (3) to (5) and (9)).

Where, because of unforeseen circumstances, a person does not complete the period of service for which he or she was assigned to a project, the proportion of his or her eligible foreign remuneration that will be exempted will be based on the number of days for which the person was assigned to the project. The qualifying period for a person assigned to complete the original person's assignment will be based on the combined periods spent on the project by that person and the original person (proposed sub-sections (6) and (7)).

A basic concept in calculating the number of qualifying days - which in turn determines the proportion of income to be exempted - is that there be a continuous period out of Australia on a project (subject to the travelling and leave time qualifications mentioned above). However, allowance is made (in proposed sub-section (8)) for short periods of time spent back in Australia not to break continuity of service for this purpose. Provided that the number of intervening days spent in Australia does not exceed one-sixth of the number of days engaged on qualifying service on the approved project, the continuous period will not be regarded as broken. However, the number of these intervening days spent in Australia will not count as days of qualifying service on the project.

A safeguard against any attempted exploitation of the exemption is contained in proposed sub-section (10), which is to the effect that income will not be exempt to the extent that it exceeds an amount that the Commissioner of Taxation considers would be reasonable remuneration for the services.

The provisions of proposed section 23AF are explained in more detail in the notes that follow.

Sub-sections (1) and (2) of new section 23AF are the main operative provisions. Sub-section (1) will allow an individual a complete exemption from Australian tax for eligible foreign remuneration (as defined in proposed sub-section (18) - broadly, income derived by an individual Australian resident from the performance by him or her of personal services on an approved overseas project) where the

person has been engaged on the project for a continuous period of qualifying service (see sub-sections (3) to (9)) of not less than 365 days.

Sub-section (2) provides for a lesser exemption in cases where a person has been engaged in qualifying service on an approved project for a continuous period of less than 365 days but not less than 91 days. In such a case exemption will apply to a proportion of the eligible foreign remuneration equal to the proportion which the number of days of qualifying service bears to 365, that is

$$\frac{\text{No. of days of continuous period during which the person is engaged on qualifying service}}{365} \times \text{Eligible foreign remuneration attributable to qualifying service during that continuous period.}$$

While provision is made for short periods spent in Australia not to break continuity of service on a project (see proposed sub-section (8)), a longer period in Australia can result in there being more than one continuous period of service on the one project. For example, if a person spent 100 days on a particular approved project abroad, came back to Australia for 90 days, then returned to the same project overseas for a further 265 days, proposed sub-section (2) will apply. In relation to the first 100 days of service on the project, 100/365ths of the eligible foreign remuneration attributable to that 100 days service will be exempt, and in relation to the second period, 265/365ths of the eligible foreign remuneration attributable to that 265 days service will be exempt.

The fact that a continuous period of qualifying service may spread over more than one income year will not reduce the proportion (based on the total continuous period of service) of eligible foreign remuneration derived during each income year that is exempt.

Sub-sections (3) to (9) inclusive contain rules for determining a period (or periods) of continuous qualifying service, and the number of days of qualifying service in each continuous period.

Proposed sub-section (3) specifies the periods during which a person is to be regarded as being engaged on qualifying service on an approved project. These are periods during which the person -

(a) is outside Australia and engaged in performing services on the project, including days within those periods when, as a normal incidence of work arrangements, the person is not actually performing services on the project (e.g., week-ends and equivalent time-off);

(b) is travelling between Australia and the project site (subject to the time not being unreasonable - see sub-section (4));

(c) is absent from work within the period of qualifying service (see sub-section (5)) due to accident or illness occurring during periods of qualifying service specified in paragraph (a) or (b); or

(d) is on eligible leave, as defined in sub-section (18), broadly recreation leave but not long service leave, which accrued while the person was engaged on qualifying service on the project. It is immaterial whether this leave is taken while the person is abroad or in Australia.

These periods must be continuous if they are to be aggregated for the purposes of sub-section (1) or (2). Thus, if eligible leave specified in paragraph (d) is taken some months after the project has been completed, it will not be counted in calculating the proportion of the eligible foreign remuneration that is to be exempted. However, the holiday pay will be included in eligible foreign remuneration.

Sub-section (4) will have the effect that travelling time between Australia and the site of an approved project will only be taken into account, for purposes of determining the period during which a person is engaged on qualifying service on an approved project, if the Commissioner of Taxation is satisfied that the time taken for the journey is reasonable in the circumstances.

Sub-section (5) will mean that a person's periods of absence from work due to accident or illness suffered on the project abroad or travelling between Australia and the site will, by reason of sub-section (3)(c), be taken as periods spent on qualifying service on the project if, after the period of incapacity, the person immediately resumes qualifying service on the project as specified in paragraph (a), (b) or (d) of sub-section (3).

Sub-section (6) deals with situations where, due to unforeseen circumstances, such as personal ill-health or a death in the family, a person's qualifying service on an approved project is prematurely terminated. In such a case, the person's period of qualifying service will be taken as the number of days in his or her actual period of qualifying service, plus the further number of days during which, in the opinion of the Commissioner, the person would have continued to be engaged on qualifying service on the project but for the unforeseen circumstances. This further period will be relevant for purposes of determining the proportion of eligible foreign remuneration that is to be exempt from tax, but the eligible foreign remuneration will only include income attributable to

the person's actual period of qualifying service on the project, not income derived during the further period after the person's premature departure from the project.

Proposed sub-section (7), which complements sub-section (6), deals with situations where a person has been assigned to complete an assignment on an approved project where the qualifying service of the person originally assigned to the project has been prematurely terminated due to unforeseen circumstances. The substituted person's period of qualifying service on the project is to be taken to be a continuous period equal to the sum of the period during which he or she was actually engaged on qualifying service on the project, and the period during which the person he or she replaced was actually engaged on qualifying service on the project. The same principles will apply should substituted persons themselves cease qualifying service on a project due to unforeseen circumstances and be replaced by further substituted persons. For example, the first substituted person will be treated as having been engaged on qualifying service for a period equal to the sum of the actual period of service of the original person and the period of service which the substituted person would have completed but for unforeseen circumstances, while the period of qualifying service of the second substituted person will be taken to be the sum of the actual periods of service of the three persons concerned.

As in the case of sub-section (6), the period of qualifying service calculated under this sub-section will only be relevant in determining the number of qualifying service days for the purpose of calculating the proportion of income attributable to the substituted person's actual period of qualifying service which will be exempt.

Proposed sub-section (8) will allow for the likelihood that it may be necessary for a person working on an approved project to return to Australia from time to time for a period or periods during which the person would not be engaged on qualifying service (referred to as "intervening periods"). As indicated in the notes on sub-section (3), periods spent in Australia during incapacity for work due to accident or illness, or on eligible leave, are treated as periods of qualifying service and so, of course, are not intervening periods. As the basic test for calculating the proportion of eligible foreign remuneration which will be exempt relates to a continuous period during which a person is engaged on qualifying service on a particular approved project, an interruption to such a period to return to Australia would, in the absence of some allowance, affect a person's exemption entitlement.

Accordingly, where a person returns to Australia for one or more intervening periods during a period of qualifying service on a particular project, in effect breaking the qualifying service into two or more periods, sub-section (8) will have the effect that those separate periods of qualifying service on the project will be treated as one

continuous period of qualifying service on the project. This will only be so where the total of the intervening periods spent in Australia does not exceed one-sixth of the total of the periods when the person was engaged on qualifying service on the project (paragraph (b)), and continuity of service on the particular project is not otherwise broken, e.g., by working on a different project, or by absences from the approved project otherwise than on eligible leave or due to accident or illness (paragraph (c)).

As indicated in the notes on proposed sub-section (3), a person is taken to be engaged on qualifying service on a project while on eligible leave which accrued while the person was engaged on qualifying service on that project. Since the holiday pay for such eligible leave forms part of the eligible foreign remuneration attributable to a project which may be partly or wholly exempt from tax, and since the period of eligible leave attributable to a project, if taken during or immediately following other periods of qualifying service on the project, will form part of a continuous period of qualifying service for the purpose of determining the proportion of eligible foreign remuneration attributable to the project that is to be exempt from tax, it is necessary to provide rules to establish the order in which eligible leave attributable to particular periods of service is to be deemed to have been taken. Proposed sub-section (9) contains a series of rules for this purpose.

Paragraph (a) deals with the situation where the person's accrued eligible leave consists of leave that accrued during a period or periods of eligible service on a particular approved project and leave that accrued during a period or periods when the person was not engaged on eligible service. In these circumstances, paragraph (d) will deem the person to have taken first the leave that accrued during the qualifying service. This will ensure that, if the leave equal to that which had accrued during qualifying service on the project is taken during or immediately after a period of qualifying service on the project, the continuity of qualifying service on the project cannot be taken to have been broken by the taking of leave which had not accrued during service on the project. If the leave is not taken during or immediately following a period of qualifying service and questions as to continuity of service are not raised, it may nevertheless be necessary to establish which part of holiday pay is eligible foreign remuneration and which is not, for example, if part of accrued leave is taken in one income year and part in another. The order established by paragraph (d) will also apply for these purposes.

Paragraph (b) deals with the situation where a person's accrued leave consists solely of leave which accrued during two or more periods of qualifying service on two or more different approved projects. In this case, paragraph (e) establishes that the leave is to be deemed to have been taken in the reverse order to that in which it accrued, that is, the leave which accrued during qualifying service on the

latest approved project will be deemed to have been taken first. This will ensure that if leave up to the number of days which accrued during qualifying service on the latest approved project is taken during or immediately following qualifying service on that project it will form part of the continuous period of qualifying service for the purpose of calculating the proportion of eligible foreign remuneration attributable to that project that is to be exempt from tax. In the cases to which paragraphs (b) and (e) apply, it is, of course, no longer possible for periods of the accrued leave which accrued during qualifying service on earlier approved projects to form part of a continuous period of qualifying service on those projects.

Paragraph (c) of sub-section (9) deals with cases where a person's leave has accrued in respect of two or more periods of qualifying service on two or more different approved projects and in respect of one or more periods when the person was not engaged on qualifying service on an approved project. In these cases, paragraph (f) specifies that the leave that accrued in respect of qualifying service on approved projects is to be deemed to have been taken first (this is consistent with the principle established in paragraph (d)) and that the leave that accrued in respect of qualifying service on approved projects is to be deemed to have been taken in the reverse order to that in which that leave accrued (this is consistent with the principle established in paragraph (e)).

Proposed sub-section (10) is designed as a safeguard against arrangements that seek to take advantage of the exemption to be provided by this section, by inflating the amount of income that is attributed to qualifying service on an approved project. The sub-section will have the effect that where the Commissioner of Taxation considers that the amount of income exceeds what would be reasonable remuneration in respect of qualifying service on the approved project, the amount of the excess is not to be treated as eligible foreign remuneration and consequently will not qualify for full or partial exemption from tax under sub-sections (1) or (2).

As in the case of similar powers available elsewhere under the income tax law, any exercise of the power given to the Commissioner under this sub-section will be subject to the usual rights of objection and reference to a Taxation Board of Review.

Under sub-section (11), an eligible project that was commenced, or is proposed to be commenced, after 19 August 1980, may be approved in writing by the Minister for Trade and Resources where he is satisfied that the undertaking of the project is, or will be, in Australia's national interest. The definition of "eligible project" contained in proposed sub-section (18) sets out the types of projects that may qualify under the section. The exemption from tax under section 23AF in respect of income derived for services performed on an overseas project will only be available where the project, being an eligible project, has been approved in writing by the Minister.

Sub-section (12) will authorise the Minister for Trade and Resources to delegate, in writing, either generally or in specified circumstances, the power to approve projects under proposed sub-section (11).

Sub-section (13) is a technical drafting measure under which, where the Minister for Trade and Resources has delegated his power to approve projects and that power is exercised by a delegate, the power will be deemed to have been exercised by the Minister.

Sub-section (14) will reserve to the Minister for Trade and Resources the power to approve projects under sub-section (11), even where that power has also been delegated to other persons.

Turning to sub-section (15), the continuous period of qualifying service on an approved project, to be used in determining the proportion of eligible foreign remuneration that is to be exempt from tax, will not necessarily fall within one year of income, e.g., a person may be assigned to an approved overseas project for an intended period of 275 days, commencing on 1 May 1981. In such a case it may be inappropriate to hold up the assessment for the first income year concerned until it is clear precisely how long the person is away.

Accordingly, sub-section (15) will authorise the Commissioner of Taxation to make an assessment, in respect of eligible foreign remuneration derived by a person in a year of income, on the basis that the person is entitled to exemption of a proportion of that remuneration calculated by reference to the whole of the continuous period for which, at the end of the year of income, it was expected that he would be so engaged.

In the above example, at 30 June 1981 the person would not, but for sub-section (15), qualify for exemption of any income derived from the project from 1 May to 30 June 1981 (having only been engaged on qualifying service on the project for 61 days). This sub-section will allow exemption of a proportion of eligible foreign remuneration derived from 1 May to 30 June 1981 (say, $4,000), on the basis that the person will be engaged on qualifying service for the continuous period of 275 days for which he was assigned to the project. Accordingly, the amount of eligible foreign remuneration to be exempted could be calculated as follows -

$$\frac{\text{No. of days of intended continuous period of qualifying service}}{365} \times \text{Eligible foreign remuneration derived (1 May - 30 June 1981)}$$

$$= \frac{275}{365} \times \$4,000$$

$$= \$3,013$$

Proposed sub-section (16) will permit the Commissioner to amend an assessment in the making of which he has applied

sub-section (15) on the basis that a circumstance would, in his opinion, exist at a future time, and the circumstances which eventuate prove to be different from those that the Commissioner had anticipated. This could happen where a proportionate exemption based on the anticipation that a person would continue to work on a project for a particular period after the end of the year of income has been allowed, but the person stays for a significantly longer or shorter period.

The operation of this sub-section can be illustrated by taking the example given in the notes on sub-section (15). If the person later proves to have been engaged on qualifying service on the approved project not for 275 days as anticipated, but for a continuous period of (say) 14 months, sub-section (16) will authorise the Commissioner to amend the person's 1980-81 assessment to allow a complete exemption of eligible foreign remuneration derived in that income year.

Sub-section (17) will identify categories of income to which this section will not apply ("excluded income").

In some situations income that a person from Australia derives from overseas is already exempt from Australian tax. If the person has ceased to be a resident, the income is exempt (section 23(r) of the Principal Act) and section 23AF reflects this by limiting its scope to remuneration of people who are residents of Australia (see definition of "eligible foreign remuneration" in sub-section (18)).

If the person concerned is a resident, and the income is (broadly speaking) taxed in the overseas country it is exempt from Australian tax by reason of section 23(qa) (Papua New Guinea) or section 23(q) (other countries). Accordingly, sub-paragraph (a) will formally exclude from section 23AF income that is taxed in the country of source and is exempt from Australian tax by application of section 23(q) or 23(qa).

Under sub-paragraph (b), income from the performance of services in another country that is exempt from tax in the other country solely because of the provisions of a double taxation agreement between Australia and that country, will not be exempt from Australian tax under this section. Such exemption provisions in double taxation agreements have been inserted in them on the basis that the income concerned will be taxed in Australia.

By sub-paragraph (c), payments in lieu of long service leave and payments by way of superannuation or pension will specifically be made ineligible for exemption under this section.

Sub-section (18) defines a number of terms used in the section.

The term "approved project" is to mean an "eligible project" (see the notes below on the definition of that term) in respect of which the Minister for Trade and Resources has issued a currently operative approval in writing under sub-section (11).

The definition of "eligible contractor" is relevant in determining whether income received by an Australian resident working on an overseas project is "eligible foreign remuneration" (see notes below on the definition of that term) which may be exempt under this section. The effect of this definition, when read with the definition of eligible foreign remuneration is that subject to other conditions being met, income will be eligible for exemption under this section if the person is an employee of, or perform services for -

(i) another Australian resident, the Commonwealth, a State or Territory or an authority of the Commonwealth, a State or Territory;

(ii) the government of another country or an authority of that government; or

(iii) an international organization of which Australia and another country or countries (or persons representing Australia and another country or countries) are members (including any agency of such an organization).

The term "eligible foreign remuneration" is being defined to mean income, not being "excluded income" to which sub-section (17) refers, derived by a person who is an Australian resident, which consists of -

(i) salary, wages, commission, bonuses or allowances derived by the person in the capacity of employee of an "eligible contractor"; or

(ii) income derived by the person under a contract with an eligible contractor, being a contract that is wholly or substantially for the personal services of the person,

which is directly attributable to qualifying service by the person on an approved project. The definition specifically includes within this term payments in lieu of "eligible leave" that accrued in respect of a period during which the person was a resident and was engaged on qualifying service on an approved project.

The term "eligible leave" is to mean leave other than long service leave (which is also defined in this sub-section). Recreation leave will be the main category of leave to which this definition applies.

The definition of "eligible project" sets out the types of projects within which a project must fall if it is to

be an approved project. If a project does fall within one of the specified types, it will still be necessary for the Minister for Trade and Resources to be satisfied that the project is or will be in Australia's national interest before he approves the project, under sub-section (11). While the definition specifies a number of different types of projects as eligible projects, provision has also been made for other classes of projects to be approved as eligible projects by the Minister for Trade and Resources.

The definition of "employee" is a technical measure to ensure that public servants and servicemen, who are generally regarded as employees for purposes of the income tax law, will be regarded as employees for purposes of this section.

The term "long service leave" is defined to include long leave, furlough, extended leave or leave of a similar kind, however it is described. As previously noted, "eligible leave" for purposes of the section will not include long service leave. Payments in lieu of long service leave will be excluded income for purposes of the section (see also sub-section (17)).

Clause 4 : Calculation of taxable income

This clause, together with clauses 5 and 7, will remedy technical deficiencies in consequential legislation enacted earlier this year by the Income Tax Assessment Amendment Act (No. 2) 1980 to authorise a 40 per cent conversion allowance deduction for the cost of replacing oil-fired equipment by equipment that operates on alternative non-oil energy sources.

Clauses 4 and 5 will amend some of the "current year company loss" provisions in Subdivision B of Division 2A of Part III of the Principal Act to categorise a leasing company's 40 per cent conversion allowance deduction as a "full-year deduction" and specify the order in which that deduction is allowable in relation to other full-year deductions. There are already corresponding provisions in the law relating to the 20 per cent investment allowance. Where it applies, the conversion allowance is in substitution for the investment allowance and it is therefore appropriate that, in the current year loss provisions, the same rules apply in relation to both allowances.

Sub-clause (1) of clause 4 will amend section 50C(3)(d) of the Principal Act to include the 40 per cent oil-fired conversion allowance deduction available to leasing companies in respect of plant leased to other persons in the order of deduction for certain full-year deductions that is specified in that provision. Under this amendment, the 40 per cent conversion allowance entitlement of leasing companies will be taken into account immediately after any 20 per cent investment allowance entitlement.

By sub-clause (2) of clause 4, the amendment proposed by sub-clause (1) will apply to assessments in respect of income of the year of income in which 22 August 1979 occurred and to assessments for all subsequent income years. Thus, the amendment will apply as if it had been included in the 40 per cent conversion allowance legislation enacted earlier this year.

Clause 5 : Full year deductions and partnership deductions

The amendment proposed by clause 5 is complementary to that being effected by clause 4.

Sub-clause (1) of clause 5 will amend section 50F of the Principal Act to include amongst the deductions identified by that section as being full-year deductions for purposes of the current year loss provisions, the 40 per cent oil-fired conversion allowance deduction allowable to a leasing company in respect of business plant leased to other persons. The 40 per cent conversion allowance deduction is thus being put into the same category as the related 20 per cent investment allowance deduction.

By sub-clause (2) of clause 5 the amendment proposed by sub-clause (1) will also apply to assessments in respect of income of the year of income in which 22 August 1979 occurred, and to assessments for all subsequent income years.

Clause 6 : Gifts, calls on afforestation shares, pensions, etc.

A purpose of the amendments proposed by this clause is to extend indefinitely the operation of the Taxation Incentives for the Arts Scheme which was originally enacted to operate on a trial basis for the three year period ending 31 December 1980. It is also proposed that gifts made on or after 1 July 1979 to the Artbank collection be made tax deductible under the Scheme.

Section 78 of the Principal Act authorises an income tax deduction for non-testamentary gifts of the value of $2 and upwards of money, or of property other than money that was purchased by the taxpayer within the twelve months preceding the making of the gift, to a fund, authority or institution specified in paragraph (a) of section 78(1). The general gift deduction is, in respect of gifts of property other than money, limited to the lesser of the value of the property at the time the gift was made and the amount paid by the donor for the property.

However, section 78(1)(aa) of the Principal Act provides for the deduction under the Taxation Incentives for the Arts Scheme of non-testamentary gifts of certain property to the Australiana Fund or to a public library, public museum or public art gallery without these limitations in respect of gifts of property. Gifts 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 of property, (other than money or an interest in land or buildings) that is to form part of a collection maintained or established by that Fund, or such an institution, qualify for deduction irrespective of how or when the property was acquired by the donor. The deduction under the Scheme is generally available in respect of the value of the property at the time it is valued for purposes of the Scheme. Determination of that value is based on the average of two or more valuations obtained from approved valuers within 90 days either before or after the making of the gift.

Paragraph (a) of sub-clause (1) of clause 6 will insert a new paragraph - paragraph (ab) - in section 78(1) of the Principal Act to make gifts to Artbank deductible under the Taxation Incentives for the Arts Scheme on a similar basis to gifts made to existing eligible donee institutions under the Scheme, i.e., property (other than money or an interest in land or buildings) given to, and accepted by, the Commonwealth for inclusion in a collection maintained or being established for the purposes of Artbank.

Paragraphs (b), (d), (e), (f) and (g) of sub-clause (1) are technical amendments consequential upon the inclusion of new paragraph (ab) in section 78(1). Their effect will be to ensure that gifts of property to Artbank are governed by the same general conditions of eligibility that apply to gifts made under the Taxation Incentives for the Arts Scheme to existing eligible donee institutions.

Paragraph (c) will extend indefinitely the operation of the Taxation Incentives for the Arts Scheme by removing from section 78(6A) of the Principal Act the present termination date, 31 December 1980.

By sub-clause (2), the deduction being authorised by sub-clause (1) for gifts to the Commonwealth for the purposes of Artbank will be available for gifts that are made on or after 1 July 1979.

Sub-clause (3) will ensure that the Commissioner of Taxation has authority to re-open an income tax assessment made before the enabling legislation becomes law if that should be necessary to allow a deduction for a gift made to Artbank before that time.

Clause 7 : Limitation of deduction in case of leased property

This clause will amend section 82AC of the Principal Act which restricts the amount of the investment allowance deduction available to a leasing company in respect of eligible plant that the company has leased to other taxpayers during the year of income. The effect of section 82AC is that a leasing company is not permitted to carry-forward for deduction as a loss in a later year of income, any part of such an investment allowance entitlement.

There is a corresponding restriction - in section 82EC of the Principal Act - in respect of a leasing company's entitlement to the 40 per cent conversion allowance in respect of eligible plant leased to other taxpayers. However, as both section 82AC and section 82EC are expressed in identical terms, they may as enacted have inappropriate results in a case where a company is entitled to both allowances. That is because each requires that in determining whether it applies in relation to the particular allowance, the other allowance is to be taken as deductible.

Sub-clause (1) of clause 7 will amend section 82AC to specify that, in a case where a leasing company is entitled in a particular income year to an investment allowance deduction in respect of plant leased to other taxpayers, and also to a conversion allowance deduction in respect of other leased plant, the conversion allowance is to be taken into account after the investment allowance for the purpose of determining whether either of those allowances would give rise to a tax loss.

As in the case of the amendments proposed by clauses 3 and 4, sub-clause (2) of clause 7 will make the amendment proposed by sub-clause (1) apply to assessments in respect of income of the year of income in which 22 August 1979 occurred and to assessments for subsequent income years, i.e., the income years in which the oil-fired conversion allowance is available.

Clause 8 : Interpretation

Sub-clause (1) of clause 8 will insert new sub-sections (19) and (20) in section 124ZA of the Principal Act to correct technical drafting defects in the existing sub-sections. Section 124ZA represents part of the measures inserted in the Act by the Income Tax Assessment Amendment Act (No. 2) 1980 to introduce the new scheme of income tax deductions for capital expenditure on certain traveller accommodation buildings.

Sections 124ZA(19) and (20) form part of a series of measures designed, broadly, to achieve the result that if, for example, a motel room or apartment is used throughout a relevant period principally for traveller accommodation, the instalment of building costs appropriate to that period that is related to that room or apartment will be wholly deductible.

As presently enacted, sub-sections (19) and (20) contain cumulative tests for their application, but are deficient in that the statement of consequence in them proceeds on the basis that the tests are not cumulative, but mutually exclusive. The revised sub-sections will correct that deficiency.

The new scheme has effect with respect to building constructions commenced on or after 22 August 1979 and sub-clause (2) ensures that the revised sub-sections are taken to apply from the first income year in which deductions are to be available under the scheme.

Clause 9 : Amendment of assessments

The general rules governing the amendment of income tax assessments are laid down in section 170 of the Principal Act, which contains general limits on the Commissioner of Taxation's power to amend assessments. Sub-section (10) of the section authorises the re-opening of assessments at any time, either to increase or reduce liability, where this is necessary to give effect to specified provisions of the Principal Act.

Sub-clause (1) of clause 9 of the Bill proposes a minor technical amendment of section 170(10) to insert the word "section" before "26AAB" to provide a proper reference to section 26AAB that was inserted by Income Tax Assessment Amendment Act (No. 2) 1980.

By sub-clause (2), the amendment proposed by sub-clause (1) will apply to assessments in respect of income of the year of income in which 22 August 1979 occurred and to assessments for all subsequent years of income. Effectively, it will apply as if the amendment had been made by the (No. 2) Act of 1980 under which section 26AAB was inserted in the Principal Act.

Clause 10 : Employer failing to issue group certificate or deliver tax stamps sheet

Section 221Q of the Principal Act relates to the position of an employee in any case where the Commissioner of Taxation is satisfied that the employer has made pay-as-you-earn tax instalment deductions from his or her salary or wages, but has failed to issue a group certificate or deliver a tax stamps sheet to the employee in respect of those deductions. The section at present indicates that the Commissioner may give credit against assessed tax for the amount deducted, in the same manner as if a group certificate had been received by the Commissioner.

Although the section is expressed in terms that the Commissioner "may" allow credit in this way, the Commissioner has considered that it is mandatory on him to allow credit in all such cases, once it is established to his satisfaction that the tax instalments were deducted.

The amendment proposed by clause 10 will in terms specify that it is mandatory under section 221Q for the Commissioner of Taxation to allow credit in the assessment of such an employee in all cases.

Clause 11 : Release of taxpayers in cases of hardship

This clause proposes amendments to section 265 of the Principal Act which empowers the Relief Board constituted under the section to release a taxpayer from the whole or a part of his or her liability for income tax where the Board is satisfied that exaction of the full amount would entail serious hardship.

Paragraph (a) of clause 11 proposes an amendment of section 265(3), which requires the Relief Board to refer each application for release from payment of tax of $2,000 or more to a Taxation Board of Review. In such a case a member of that Board, or the person acting as Secretary of the Board, examines the relief application and submits a report to the Relief Board. Where release is sought from payment of an amount less than $2,000 the Relief Board may, at its discretion, refer the application to a Board of Review for examination and report. By paragraph (a) of this clause the amount of $2,000

is to be increased to $10,000, thus reducing the number of relief applications that must be the subject of a report from a Board of Review.

Paragraph (b) of clause 11 proposes an amendment of section 265(11), which empowers the Commissioner of Taxation to exercise the powers conferred on the Relief Board where application is made for release from an income tax liability of not more than $200. By paragraph (b) this amount of $200 is to be increased to $500.

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