

1979

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

TAXATION ADMINISTRATION AMENDMENT BILL 1979 ✓
ESTATE DUTY ASSESSMENT AMENDMENT BILL 1979 ✓
GIFT DUTY ASSESSMENT AMENDMENT BILL 1979 ✓
INCOME TAX ASSESSMENT AMENDMENT BILL (No. 3) 1979 ✓
PAY-ROLL TAX ASSESSMENT AMENDMENT BILL 1979 ✓
PAY-ROLL TAX (TERRITORIES) ASSESSMENT AMENDMENT BILL (No. 2) 1979 ✓

EXPLANATORY MEMORANDUM

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

Introductory Note

The purpose of this memorandum is to explain the provisions of the above Bills.

The principal Bill is the Taxation Administration Amendment Bill, which is a Bill to amend the Taxation Administration Act in order to abolish the Valuation Boards. The five remaining Bills will amend the provisions of several taxation Acts relating to the jurisdiction of the Valuation Boards and a particular statutory function of the Chairman of the Valuation Boards.

The Valuation Boards are established under the Taxation Administration Act 1953, their primary function being the determination of disputed valuations made by the Commissioner of Taxation for purposes of assessments raised under the Estate Duty Assessment Act and the Gift Duty Assessment Act. The abolition of estate duty and gift duty on and from 1 July 1979 will remove the primary need for the Valuation Boards. The

Estate Duty Assessment Amendment Bill and the Gift Duty Assessment Amendment Bill provide for the residual function of Valuation Boards in determining questions relating to valuation of property arising under estate duty and gift duty assessments to be taken over by the Taxation Boards of Review.

The Chairman of the Valuation Boards has an additional function under the Income Tax Assessment Act, the Estate Duty Assessment Act, the Pay-roll Tax Assessment Act and the Pay-roll Tax (Territories) Assessment Act. This concerns applications by taxpayers, beneficiaries or administrators of deceased estates or employers, as the case may be, for total or partial release from tax liabilities where serious financial hardship would be involved by exaction of the full amount of tax or duty due. A Relief Board exists to determine whether this release should be given.

Broadly stated, the Chairman's responsibility is to submit reports to the relevant Relief Board upon the facts as determined by examination of persons whose applications for release have been referred to him by that Board. His examination is to establish the financial position of the taxpayer, beneficiary or employer. He does not make any recommendation or decision regarding ability to pay, this matter being left to the Relief Board.

The Estate Duty Assessment Amendment Bill, the Income Tax Assessment Amendment Bill (No. 3), the Pay-roll Tax Assessment Amendment Bill and the Pay-roll Tax (Territories) Assessment Amendment Bill (No. 2) provide for this function to be transferred to the Boards of Review to be dealt with as the Chairman of the Board of Review concerned decides, by either the Chairman, another member of the Board or the Secretary to the Board. There is no provision in the Gift Duty Assessment Act for release from gift duty in the case of financial hardship.

The amendments proposed by the above Bills are, in the main, formal amendments to delete references to Valuation Boards and insert appropriate references to Taxation Boards of Review. Other minor drafting amendments have in some cases been made to bring into line the relief provisions in each Act being amended.

The Estate Duty Assessment Amendment Bill and the Gift Duty Assessment Amendment Bill also contain transitional provisions designed to ensure that any outstanding requests for reference to a Valuation Board will be capable of being referred, upon request, to a Board of Review or to a specified Supreme Court. This will protect the legal rights of persons who may have requested that a decision on an objection relating to the value of property be referred to a Valuation Board for review where that request is still being dealt with by the Commissioner.

Notes on the clauses of each Bill are set out below.

TAXATION ADMINISTRATION AMENDMENT BILL 1979

ESTATE DUTY ASSESSMENT AMENDMENT BILL 1979

GIFT DUTY ASSESSMENT AMENDMENT BILL 1979

INCOME TAX ASSESSMENT AMENDMENT BILL (No. 3) 1979

PAY-ROLL TAX ASSESSMENT AMENDMENT BILL 1979

PAY-ROLL TAX (TERRITORIES) ASSESSMENT AMENDMENT BILL (No. 2) 1979

Clause 1 : Short title, etc.

This clause formally provides for the citation of the amending Act and for the relevant Act being amended to be referred to as the Principal Act.

Clause 2 : Commencement

Under this clause the amending Act is to come into operation on the day it receives the Royal Assent. But for this clause, the amending Act would, by reason of sub-section 5(1A), of the Acts Interpretation Act 1901, come into operation on the twenty-eighth day after the date of Assent.

TAXATION ADMINISTRATION AMENDMENT BILL 1979

This Bill will amend the Taxation Administration Act 1953 (in this section of the notes referred to as the "Principal Act") under which the Valuation Boards are established. The

main purpose of this Bill, as explained in the introductory note, will be to abolish the Valuation Boards.

Clause 3 : Interpretation

This clause will omit the definition of "Valuation Board" from section 3 of the Principal Act. The omission of this definition is necessary as a consequence of the proposed abolition of the Valuation Boards by clause 4 of the Bill.

Clause 4 : Repeal of Part III

Part III of the Principal Act, provides for the establishment of the Valuation Boards, meetings of the Boards, the remuneration and allowances of members, the vacation of the office of Chairman and for the suspension or removal of the Chairman or members. Clause 4 proposes that Part III be repealed. The effect of this will be to abolish the Valuation Boards.

Clause 5 : Officers' Rights Declaration Act

This clause proposes a technical amendment to section 15 of the Principal Act. It will simply delete the reference in that section to a member of a Valuation Board.

ESTATE DUTY ASSESSMENT AMENDMENT BILL 1979

This Bill will amend the Estate Duty Assessment Act 1914 (in this section of the notes referred to as the "Principal Act"), to transfer the jurisdiction of the Valuation Boards and that of the Chairman of the Boards in relation to applications for relief from duty to the Taxation Boards of Review.

Clause 3 : Application of Part

This clause will amend section 9D of the Principal Act to omit the reference to "Valuation Board" which will become redundant on abolition of the Boards.

Clause 4 : Value of shares and stock

Under the amendments proposed by clause 5, the valuation of property that is assessed for estate duty purposes will henceforth be capable of being reviewed by either a Board of Review or a Supreme Court, where an objector is dissatisfied with the decision of the Commissioner of Taxation on a valuation question raised in an objection.

Clause 4 will make a formal amendment to section 16A of the Principal Act, which provides special rules for determining the value of shares and stock in a company, by substituting "Board of Review" for the word "Board".

Clause 5 : Objections, reviews and appeals

An objector who is dissatisfied with the decision of the Commissioner of Taxation on an objection may, under sub-section 24(4) of the Principal Act, request the Commissioner to refer his decision on the objection to a Valuation Board for review of so much of the decision as relates to the valuation of property or to a Board of Review for review of so much of the decision as does not so relate.

This clause will amend sub-section 24(4) of the Principal Act by omitting the existing paragraph (a) and substituting a new paragraph (a).

Under the proposed new paragraph (a), an objector will be entitled to request that the whole of the decision on an objection be referred to a Board of Review. Alternatively, under sub-section 24(4) of the Principal Act, an objector may, as at present, request that the objection be referred as an appeal to a Supreme Court of a State or Territory.

Clause 6 : Reference to Valuation Board

This clause proposes that section 25 of the Principal Act be repealed. Section 25 sets out the procedure to be followed where an objection or appeal is referred to and dealt with by a Valuation Board. The section becomes redundant upon abolition of the Boards.

Clause 7 : Reference to Board of Review

Clause 7 proposes the following amendments to section 26 of the Principal Act :

- (a) the omission from sub-section (1) of the phrase "or sub-section (6) of section 25";
- (b) the omission of the proviso from sub-section (6); and
- (c) the omission of sub-sections (7) and (8).

Section 26 of the Principal Act sets out the procedure where the decision on an objection is referred to and dealt with by a Board of Review. The amendments proposed by clause 4 will entitle an objector to have the whole of a decision on an objection (including valuation of property questions) referred to a Board of Review. The amendments to be made by clause 7 take account of the changes effected by clause 4 and are consequential on the abolition of the Valuation Boards.

Clause 8 : Practice and procedure of Supreme Courts

This clause deletes from section 28D of the Principal Act references to a Valuation Board which are no longer required.

Clause 9 : Release from liability for duty in cases of hardship

Under section 48A of the Principal Act a beneficiary, executor or administrator of a deceased estate may apply to a Board (known as the "Relief Board") consisting of the Commissioner of Taxation, the Secretary to the Department of Finance and the Comptroller-General of Customs, or their substitutes, for the total or partial release from estate duty of the person liable to pay that duty, where payment would entail serious hardship to the beneficiary.

Where the duty involved is \$2,000 or more the Relief Board is required to obtain a report from a member of a Board of Review or, alternatively, from the Chairman of the Valuation

Boards, on the financial circumstances of the beneficiary who would benefit from a release from payment of the full amount of the duty payable. Where the duty payable is less than \$2,000 the Relief Board may seek such a report.

Clause 9 will amend section 48A in several respects so that, in future, all such reports shall be obtained from a person designated by the Chairman of a Board of Review. That person may be either the Chairman himself, another member of the Board of Review or the Secretary to the Board of Review.

Paragraph (a) of clause 9 will remove the words "for a report by a member of the Board of Review" from sub-section 48A(3). This will mean that a request for a report about the financial circumstances of a beneficiary will now be made by the Relief Board to a Board of Review instead of to a particular member of a Board. Under proposed new sub-section (4) the Chairman of that Board will designate the person who is to conduct the enquiry into and prepare the report on the financial circumstances of the beneficiary.

Paragraph (b) will omit sub-section 48A(4) and substitute two new sub-sections - sub-sections (4) and (4A). Proposed new sub-section (4) has the same basic purpose as the existing sub-section (4), but will, as explained above, authorise the Chairman of the Board of Review to which an application is referred by the Relief Board to nominate the person who is to deal with that application. As explained earlier, the Chairman may nominate himself, another member of the Board of Review or the Secretary to the Board of Review.

Proposed sub-section (4A) is a measure to authorise the Chairman to nominate a person in accordance with new sub-section (4) on the basis that that person will deal with a specified class of applications. This will obviate the need for the Chairman always to allocate the applications on a case-by-case basis.

Paragraph (c) will make a formal amendment to sub-sections (5), (6), (7), (9) and (10) of section 48A of the Principal Act to replace the references in those sub-sections to "member of the Board of Review" with "designated person".

The "designated person" is the person nominated by the Chairman in accordance with new sub-section (4) to deal with the application.

Paragraph (d) will omit sub-section 48A(11) which deals with references of applications to the Chairman of the Valuation Boards.

Clause 10 : Transitional - requests for reference to a Valuation Board

Where an objector has, before the date of Royal Assent to the amending Bill, requested the Commissioner of Taxation to refer a decision on an objection concerning valuation of property to a Valuation Board and that decision has not, at the time of Assent, been so referred, sub-clause 10(1) will permit the objector, within 30 days of Assent, to amend the original request in one of two ways.

The objector may under paragraph (c) of sub-clause 10(1) request the Commissioner to refer the whole of the decision on the objection to a Taxation Board of Review which will review both valuation and non-valuation aspects of the decision. In reviewing matters relating to the valuation of property the Board of Review would as necessary be assisted by expert evidence given by qualified valuers.

Alternatively, the objector may, under paragraph (d), request the Commissioner to treat the objection as an appeal and to forward it to a specified Supreme Court. In this case the Supreme Court would, as at present, review both valuation and non-valuation matters again where necessary relying on expert witnesses.

Sub-clause 10(2) deals with the case where an objector has, before the date of Royal Assent, requested the Commissioner to refer that part of his decision on an objection that does not relate to valuation of property, e.g., a question of law, to a Taxation Board of Review. Where this has occurred and the objection also relates to valuation matters, the objector may amend the original request by requesting the Commissioner to refer the whole of the decision on the objection to the Board of Review. The Board of Review will

review both the non-valuation and valuation aspects of the decision. An objector who is dissatisfied with the decision of the Board of Review may take that decision on appeal to a specified Supreme Court.

GIFT DUTY ASSESSMENT AMENDMENT BILL 1979

This Bill will amend the Gift Duty Assessment Act 1941 (in this section of the notes referred to as the "Principal Act") to transfer the jurisdiction of the Valuation Boards to review decisions of the Commissioner of Taxation on objections relating to the valuation of gifted property to the Taxation Boards of Review.

Clause 3 : Officers to observe secrecy

This clause will amend section 10 of the Principal Act, which requires officers to observe secrecy in relation to information coming under their notice in the performance of their duties, to omit the reference to a Valuation Board from paragraph (b) of sub-section 10(4). The reference is not required following abolition of the Boards.

Clause 4 : Value of gift

Under the amendments proposed to clause 5, the valuation of property which is the subject of a gift will henceforth be capable of being referred to either a Board of Review or a Supreme Court where an objector is dissatisfied with the decision of the Commissioner of Taxation on an objection which raises a valuation question.

Clause 4 will make a formal amendment to section 18 of the Principal Act, which provides certain rules for computing the value of a gift, by substituting "Board of Review" for "Board".

Clause 5 : Objections and appeals

An objector who is dissatisfied with the decision of the Commissioner of Taxation on an objection may, under sub-section 31(4) of the Principal Act, request the Commissioner to

refer his decision on the objection to a Valuation Board for review of so much of the decision as relates to the valuation of property or to a Board of Review for review of so much of the decision as relates to other matters.

This clause will amend sub-section 31(4) of the Principal Act by omitting the existing paragraph (a) and substituting a new paragraph (a).

Under the proposed new paragraph (a), an objector will be entitled to request that the whole of the decision on an objection be referred to a Board of Review. Alternatively, under sub-section 31(4) of the Principal Act an objector may, as at present, request that his objection be referred as an appeal to a Supreme Court of a State or Territory.

Clause 6 : Reference to Board

This clause proposes that section 32 of the Principal Act be repealed. Section 32 provides the procedure to be followed where an objection or appeal is referred to and dealt with by a Valuation Board. The section becomes redundant upon abolition of the Boards.

Clause 7 : Reference to Board of Review

Clause 7 proposes the following amendments to section 33 of the Principal Act :

- (a) the omission from sub-section (1) of the phrase "or sub-section (6) of section 32";
- (b) the omission of the proviso from sub-section (6); and
- (c) the omission of sub-sections (7) and (8).

Section 33 of the Principal Act provides the procedure where the decision on an objection is referred to and dealt with by a Board of Review. The amendments proposed by clause 4 will entitle an objector to have the whole of a decision on an objection (including valuation of property

questions) referred to a Board of Review. The amendments to be made by clause 7 take account of the changes effected by clause 4 and are consequential on the abolition of the Valuation Boards.

Clause 8 : Practice and procedure of Supreme Courts

This clause deletes from section 38A of the Principal Act references to a Valuation Board which are no longer required.

Clause 9 : Transitional - requests for reference to a Valuation Board

Clause 9 is a transitional provision in the same terms as Clause 10 of the Estate Duty Assessment Amendment Bill.

An explanation of these transitional provisions is given in the notes on Clause 10 at page 8 of this Explanatory Memorandum.

INCOME TAX ASSESSMENT AMENDMENT BILL (No. 3) 1979

This Bill will amend the Income Tax Assessment Act 1936 (in this section of the notes referred to as the "Principal Act") to transfer the statutory functions of the Chairman of the Valuation Board relating to the release of taxpayers from liability for income tax in cases of serious financial hardship to a person designated by the Chairman of a Taxation Board of Review.

Clause 3 : Release of Taxpayers from liability in cases of hardship

Under section 265 of the Principal Act a taxpayer may apply to a Board (known as the "Relief Board") consisting of the Commissioner of Taxation, the Secretary to the Department of Finance and the Permanent Head of the Department of Business and Consumer Affairs, or their substitutes, for total or partial release from income tax where payment would entail serious hardship.

Where the income tax involved is \$2,000 or more the Relief Board is required to obtain a report from a member of a Board of Review or, alternatively, from the Chairman of the Valuation Board, on the financial circumstances of the taxpayer. Where the income tax payable is less than \$2,000 the Relief Board may seek such a report.

Clause 3 will amend section 265 in several respects so that, in future, all such reports will be obtained from a person designated by the Chairman of a Board of Review. That person may be either the Chairman himself, another member of the Board of Review or the Secretary to the Board of Review.

Paragraph (a) will remove the words "a member of a Board of Review constituted under this Act" from sub-section 265(3) and substitute "a Board of Review". This will mean that a request for a report about the financial circumstances of a taxpayer will now be made by the Relief Board to a Board of Review instead of to a particular member of a Board. Under proposed new sub-section (4), the Chairman of that Board will designate the person who is to conduct the enquiry into and prepare the report on the financial circumstances of the taxpayer.

Paragraph (b) will omit sub-section 265(4) and substitute two new sub-sections - sub-sections (4) and (4A). Proposed new sub-section (4) has the same basic purpose as the existing sub-section (4), but will, as explained above, authorise the Chairman of the Board of Review to which an application is referred by the Relief Board to nominate the person who is to deal with that application. As explained earlier, the Chairman may nominate himself, another member of the Board of Review or the Secretary to the Board of Review.

Proposed sub-section (4A) is a measure to authorise the Chairman to nominate a person in accordance with new sub-section (4) on the basis that that person will deal with a specified class of applications. This will obviate the need for the Chairman always to allocate the applications on a case-by-case basis.

Paragraphs (c) and (e) will make a formal amendment to sub-sections (5), (6), (7) and (8) of section 265 of the Principal Act to replace the references in those sub-sections

to "member of the Board of Review" with the expression "designated person". The "designated person" is the person nominated by the Chairman in accordance with new sub-section (4) to deal with the application.

Paragraph (d) will amend sub-section 265(5) to enable a taxpayer or his representative giving evidence before a designated person in an enquiry into the financial circumstances of the taxpayer to do so under affirmation rather than upon oath should he wish to do so.

Paragraph (f) will omit sub-sections (9) and (10) of section 265 and substitute a new sub-section (9).

Proposed sub-section (9) is to the same effect as the existing sub-section (9), but reflects changes in drafting style. The sub-section requires the designated person to submit a report to the Relief Board concerning his examination of the taxpayer or his representative, together with a transcript of the evidence given before the designated person and to draw the attention of the Relief Board to any matters that, in his opinion, have particular bearing upon the application for relief from income tax.

Sub-section (10) which is being omitted deals with references of applications to the Chairman of the Valuation Board and is no longer necessary.

PAY-ROLL TAX ASSESSMENT AMENDMENT BILL 1979

This Bill will amend the Pay-roll Tax Assessment Act 1941 (in this section of the notes referred to as the "Principal Act") to transfer the statutory functions of the Chairman of the Valuation Board relating to the release of employers from liability for pay-roll tax in cases of serious hardship, to a person designated by the Chairman of a Taxation Board of Review.

Clause 3 : Release of employers in cases of hardship

Under section 70 of the Principal Act an employer (or his dependants if he is deceased) may apply to a Board

(known as the "Relief Board") consisting of the Commissioner of Taxation, the Secretary to the Treasury (this is to be amended to Secretary to the Department of Finance by paragraph (a) of Clause 3) and the Comptroller-General of Customs, or their substitutes, for the total or partial release from pay-roll tax where payment would entail serious hardship.

Where the pay-roll tax involved is \$1,000 or more the Relief Board is required to obtain a report from a member of a Board of Review or, alternatively, from the Chairman of the Valuation Boards, on the financial circumstances of the employer. Where the pay-roll tax payable is less than \$1,000, the Relief Board may seek such a report.

Clause 3 will amend section 70 in several respects so that, in future, all such reports shall be obtained from a person designated by the Chairman of a Board of Review. That person may be either the Chairman himself, another member of the Board of Review or the Secretary to the Board of Review.

Although amendments are being made to the Principal Act, Commonwealth pay-roll tax is not payable in respect of wages paid in a State on or after 1 September 1971. A liability under the Principal Act would arise only where a failure to pay pay-roll tax in respect of wages paid before that date is involved. Assessment to pay-roll tax on wages payable in the Australian Capital Territory is covered by the Pay-roll Tax (Territories) Assessment Act 1971.

Paragraph (a) of clause 3 proposes that, by reason of changes in administrative functions, the constitution of the Relief Board be altered so that the Secretary to the Treasury is replaced by the Secretary to the Department of Finance. This will bring the membership of the pay-roll tax Relief Board into line with that of the income tax and estate duty Relief Boards.

Paragraph (b) of clause 3 will remove the words "a member of a Board of Review" from sub-section 70(3) and substitute "a Board of Review". This will mean that a request for a report about the financial circumstances of an employer will now be made by the Relief Board to a Board of Review instead of to a particular member of a Board. Under proposed new sub-section (4) the Chairman of that Board will designate the person who is to conduct the enquiry into and prepare the report on the financial circumstances of the employer.

Paragraph (c) will omit sub-section 70(4) and substitute two new sub-sections - sub-sections (4) and (4A). Proposed new sub-section (4) has the same basic purpose as the existing sub-section (4), but will, as explained above, authorise the Chairman of the Board of Review to which an application is referred by the Relief Board to nominate the person who is to deal with that application. As explained earlier, the Chairman may nominate himself, another member of the Board of Review or the Secretary to the Board of Review.

Proposed sub-section (4A) is a measure to authorise the Chairman to nominate a person in accordance with new sub-section (4) on the basis that that person will deal with a specified class of applications. This will obviate the need for the Chairman to always allocate the applications on a case-by-case basis.

Paragraphs (d), (f) and (h) will make a formal amendment to sub-sections (5), (6), (7) and (8) of section 70 of the Principal Act to replace the references in those sub-sections to "member of the Board of Review" with the expression "designated person". The "designated person" is the person nominated by the Chairman in accordance with new sub-section (4) to deal with the application.

Paragraph (e) will amend sub-section 70(5) to enable an employer or his representative giving evidence before a designated person in an enquiry into the financial circumstances of the employer to do so under affirmation rather than upon oath should he wish to do so.

Paragraph (g) will make an amendment to sub-section 70(6) to replace the words "Department of Taxation" with "Australian Taxation Office" to take account of a change of title which occurred several years ago but for which no appropriate amendment was made at that time.

Paragraph (i) will omit sub-sections (9) and (10) of section 70 and substitute a new sub-section (9).

Proposed sub-section (9) is to the same effect as the existing sub-section (9), but reflects changes in drafting style. The sub-section requires the designated person to submit a report to the Relief Board concerning his examination of the

employer or his representative, together with a transcript of the evidence given before the designated person and to draw the attention of the Relief Board to any matters that, in his opinion, have particular bearing upon the application for relief from pay-roll tax.

Sub-section (10), which is being omitted, deals with references of applications to the Chairman of the Valuation Board and is no longer necessary.

PAY-ROLL TAX (TERRITORIES) ASSESSMENT AMENDMENT BILL (No. 2) 1979

This Bill will amend the Pay-roll Tax (Territories) Assessment Act 1971 (in this section of the notes referred to as the "Principal Act") to transfer the statutory functions of the Chairman of the Valuation Board relating to the release of employers from liability for pay-roll tax in relation to wages paid in the Australian Capital Territory, or in the Northern Territory prior to 1 July 1978, in cases of serious hardship, to a person designated by the Chairman of a Taxation Board of Review.

Clause 3 : Release of employers in cases of hardship

The amendments to be effected by clause 3 are similar to those effected by clause 3 of the Pay-roll Tax Assessment Amendment Bill. An explanation of these amendments is given in the notes on clause 3 of that Bill at page 13 of this Explanatory Memorandum.

The amendment made by paragraph (c) of clause 3 will correct an inadvertent omission from sub-section 69(6) of the Principal Act. The officer who assists in the examination of an employer who has made application for relief from pay-roll tax is an officer employed in the Australian Taxation Office who is a qualified accountant. The requirement that the assisting officer be employed in the Australian Taxation Office applies in other taxation laws containing similar relief provisions.