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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

TAXATION (UNPAID COMPANY TAX) ASSESSMENT BILL 1982

SUPPLEMENTARY EXPLANATORY MEMORANDUM

INCOME TAX ASSESSMENT AMENDMENT BILL (NO.6) 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister representing
the Treasurer, the Minister for Finance,
Senator the Hon Dame Margaret Guilfoyle, D.B.E.)

11/11/11

Introductory Note

The Taxation (Unpaid Company Tax) Assessment Bill 1982 is one of four Bills designed to recoup evaded company tax. The other Bills in the package are:

- . The Taxation (Unpaid Company Tax - Vendors) Bill 1982;
- . The Taxation (Unpaid Company Tax - Promoters) Bill 1982; and
- . The Taxation (Unpaid Company Tax - Consequential Amendments) Bill 1982.

An Explanatory Memorandum containing explanations of those Bills, as introduced into the House of Representatives, has been made available to honourable Senators.

Amendments were made to the Taxation (Unpaid Company Tax) Assessment Bill 1982 during the Committee Stage in the House of Representatives. This memorandum explains those amendments and is to be read in conjunction with the earlier Explanatory Memorandum.

This memorandum also contains explanations designed to provide a guide to an associated Bill - the Income Tax Assessment Amendment Bill (No.6) 1982 - which deals principally with penalties for late payment of income tax. This Bill also contains amendments of the income tax law to provide that certain payments for promoters recoupment tax will be allowable deductions for income tax purposes. These latter amendments were made in the House of Representatives to the Bill, which had been introduced there by the title of the Income Tax Assessment Amendment (Additional Tax) Bill 1982.

TAXATION (UNPAID COMPANY TAX) ASSESSMENT BILL 1982

The House of Representatives amendments made to clauses 7, 9, 10 and 21 of the Bill are explained below:

Clause 7 : Promoters taxable amounts

For a detailed explanation of clause 7 reference should be made to page 54 of the earlier Explanatory Memorandum.

This clause was amended by the insertion of four new sub-clauses - sub-clauses (3) to (6) - with the original sub-clauses (3) to (14) being renumbered as sub-clauses (7) to (18) respectively.

The new sub-clauses are designed to ensure that the amount of evaded company tax that the persons in the eligible promoters class will be required to recoup in relation to a purchase of shares under a scheme does not exceed the gross fee charged by the purchaser in connection with the scheme. The purchaser effectively derived that fee by applying for his or her own benefit funds of the target company in excess of the consideration for the purchase of the shares.

Sub-clause (3) stipulates that a ceiling will apply to the total of the primary taxable amounts ascertained under sub-clause (1) or (2) in relation to a purchase of shares under a scheme.

Paragraph (a) determines how the ceiling will be calculated in the simple case where shares were purchased in a single target company. In this case, the ceiling is equal to the amount by which the total value of the assets of the target company, immediately before its shares were purchased, (component A) exceeds the aggregate of -

- . the company's liabilities (other than for company tax - see sub-clause (5)) at that time (component L);
- . the amount of any company tax liability in respect of income derived during or prior to the year of purchase that was paid after the purchase and before 25 July 1982 (component T); and
- . the consideration paid for the shares purchased under the scheme (component C).

Paragraph (b) specifies the ceiling where more than one company was effectively acquired under a scheme. In that situation, the ceiling will equal the amount by which the combined assets of the companies acquired exceeded the aggregate of the liabilities and company tax

payments of those companies and the consideration paid for the shares purchased under the scheme.

Sub-clauses (4) to (6) set out how the value of a company's assets and liabilities, immediately before the shares were purchased under the scheme, are to be ascertained for the purpose of applying the formulae in paragraphs (a) and (b) of sub-clause (3).

By paragraphs (a) and (b) of sub-clause (4) the value of a company's assets and the amount of a company's liabilities will, where applicable, be taken to be the amounts agreed upon by the parties to the purchase of shares under the scheme for the purposes of that purchase. In the absence of such agreement, the amounts will, subject to rights of objection, be taken to be such amounts as the Commissioner of Taxation determines.

Under sub-clause (5) the amount of a company's liabilities will not include liabilities in respect of company tax. Payments of company tax are represented by the separate component T in the formula in paragraphs (3) (a) and (b).

Sub-clause (6) provides that the value of a company's assets ascertained under sub-clause (4) is to be reduced where, for the purpose of applying the formula in paragraph (3) (b), those assets are being aggregated with the assets of other companies in a group and include a beneficial interest in the shares of another company in the group. In that case the value of the former company's assets is to be reduced by that part of the value attributable to the beneficial interest. This reduction will ensure that there is no "double-counting" of assets in arriving at the aggregate value of the group's assets.

Clause 9 : Reduction of liability where tax paid

Reference should be made to page 63 et seq of the earlier Explanatory Memorandum for a detailed explanation of clause 9.

Sub-clause (6) of clause 9 was amended consequential upon the amendment of clause 7 which as explained above places a ceiling on the liability of promoters.

The sub-clause provides for a reduction in promoters recoupment tax payable where a subsequent payment of company tax is made.

Under the sub-clause, as amended, the amount of the reduction will be -

in a case where 20 per cent of the company tax liability was allocated to the eligible

promoters class - 20 per cent of the company tax payment;

- . in a case where 100 per cent of the liability was so allocated - 100 per cent of the payment; and
- . in a case where the ceiling provisions of sub-clause 7(3) operated - such amount (if any) as the Commissioner of Taxation determines, not exceeding 20 per cent of the company tax payment (where, but for the ceiling, 20 per cent of the company tax liability would have been allocated to the promoters) or 100 per cent of the company tax payment (where, but for the ceiling, 100 per cent of the liability would have been so allocated). The Commissioner would in effect make an appropriate reduction where the company tax payment is such that the promoters recoupment tax which would be payable, but for the application of the ceiling, falls below the ceiling.

Clause 10 : Right of contribution and apportionment of liability

The amendment relevant to clause 10 omitted the clause, as introduced, and substituted a new clause 10. The explanation of the new clause which follows should therefore be substituted for that on page 66 of the earlier Explanatory Memorandum.

Clause 10 is set against the background that persons included in an eligible promoters class are jointly and severally liable to pay promoters recoupment tax on a promoters taxable amount.

The clause gives a person in the eligible promoters class who is obliged by the Commissioner of Taxation to pay promoters recoupment tax two avenues for taking action which will result in other members of the class being required to contribute an appropriate share of the tax.

The first option is for the person to pay the tax and then recover, by action in the courts, an appropriate contribution from other members of the class. Alternatively, the person may, when sued by the Commissioner for the unpaid recoupment tax, act to have other members of the class joined as co-defendants to the recovery suit in which case the court will be authorised to allocate the liability between the co-defendants.

By sub-clause (1) any person included in an eligible promoters class who has paid any of the tax on a promoters taxable amount applicable to that class will be

entitled to seek a contribution from other members of the class.

The person may institute a proceeding for recovery of a contribution from a co-member of the class in any court of competent jurisdiction and it will be for the court to determine the part of the recoupment tax paid by the person that it would be just and equitable for the co-member to contribute. Under certain circumstances (see clause 11) these court proceedings may be transferred to the Federal Court of Australia.

Sub-clause (2) applies where a person included in an eligible promoters class is being sued by the Commissioner for recovery of promoters recoupment tax payable on a promoters taxable amount.

In that case, the court in which the recovery suit is instituted may, on the application of the person, join one or more other members of the eligible promoters class as co-defendants to the recovery suit.

Where co-members are joined the court will determine the proportion of the unpaid recoupment tax that it would be just and equitable for each co-defendant to be liable to pay. That allocation of the liability is to be made having regard to the nature and extent of each co-defendant's participation in either the scheme under which the shares in the target company were purchased or in the arrangement which rendered it unable to meet its company tax liability and the benefit each person has, or may reasonably be expected to obtain, as a result of the scheme under which the shares were purchased.

Under clause 11, these court proceedings may, in certain circumstances, also be transferred to the Federal Court of Australia.

Sub-clause (3) is a drafting measure by which the expression "promoters recoupment tax" as used in clause 10 is to include late payment tax payable under clause 13.

Clause 21 : Instalment arrangements in relation to late payment of company tax

A technical amendment was made to paragraph (f) of sub-clause 21(1) which enabled paragraph (h) to be deleted.

The explanation of clause 21 given on page 84 of the Explanatory Memorandum previously made available is still appropriate except that the explanation of the former paragraph (h) is no longer relevant. However the effect of former paragraph (h) has been retained by the inclusion in paragraph 21(1) (f) of a reference to "sub-section 9(6)".

Former paragraph (j) has been re-numbered as new paragraph (h).

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 6)1982Introductory note

A primary function of this Bill is to amend the Income Tax Assessment Act 1936 to increase the rate of statutory penalties for late payment of tax from 10 per cent per annum to 20 per cent per annum. The additional taxes and the additional amounts concerned are payable to the Commissioner of Taxation as penalty in cases where income tax or other amounts payable to the Commissioner are paid after the due date for payment. Additional (penalty) tax at the rate of 10 per cent per annum is also payable where the expected income tax liability of a company has been underestimated, with the result that instalments of company tax are reduced. An underestimation of this nature effectively means that the company tax was not paid when it should have been paid.

The provisions of the Assessment Act which, by this Bill, will be amended to increase penalty taxes and other penalty amounts from 10 per cent per annum to 20 per cent per annum are:

- . sub-section 128C(3) - additional tax for late payment of withholding tax on dividends and interest paid to non-residents of Australia;
- . sub-section 207(1) - additional tax for late payment of assessed income tax;
- . sub-sections 221AG(6) & (7) - additional tax for under-estimating income tax for company tax instalment purposes;
- . sub-section 221F(10) - additional amount for late remittance of PAYE deductions made by an employer from salary and wages paid to an employee;
- . sub-section 221YN(4) - additional amount for late payment of amounts deducted from dividends or interest on account

of withholding tax payable; and

- . sub-section 221ZC(4) - additional amount for late payment of mining withholding tax.

Other purposes of the Bill are:

- . to amend the Assessment Act to restrict the powers of the Commissioner of Taxation to remit all or part of an amount payable as penalty tax or other penalty amount to those cases where late payment is due to special circumstances such as adverse business or other factors beyond the control of the taxpayer;
- . to insert into the Assessment Act a provision to authorise an income tax deduction for amounts paid in respect of promoters recoupment tax payable under the Taxation (Unpaid Company Tax) Assessment Act 1982 but so as to provide that no carry-forward losses may be created as a result thereof; and
- . to enable existing income tax assessments to be amended to allow deductions for promoters recoupment tax paid.

The practical effect of the amendments to restrict the power of the Commissioner of Taxation to remit additional tax for late payment of income tax, will be that the Commissioner's existing practice, in disputed assessment cases, of agreeing to remit the additional tax payable in respect of one-half of the disputed tax pending the outcome of the dispute, provided that the other half is paid in the meantime, will not be open in the future.

Instead, if a taxpayer who has disputed an assessment pays only, say, 50 per cent of the tax in dispute additional tax at the increased rate of 20 per cent per annum will be payable in respect of the tax that is found to be payable and remains unpaid, and the Commissioner will not be authorised to remit any part of that additional tax. There has been a ministerial announcement of further legislation to provide for the payment of interest on amounts refunded to taxpayers as a result of a successful objection or appeal against an assessment.

Arrangements entered into by the Commissioner, prior to the date on which the amendments proposed by this Bill become law, to remit additional tax in disputed liability cases will not be overturned and will be allowed to continue according to their terms.

The increased rate of penalty tax proposed by this Bill will not take effect until a date two months after the date on which the amendments become law.

Notes on each clause of the Bill follow.

Clause 1 : Short title, etc.

By sub-clause (1) of this clause the amending Act is to be cited as the Income Tax Assessment Amendment Act (No. 6) 1982.

Sub-clause (2) facilitates references to the Income Tax Assessment Act 1936 which, in the Bill, is referred to as "the Principal Act".

Clause 2 : Commencement

Under this clause the amending Act is to come into operation on the day on which 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.

By clause 14 the increase from 10 per cent to 20 per cent in the rate of additional tax for late payment will not apply for a further two months.

Clauses 3 and 4 : Current year losses

Introductory Note

Clauses 3 and 4 propose amendments to Sub-division B of Division 2A of Part III - the "current year loss" provisions of the Principal Act. The amendments are consequential upon the amendments proposed by clauses 5 and 6 which will authorise deductions in respect of certain amounts paid for promoters recoupment tax but not so as to give rise to a carry-forward loss.

Clause 3 : Calculation of taxable income

This clause will insert a reference to new section 78B in sub-paragraph 50C(3) (d) (i) of the Principal Act. The provisions governing the full-year deductions listed in that sub-paragraph contain in-built limitations that prevent the allowable deduction exceeding the amount of income remaining after allowing certain other allowable deductions. These deductions are listed in the order in which they are deductible under the Principal Act.

The effect of clause 3 will be to bring deductions allowed under the new section 78B into their appropriate place within the specified order of deductions set out in sub-paragraph 50C(3).

Clause 4 : Full-year deductions and
partnership deductions

The amendment proposed by clause 4 is complementary to that being effected by clause 3 and will insert a reference to new section 78B in paragraph 50F(1) (c) of the Principal Act.

Sub-section 50F(1) identifies the allowable deductions of a company that are to be treated as "full-year" deductions for the purposes of the current year loss provisions. The amendment will mean that a deduction under proposed section 78B will be so treated.

Clause 5 : Promoters recoupment tax

Clause 5 proposes the insertion of a new section - section 78B - into the Principal Act which, in broad terms, will authorise a deduction for amounts paid by way of or in respect of promoters recoupment tax.

The new section is complementary to those provisions in the Taxation (Unpaid Company Tax) Assessment Bill 1982 which provide that the promoters of a scheme to strip company of pre-tax profits and certain persons closely connected with them are to be jointly and severally liable to pay by way of promoters recoupment tax a share of the company tax evaded as a result of the scheme. The broad aim of those provisions is that the promoters class will be required to recoup evaded company tax to the extent of the promoters fee that was received in relation to the particular scheme.

Proposed section 78B provides that an income tax deduction is to be allowable in the year of income in which the shares in the target company were purchased for those amounts paid by a person as promoters recoupment tax or as a contribution towards the promoters recoupment tax that another member of the particular eligible promoters class has paid. The basic purpose of the provision is to enable a promoter's income tax liability to be ascertained as though he or she had never received the benefit of the promoters fee (which would generally have been assessable income) to the extent that it is effectively paid back as promoters recoupment tax.

Under sub-section (1) a taxpayer included in a promoters class is to be entitled to a deduction if he or she has paid promoters recoupment tax (or a contribution towards such tax) for which that class is jointly and severable liable. The deduction is allowable in the year of income in which the shares were purchased in the target company under the scheme which gave rise to the recoupment tax liability.

The amount of the deduction will be -

- . in a case where the taxpayer has paid an amount of promoters recoupment tax - the amount paid less any contributions received towards that tax; and
- . in a case where the taxpayer has paid an amount by way of a contribution towards promoters recoupment tax paid by another person - the amount of the contribution.

By sub-section (2) an amount will be taken to have been received by a taxpayer by way of contribution not only when it is actually paid over to the taxpayer but also when it is re-invested, accumulated, capitalised, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on behalf of the taxpayer or as the taxpayer directs.

Sub-sections (3) to (6) are designed to extend the benefit of the usual objection and appeal provisions to a taxpayer in circumstances where he or she believes that a deduction should be allowed under sub-section (1) in respect of an amount paid after the period of 60 days for objecting against the relevant assessment has expired and the Commissioner of Taxation takes a different view.

To this end, a taxpayer who considers that a deduction is allowable under sub-section (1) is to be given a statutory right by proposed sub-section (3) to ask the Commissioner for an amended assessment. By sub-section (4), the Commissioner is to consider the request and give written notice of his decision and if the taxpayer is dissatisfied with the decision he or she may, under sub-section (5), lodge a formal objection with the Commissioner. Sub-section (6) provides that the objection and appeal provisions of the income tax law are to apply in relation to such an objection. This will mean that a refusal by the Commissioner to accede to an amendment of an assessment to allow a deduction for promoters recoupment tax will be reviewable by a Board of Review or a Supreme Court in the first instance and, if warranted, by higher courts of appeal.

Sub-section (7) is a drafting measure which ensures that certain expressions used in proposed sub-section 78B(1) will have the same meanings as those expressions have in the proposed Taxation (Unpaid Company Tax) Assessment Act 1982. The expressions concerned are "eligible promoters class", "promoters taxable amount", "promoters recoupment tax", "payable" and "last purchase time."

Clause 6 : Limitation on certain deductions

Section 79C of the Principal Act operates to ensure that allowable deductions authorised by certain provisions of the Principal Act cannot give rise to a

carry-forward loss. In broad terms, it does so by restricting the aggregate of the amounts that may be allowable as deductions under specified sections to the amount that would otherwise have been the taxable income for the income year. The practical effect of section 79C is that deductions under the specified sections can reduce the taxable income of a person to nil but cannot create, or increase, an income tax loss for the particular year of income.

It is proposed that section 79C be amended by clause 6 so that the deductions authorised under the proposed section 78B (clause 5) in respect of amounts paid by a taxpayer as promoters recoupment tax (or as contribution thereto) will also be incapable of giving rise to an income tax loss that may be carried forward to the next income year.

Clause 7 : Payment of withholding tax

This clause proposes amendments to sub-sections 128C(3) and (4) of the Principal Act. By section 128C, withholding tax on dividend and interest income derived by a non-resident of Australia is due and payable twenty-one days after the end of the month in which the income to which it relates was derived. If any withholding tax remains unpaid at the expiration of sixty days after the time when it became due and payable, additional tax is due and payable on the amount unpaid, computed from the expiration of that period. The existing rate used in the calculation of the additional tax is 10 per cent per annum.

Paragraph (a) of clause 7 proposes an amendment to sub-section 128C(3) to increase the rate of additional tax to 20 per cent per annum.

By paragraph (b), sub-section 128C(4) will be omitted and a new sub-section substituted. Existing sub-section 128C(4) provides general authority for the Commissioner of Taxation to remit the statutory additional tax or any part of the additional tax simply, for such reasons that he thinks sufficient. New sub-section (4) will operate to permit the Commissioner to remit the statutory additional tax only in restricted circumstances.

The circumstances in which remission of additional tax will be permitted by sub-section (4) are comparable with those in which remission of additional tax for late payment of assessed income tax is to be permitted.

Clause 8 : Amendment of assessments

This clause will amend section 170 of the Principal Act which governs the power of the Commissioner of Taxation to amend income tax assessments. Sub-section (10) of section 170 provides that nothing in the section is to prevent the amendment of an assessment at any time for

the purpose of giving effect to specified provisions of the Principal Act.

The purpose of including a reference to the new section 78B in sub-section 170(10) is to enable assessments of earlier years to be amended to allow a deduction for promoters recoupment tax paid in respect of schemes carried out in those earlier years.

Clause 9 : Penalty for unpaid tax

Clause 9 of the Bill proposes an amendment to section 207 of the Principal Act by which sub-section 207(1) will be omitted and two new sub-sections - sub-sections (1) and (1A) - will be substituted.

Under section 207 of the Principal Act, additional (penalty) tax becomes payable when income tax determined by assessment remains unpaid after the time when it becomes due and payable. By virtue of sub-section 221YA(2) this additional tax applies also to late payment of provisional tax.

The rate of the additional tax is 10 per cent per annum and is calculated on the amount of assessed income tax (or provisional tax) unpaid from the date on which it became payable to the date on which it was paid.

Revised sub-section (1) of section 207 specifies that the rate of late payment penalty is to rise to 20 per cent per annum. In addition, its re-expression will make clear the position about this penalty where, under section 206 of the Principal Act, the Commissioner has granted a taxpayer an extension of time for payment.

The additional tax may be payable where tax remains unpaid after the due date for payment notified in a notice of assessment, whether or not an extended due date has been granted under section 206. Where, however, in granting an extension of time to pay the Commissioner has determined a later date as the date from which the late payment penalty is to run, additional tax will be payable if tax remains unpaid after that later date.

This will mean that under the amended law the way will be open for the Commissioner, if the circumstances make it appropriate, to grant to a taxpayer who pays, say, 50 per cent of an amount notified by the Commissioner, an extension of time for the balance of the tax, subject to late payment penalty on the balance, measured from the original due date.

A power to remit late payment penalty, now contained on a general basis in the proviso to sub-section 207(1) is being reinstated in more restricted terms in proposed sub-section 207(1A).

By paragraph (a) of sub-section (1A) the Commissioner will be permitted to remit the additional tax payable by a taxpayer if he is satisfied that the circumstances that led to the delay in payment of the income tax were not caused by an act or omission of the taxpayer and the taxpayer has taken reasonable action to mitigate the effects of the circumstances that led to the delay. For example, paragraph (a) would permit the Commissioner to remit additional tax in a case where the late payment of income tax was caused by adverse factors beyond the taxpayer's control, such as, loss of property or trading stock through an accident or a natural disaster. The power to remit the additional tax will, however, only be available if the taxpayer has taken any action reasonably available to mitigate the effects of the adverse factors. Action that a taxpayer could be expected to take in mitigation would include payment of as much as practicable of the outstanding tax.

Paragraph (b) of sub-section (1A) will authorise the Commissioner of Taxation to remit the additional tax in appropriate cases, notwithstanding that the circumstances which led to the delay in payment of tax were caused by the taxpayer. Remission of the penalty tax will be possible if the Commissioner is satisfied that the taxpayer has taken reasonable action to mitigate the effects of those circumstances and that it is fair and reasonable to remit the penalty tax in view of the nature of those circumstances.

A situation to which paragraph (b) would apply could arise out of financial difficulties caused by a business decision taken by the taxpayer which, although it might have been a reasonable decision to take at the time, resulted in a loss or other adverse consequences for the taxpayer.

By paragraph (c) of sub-section (1A) the Commissioner of Taxation will be able to remit additional tax imposed for late payment of income tax where he considers that there are other special circumstances to justify that course.

The automatic imposition of additional tax by sub-section 207(1) will, in some cases, result in very small amounts of additional tax being payable. Paragraph (1A) (c) will permit the Commissioner to remit in full those small amounts if he considers that course to be justified.

Clause 10 : Estimated income tax

This clause proposes amendments to section 221AG of the Principal Act by which sub-sections 221AG(6) and (7) will be omitted and two new sub-sections substituted. Section 221AG forms a part of the provisions in the Principal Act by which companies are called upon to pay advance instalments of tax. The section operates, in cases

where a notice has been served by the Commissioner of Taxation on a company requiring it to pay an instalment of company tax, to permit the company to make an estimate of its expected income tax liability for the purpose of varying the amount payable by way of instalments.

Sub-sections 221AG(6) and (7) impose additional tax where instalments of company tax have been reduced as a result of an underestimation of the company's income tax liability. An underestimation of this nature effectively means that the company tax was not paid when it should have been paid.

The existing sub-section (6) imposes penalty tax where a company, upon receiving a notice calling for payment of an instalment of tax, provides the Commissioner of Taxation with an estimate, which subsequently proves to be an underestimate, of its income tax liability for the purpose of having the amount of the tax instalment reduced. By the scheme of the company tax instalment provisions, subsequent notices to be served on a company which makes an estimate of its income tax liability are also based on the estimate made by the company. Sub-section (7) imposes penalty tax in cases where as a result of the income tax liability of a company having been underestimated, subsequent instalments of tax are notified at the reduced level. Existing sub-sections 221AG(6) and (7) provide general authority for the Commissioner of Taxation to remit the statutory additional tax or any part of the additional tax simply, for such reasons that he thinks sufficient.

The new sub-sections 221AG(6) and (7) will substantially re-enact the existing sub-sections, with the difference in each sub-section being that the rate of the additional tax is increased from 10 per cent per annum to 20 per cent per annum and the power of the Commissioner of Taxation to remit all or part of the additional tax is limited to cases where the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to do so.

Clause 11 : Group employers

By clause 11 of the Bill section 221F of the Principal Act will be amended by omitting sub-section (10) of that section and substituting two new sections - sub-sections (10) and (10A). Section 221F forms part of the PAYE (pay-as-you-earn) provisions applicable to employees. The broad requirement of the PAYE provisions is for employers to make deductions from salaries and wages paid to employees and to either remit the amounts so deducted to the Commissioner of Taxation or to purchase tax stamps on behalf of the employee.

Section 221F requires an employer who ordinarily has 10 or more employees to register as a group employer and to remit to the Commissioner deductions made from salaries and wages paid to employees. A group employer is required to remit the deductions to the Commissioner within 7 days of the end of the month in which the deductions were made.

Existing sub-section 221F(10) imposes statutory additional tax at the rate of 10 per cent per annum if PAYE deductions are not remitted to the Commissioner in the time allowed. The Commissioner can remit all or part of the additional tax for such reasons that he thinks sufficient.

In the new sub-section 221F(10) proposed by this clause the rate of the additional tax is increased from 10 per cent per annum to 20 per cent per annum of the amount unpaid.

The power to remit late payment penalty, at present contained on a general basis in the proviso to sub-section 221F(10), is being reinstated in a restricted form in proposed sub-section 221F(10A). The circumstances in which remission of the late payment penalty will be permitted by sub-section (10A) are comparable with those in which remission of additional tax imposed by section 207 of the Principal Act for late payment of assessed income tax is to be permitted.

Clause 12 : Deductions to be forwarded to
Commissioner, etc.

This clause proposes amendments to section 221YN of the Principal Act. Section 221YN forms a part of the provisions of the Principal Act which deal with the collection of withholding tax payable by a non-resident of Australia in respect of dividends and interest received from Australia. To facilitate the collection of withholding tax, the company or other person in Australia that pays the dividend or interest to the non-resident is required to deduct from the dividend or interest an amount on account of the withholding tax liability of the non-resident and to pay the amount of the deduction to the Commissioner of Taxation.

An amount deducted from a dividend or interest paid to a person not resident in Australia is required to be paid to the Commissioner within 21 days after the end of the month in which the deduction was made. If the amount is not paid within that period sub-section 221YN(4) specifies that an additional (penalty) amount becomes payable at the rate of 10 per cent per annum computed from the date on which the amount should have been paid.

Paragraph (a) of clause 12 proposes to amend sub-section 22LYN(4) to increase the rate of the late payment penalty from 10 per cent per annum to 20 per cent per annum.

Paragraph (b) will omit sub-section (5), which provides on a general basis a power for the Commissioner to remit the late payment penalty, and substitute a new sub-section (5) to restate the power to remit late payment penalty in a restricted form. The form of the restricted power of remission is the same as that proposed for the remission of additional tax for late payment of assessed income tax.

Clause 13 : Deductions to be forwarded to
Commissioner, etc.

This clause proposes amendments to section 221ZC of the Principal Act. Section 221ZC imposes upon persons who make specified payments for the use of Aboriginal land for mining or mineral prospecting purposes an obligation to deduct from the payments an amount on account of mining withholding tax payable in respect of those payments.

An amount deducted from a payment of this kind is required to be forwarded to the Commissioner of Taxation within 21 days after the end of the month in which the deduction was made. If the amount is not remitted to the Commissioner within that period an additional amount becomes payable at the rate of 10 per cent per annum computed from the date on which the amount should have been paid.

Paragraph (a) of clause 13 proposes to amend sub-section 221ZC(4) to increase the rate of the late payment penalty from 10 per cent per annum to 20 per cent per annum.

Paragraph (b) will omit sub-section (5), which provides on a general basis a power for the Commissioner to remit the late payment penalty, and substitute a new sub-section (5) to restate in a more restricted form the power to remit late payment penalty. The form of the restricted power of remission is the same as that proposed for the remission of additional tax for late payment of assessed income tax.

Clause 14 : Deferment for 2 months of increased
rate of additional tax

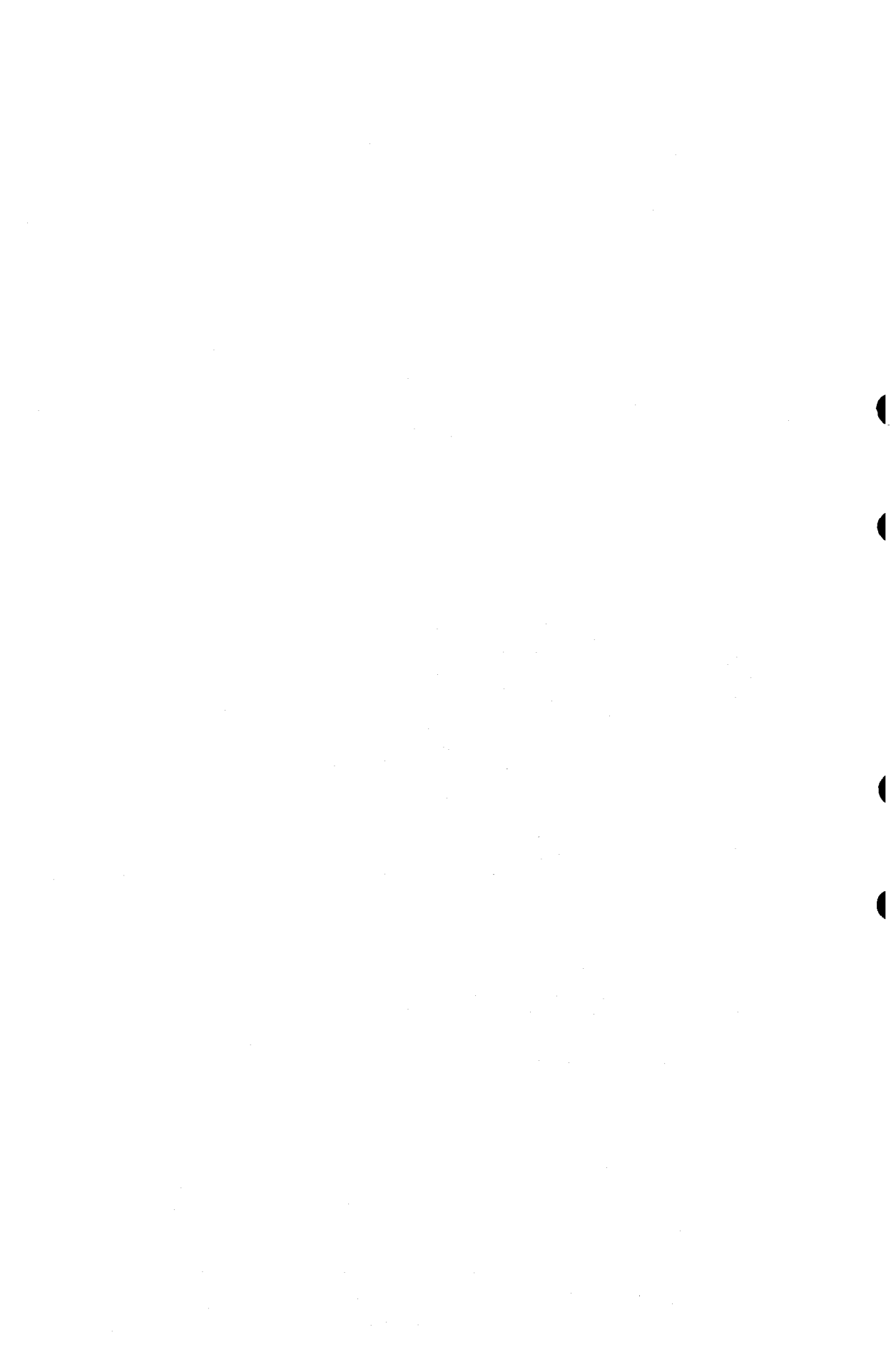
Clause 14 of the Bill is a transitional measure designed to ensure that the proposed 20 per cent per annum rate for late payment penalty will only commence to apply from a date 2 months after the Bill becomes law.

In practical effect, clause 14 will require that, in any computation of late payment penalty under a provision of the Principal Act which is proposed to be amended by this Bill, the computation will proceed on the basis that, where tax or another amount has remained unpaid during a period prior to the date 2 months after enactment, the former rate of 10 per cent per annum continues to apply.

Clause 15 : Agreement to remit additional tax

Clause 15 is a further transitional measure designed to modify the effect of the amendments made by this Bill to the power of the Commissioner of Taxation to remit an amount of late payment penalty imposed under section 207 of the Principal Act. By the amendment of section 207 the power of the Commissioner to remit all or a part of an amount payable as penalty for late payment of assessed income tax is to be restricted to those cases where late payment is due to special circumstances, such as adverse business or other factors beyond the control of the taxpayer. The practical effect of those amendments will be that the Commissioner's existing practice, in disputed assessment cases, of agreeing to remit the additional tax payable in respect of one-half of the disputed tax pending the outcome of the dispute, provided the other half is paid in the meantime, will not be open in the future.

Clause 15 will, however, retain for the Commissioner a general authority to remit an amount of late payment penalty in any case where, prior to the date on which the Bill becomes law, he has entered into an arrangement with a taxpayer to remit additional tax in respect of an amount of assessed income tax that has remained unpaid pending the resolution of a disputed assessment. In other words, these existing arrangements will not be overturned and will be allowed to continue according to their terms.



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