

1990

THE PARLIAMENT OF THE COMMONWEALTH
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HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT (RATES AND PROVISIONAL TAX)
BILL 1990

INCOME TAX AMENDMENT BILL 1990

MEDICARE LEVY AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. P. J. Keating, M.P.)



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GENERAL OUTLINE

TAXATION LAWS AMENDMENT (RATES AND PROVISIONAL TAX) BILL 1990

This Bill will amend two taxation Acts to give effect to a number of proposals :

- . the Income Tax Rates Act 1986

Personal rates of tax for residents

- .. to declare the rates of tax payable by resident individuals, and trustees generally, to give effect to the announcement in the 21 February 1990 Economic Statement to reduce the rates of tax from 1 January 1991 by -
 - increasing the level of the threshold at or below which no tax is payable from \$5,100 to \$5,400;
 - increasing the top of the first rate step from \$17,650 to \$20,700 and abolishing the 29 per cent rate, so that the 21 per cent rate applies in the income range \$5,401 to \$20,700;
 - reducing the 39 per cent rate to 38 per cent, to apply in the income range \$20,701 to \$36,000;
 - introducing a new rate of 46 per cent to apply in the income range \$36,001 to \$50,000;
 - applying the existing top marginal rate of 47 per cent only to incomes over \$50,000.

A table comparing the proposed rates of tax (including changes to the income ranges at which the proposed rates apply) with existing rates is set out below.

<u>For parts of taxable income</u>		<u>Proposed</u>	<u>Existing</u>
<u>exceeding</u>	<u>but not exceeding</u>	<u>rate</u>	<u>rate</u>
\$	\$	%	%
0	5,100)	NIL
5,100	5,400) _____) _____
5,400	17,650)) _____
17,650	20,600) 21) <u>29</u>
20,600	20,700) _____)
20,700	35,000)) _____
35,000	36,000) _____)
36,000	50,000	46) 47
50,000	-	47)

A composite rate scale will apply for the 1990-91 financial year. That scale will comprise a weighted average of one-half of the existing rate scale applying from 1 July 1990 to 31 December 1990 and one-half of the proposed new rate scale that is to apply from 1 January 1991 to 30 June 1991.

Personal rates of tax for non-residents

- .. to declare the rates of tax payable by non-resident individuals, and by trustees in respect of a non-resident beneficiary or non-resident trust estate, to give effect to the 1990-91 Budget announcement to adjust the rates of tax from 1 January 1991 by -
 - increasing the top of the first rate step from \$20,600 to \$20,700 and retaining the existing lowest marginal rate of 29 per cent to apply in the income range \$1 - \$20,700;
 - applying the new rates for residents in the income ranges above \$20,700.

A table comparing the proposed rates of tax (including changes to the income ranges at which the proposed rates apply) with existing rates is set out below.

For parts of taxable income

<u>exceeding</u>	<u>but not exceeding</u>	<u>Proposed</u>	<u>Existing</u>
\$	\$	<u>rate</u>	<u>rate</u>
		%	%
0	20,600)	29
		29	
20,600	20,700)	39
		38	
20,700	35,000)	
		38	
35,000	36,000)	
		46	47
36,000	50,000)	
		47	
50,000	-)	

On the same basis as for resident taxpayers a composite rate scale will apply for the 1990-91 financial year.

- . the Income Tax Assessment Act 1936

Medical Expenses Rebate

- .. to reduce the level of the rebate of tax for net medical expenses over \$1,000 from 29 per cent to 21 per cent effective for the 1991-92 and subsequent income years (1990-91 Budget announcement). The level of the rebate for the 1990-91 income year will be 25 per cent.

Provisional Tax

- .. to provide a method of calculating provisional tax for the 1990-91 and subsequent income years, including the payment of provisional tax on certain salary or wages (1990-91 Budget announcement).

INCOME TAX AMENDMENT BILL 1990

This Bill will formally impose income tax payable for the 1990-91 financial year and, until the Parliament otherwise provides, the 1991-92 financial year at the rates declared by the Income Tax Rates Act 1986.

MEDICARE LEVY AMENDMENT BILL 1990

This Bill will amend the Medicare Levy Act 1986 -

- . to impose a basic rate of Medicare levy of 1.25 per cent for the 1990-91 financial year and, until the Parliament otherwise provides, the 1991-92 financial year; and
- . to exempt from the levy individuals with taxable incomes of \$11,745 or less and families and sole parents with family incomes of \$19,045 or less; the family or sole parent threshold is raised by a further \$2,100 for each dependent child or student (1990-91 Budget announcement).

FINANCIAL IMPACT

TAXATION LAWS AMENDMENT (RATES AND PROVISIONAL TAX)
BILL 1990

INCOME TAX AMENDMENT BILL 1990

The changes to the personal tax rate scale for residents is estimated to cost \$1,230 million in 1990-91 and \$2,585 million in 1991-92.

The changes to the personal tax rate scale for non-residents is estimated to cost less than \$0.5 million in a full year.

The gain to revenue from the reduction of the level of the rebate for net medical expenses is estimated at \$7 million in 1991-92 and \$15 million in a full year.

The estimated gain to revenue from the extension of the provisional tax system to certain salary or wages is \$370 million in 1990-91.

MEDICARE LEVY AMENDMENT BILL 1990

The increase in the low income thresholds is estimated to cost \$35 million in 1990-91 and \$80 million in 1991-92.

MAIN FEATURES

The main features of the Bills are as follows :

TAXATION LAWS AMENDMENT (RATES AND PROVISIONAL TAX)
BILL 1990

This Bill will amend the Income Tax Rates Act 1986 and the Income Tax Assessment Act 1936.

Rates of tax

(Clauses 3 and 4, and Schedules 1 and 2)

The Bill amends the Income Tax Rates Act 1986 to give effect to the proposal announced in the 21 February 1990 Economic Statement to reform the personal income tax rate scale for resident taxpayers. With effect from 1 January 1991 the Bill will-

- . increase the level of the tax-free threshold from \$5,100 to \$5,400 and increase the top of the first rate step from \$17,650 to \$20,700, so that the lowest marginal rate of 21 per cent applies in the income range \$5,401 to \$20,700;
- . increase the top of the second rate step from \$20,600 to \$36,000, remove the 29 per cent marginal rate and reduce the existing 39 per cent rate to 38 per cent, so that a 38 per cent marginal rate applies in the income range \$20,701 to \$36,000;
- . increase the top of the third rate step from \$35,000 to \$50,000 so that a new marginal rate of 46 per cent applies in the income range \$36,001 to \$50,000; and
- . increase the top rate step to incomes above \$50,000, so that the top marginal rate of 47 per cent applies only to incomes above \$50,000.

Because these changes are effective from 1 January 1991 they will form the rate scale for the 1991-92 and subsequent financial years. The Bill will declare composite rates to apply on assessment in respect of income for the 1990-91 year of income as follows:

<u>Parts of taxable income</u>		
<u>exceeding</u>	<u>but not exceeding</u>	<u>Proposed</u>
\$	\$	<u>rate</u>
		%
5,250	17,650	21.0
17,650	20,600	25.0
20,600	20,700	30.0
20,700	35,000	38.5
35,000	36,000	42.5
36,000	50,000	46.5
50,000	-	47.0

This Bill will also amend the Income Tax Rates Act 1986 to give effect to a 1990-91 Budget announcement to apply the 29 per cent rate of tax on the first \$20,700 of taxable income of a non-resident, and apply to taxable incomes of non-residents exceeding \$20,700 the proposed new rate scale for residents, as applicable.

These changes are effective also from 1 January 1991 and as a consequence will first apply for the 1991-92 and subsequent financial years. The Bill will declare composite rates for non-residents to apply on assessment in respect of income for the 1990-91 year of income as follows:

<u>Parts of taxable income</u>		
<u>exceeding</u>	<u>but not exceeding</u>	<u>Proposed</u>
\$	\$	<u>rate</u>
		%
0	20,600	29.0
20,600	20,700	34.0
20,700	35,000	38.5
35,000	36,000	42.5
36,000	50,000	46.5
50,000	-	47.0

Concessional Rebates

(Clauses 3 and 4 and Schedules 1 and 2)

The Bill will give effect to the 1990-91 Budget announcement to reduce the level of the rebate of tax, allowable under section 159P of the Income Tax Assessment Act 1936 for payments of net medical expenses exceeding \$1,000, from 29 per cent to 21 per cent, for 1991-92 and subsequent income years. The level of the rebate for the 1990-91 income year will be 25 per cent.

Provisional Tax

(Clauses 6 to 14 and Schedule 3)

The Bill will amend the Income Tax Assessment Act 1936 to incorporate the method of calculating provisional tax for 1990-91 and subsequent income years as a standing measure.

Provisional tax for the 1990-91 year of income is to be calculated by applying 1990-91 rates of tax and Medicare levy to 1989-90 taxable incomes, increased by the provisional tax uplift factor for 1990-91 of 10 per cent (1990-91 Budget announcement).

For subsequent income years, the Bill proposes that the uplift factor may be adjusted by regulation, but not to a percentage exceeding 12 per cent. Where no regulation setting an uplift factor is declared in 1991-92 or a later year, the factor for the relevant year will be 10 per cent.

Subject to certain adjustments outlined below, rebates and credits allowed in 1989-90 will be taken into account as appropriate in the calculation of 1990-91 provisional tax.

Rebates will be adjusted as follows :

- (a) the level of 1989-90 franking rebates will be uplifted by 10 per cent;
- (b) concessional rebates allowed in 1989-90 assessments will be adjusted to reflect the increase in the levels of those rebates in 1990-91; and
- (c) any zone rebate, rebate for a Defence Force member serving overseas, or rebate for civilians serving with the United Nations that was allowed in 1989-90 assessments will be adjusted by an amount equal to 20 per cent of any additional amount of concessional rebates to which a taxpayer may be entitled in 1990-91 by virtue of paragraph (b).

Credits allowed in 1989-90 assessments for foreign taxes will be uplifted by 10 per cent.

Subject to the level of the uplift factor, the same basis of calculating provisional tax would be used in future years under the standing measure. Of course, amendment of the standing measure would be made, as necessary, to allow for any particular change relevant to the provisional tax calculation for a future year.

Certain consequential amendments are proposed in the legislation dealing with arrangements to avoid provisional tax, to allow for the operation of an uplift factor.

Finally, the Bill proposes that provisional tax will be payable by a taxpayer in respect of a year of income, where the assessable income of the preceding year consists only of salary or wages and two conditions are met:

- (a) the taxpayer has tax payable in respect of the preceding year of \$3,000 or more; and
- (b) the tax instalments deducted from the salary or wages of the preceding year are less by \$3,000 or more than the tax that would have been assessed on that income, if it had been the only income derived during the year.

Where the two conditions are met in respect of a taxpayer, the existing method of calculation of the provisional tax payable where the assessable income includes salary or wages will be changed. The change will be made whether the assessable income of the preceding income year consists wholly, or partly, of salary or wages, to take account of the shortfall in the tax instalment deductions made from the salary or wages in that preceding year.

The change to the situation in which a taxpayer is liable to pay provisional tax, and the method of calculation, will apply in respect of provisional tax payable for the 1990-91 and subsequent income years.

INCOME TAX AMENDMENT BILL 1990

This Bill will amend the Income Tax Act 1986 to formally impose income tax payable for the 1990-91 financial year and the subsequent year, at the rates declared by the Income Tax Rates Act 1986, by :

- . individuals and trustees generally;
- . companies, registered organizations, corporate unit trusts and public trading trusts, and certain other trusts; and

- . trustees of superannuation funds, approved deposit funds and pooled superannuation trusts.

MEDICARE LEVY AMENDMENT BILL 1990

Medicare levy will, by this Bill, be payable on taxable incomes for the 1990-91 financial year and, until the Parliament otherwise provides, the 1991-92 financial year. The amendments to the levy arrangements by the Bill will -

- . impose Medicare levy in respect of 1990-91 and the subsequent financial year at the rate of 1.25 per cent; and
 - . increase the level of the low income thresholds so that no levy will be payable by :
 - .. a person whose taxable income does not exceed \$11,745; or
 - .. a married (including de facto) couple where the sum of the couple's taxable incomes does not exceed \$19,045, or a sole parent where his or her taxable income does not exceed \$19,045; for each dependent child or student maintained by a married couple or sole parent the threshold for payment of the levy is to continue to be increased by \$2,100.
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A more detailed explanation of the provisions of the Bills is contained in the following notes.

TAXATION LAWS AMENDMENT (RATES AND PROVISIONAL TAX)
BILL 1990

PART 1 - PRELIMINARY

Clause 1: Short title

This clause allows the amending Act to be cited as the Taxation Laws Amendment (Rates and Provisional Tax) Act 1990.

Clause 2: Commencement

By subclause 2(1) it is proposed that the amending Act, other than clause 4, is to commence on the day on which it receives the Royal Assent. But for this subclause, the Act would, by reason of subsection 5(1A) of the Acts Interpretation Act 1901, commence on the twenty-eighth day following the date of Assent.

Subclause (2) proposes that the amendments proposed by clause 4 commence on 1 July 1991.

PART 2 - AMENDMENTS RELATING TO RATES AND REBATES

Clause 3 : Amendments applicable for 1990-91

By subclause 3(1), the Acts specified in Schedule 1 to the Bill are to be amended as set out in that Schedule. The particular amendments are discussed below.

Subclause (2) provides that the amendments made by subclause (1) will apply to assessments of income of the 1990-91 year of income. The amendments relate mostly to the changes in the rates of personal tax that are effective from 1 January 1991 and as such, composite rates of tax will apply for the 1990-91 year.

Clause 4 : Amendments applicable for 1991-92 and subsequent years

By subclause 4(1), the Acts specified in Schedule 2 to the Bill are to be amended as set out in that Schedule. The particular amendments are discussed below.

Subclause (2) provides that the amendments made by subclause (1) will apply to assessments of income of the 1991-92 and subsequent years of income.

The amendments specified in Schedules 1 and 2 to the Bill are discussed below.

THE INCOME TAX ASSESSMENT ACT 1936Concessional rebate for medical expenses

The level of the rebate of tax which is allowable to taxpayers who pay net medical expenses exceeding \$1,000 in a year of income is to be reduced to 25 per cent for 1990-91 and to 21 per cent for subsequent years.

By subsection 159P(3A) of the Income Tax Assessment Act 1936 (the "Assessment Act") the rebate for taxpayers who incur net medical expenses in excess of \$1,000 is presently 29 per cent.

Clause 3 of the Bill amends subsection 159P(3A) of the Principal Act as set out in Schedule 1 by substituting 25 per cent for the 29 per cent rate, to apply for the 1990-91 year of income.

Clause 4 of the Bill will amend subsection 159P(3A) as set out in Schedule 2 by substituting 21 per cent for the 25 per cent rate, to apply for 1991-92 and all subsequent years of income.

THE INCOME TAX RATES ACT 1986Pro-rating of the tax-free threshold (section 20 of the Rates Act)

Division 4 of Part II of the Income Tax Rates Act 1986 (the "Rates Act") sets out the basis for pro-rating the tax-free threshold (the zero rated step in the personal income tax rate scale) for an individual taxpayer who, in a year of income, first ceases a course of full-time education or becomes, or ceases to be, a resident of Australia.

Consistent with the increase of the tax-free threshold to \$5,250 for the 1990-91 income year by virtue of the operation of subclause 3(1) of this Bill and Schedule 1, subsections 20(1) and (2) of the Rates Act are amended to omit the references to \$5,100 and replace them with \$5,250. As a result of the increase of the tax-free threshold, the value of "A" in the formulae in subsections 20(1) and (2) of the Rates Act are also increased to \$438. These amendments apply to assessments in respect of income of the 1990-91 year of income.

Subclause 4(1), by way of Schedule 2, further amends subsections 20(1) and (2) of the Rates Act to omit the references to \$5,250 and \$438 and replace them with \$5,400 and \$450 respectively. These amendments will apply to assessments in respect of income of the 1991-92 year of income and for all subsequent years of income.

Rates of tax - Schedules 7, 8 and 10

The Rates Act declares the rates of tax payable by specified categories of taxpayers. The rates payable by individuals and by trustees generally are declared by Division 3 of Part II of the Rates Act.

The amendments of the Rates Act proposed by clause 3 (Schedule 1) and clause 4 (Schedule 2) will declare the rates of tax for the 1990-91 financial year and for the 1991-92 and subsequent financial years respectively, to give effect to the reduction in personal income tax rates for residents announced in the 21 February 1990 Economic Statement. As these reductions take effect from 1 January 1991 composite rates of tax are required for the 1990-91 financial year. The amendments proposed also provide for the changes in the personal income tax rates for non-residents as announced in the 1990-91 Budget.

Rates of tax and notional rates (section 12 of the Rates Act) for 1990-91

Section 12 of the Rates Act declares the ordinary rates of tax payable by individuals and trustees generally. These rates are set out in Schedules 7 to 10 to the Rates Act.

Subsection 12(1) of the Rates Act declares the general rates for individuals. These rates are set out in clause 1 of Parts I and II of Schedule 7.

The existing rate table in Part I of Schedule 7 to the Rates Act, which specifies the rates of tax for resident taxpayers, will be replaced by a composite rate table that will apply, by virtue of clause 3 of this Bill for the 1990-91 financial year. The new rates for resident individuals will be as follows:

<u>For parts of taxable income</u>		
<u>exceeding</u>	<u>but not exceeding</u>	<u>Rate</u>
\$	\$	%
0	5,250	NIL
5,250	17,650	21
17,650	20,600	25
20,600	20,700	30
20,700	35,000	38.5
35,000	36,000	42.5

36,000	50,000	46.5
50,000	-	47

Tax payable for 1990-91 may be calculated from the following table :

<u>Parts of taxable income</u>		
<u>exceeding</u>	<u>but not exceeding</u>	<u>Tax on total taxable income</u>
\$	\$	
0	5,250	Nil
5,250	17,650	Nil plus 21 cents for each dollar of taxable income in excess of \$5,250
17,650	20,600	\$2,604 plus 25 cents for each dollar of taxable income in excess of \$17,650
20,600	20,700	\$3341.50 plus 30 cents for each dollar of taxable income in excess of \$20,600
20,700	35,000	\$3371.50 plus 38.5 cents for each dollar of taxable income in excess of \$20,700
35,000	36,000	\$8,877 plus 42.5 cents for each dollar of taxable income in excess of \$35,000
36,000	50,000	\$9302 plus 46.5 cents for each dollar of taxable income in excess of \$36,000

50,000	-	\$15,812 plus 47 cents for each dollar of taxable income in excess of \$50,000
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The rate table in Part II of Schedule 7 to the Rates Act sets out the rates of tax for non-resident taxpayers. This table will be replaced by a rate table that will be a composite table, and by virtue of clause 3 of this Bill, will apply for the 1990-91 financial year. The new rates for non-residents will be as follows:

For parts of taxable income

<u>exceeding</u> \$	<u>but not exceeding</u> \$	<u>Rate</u> %
0	20,600	29.0
20,600	20,700	34.0
20,700	35,000	38.5
35,000	36,000	42.5
36,000	50,000	46.5
50,000	-	47.0

Tax payable by non-resident taxpayers for the 1990-91 financial year may be calculated from the following table:

Parts of taxable income

<u>exceeding</u> \$	<u>but not exceeding</u> \$	<u>Tax on total</u> <u>taxable income</u>
0	20,600	29 cents for each dollar of taxable income
20,600	20,700	\$5,974 plus 34 cents for each dollar of taxable income in excess of \$20,600
20,700	35,000	\$6,008 plus 38.5 cents for each dollar of taxable income in excess of \$20,700

35,000	36,000	\$11,513.50 plus 42.5 cents for each dollar of taxable income in excess of \$35,000
36,000	50,000	\$11,938.50 plus 46.5 cents for each dollar of taxable income in excess of \$36,000
50,000		\$18,448.50 plus 47 cents for each dollar of taxable income in excess of \$50,000

Rates of tax and notional rates (section 12 of the Rates Act) for 1991-92 and subsequent financial years

By the operation of subclause 4(1) of the Bill that commences on 1 July 1991, the rate table in Part I of Schedule 7 to the Rates Act, to be inserted by clause 3 and to apply for 1990-91 (specifying the rates of tax for a resident taxpayer), will be replaced by the table set out in Schedule 2 to this Bill to apply for the 1991-92 and subsequent financial years. The new rates for resident individuals will be as follows:

For parts of taxable income

<u>exceeding</u> \$	<u>but not exceeding</u> \$	<u>Rate</u> %
0	5,400	NIL
5,400	20,700	21
20,700	36,000	38
36,000	50,000	46
50,000	-	47

Tax payable for the 1991-92 and subsequent financial years may be calculated from the following table:

For parts of taxable income

<u>exceeding</u> \$	<u>but not exceeding</u> \$	<u>Tax on total</u> <u>taxable income</u>
0	5,400	NIL

5,400	20,700	NIL plus 21 cents for each dollar of taxable income in excess of \$5,400
20,700	36,000	\$3,213 plus 38 cents for each dollar of taxable income in excess of \$20,700
36,000	50,000	\$9,027 plus 46 cents for each dollar of taxable income in excess of \$36,000
50,000		\$15,467 plus 47 cents for each dollar of taxable income in excess of \$50,000

The rate table in Part II of Schedule 7 to the Rates Act to be inserted by clause 3 to apply for 1990-91 sets out the rates of tax for non-resident taxpayers. By the operation of subclause 4(1) of the Bill that commences on 1 July 1991, this rate table will be replaced by the table set out in Schedule 2 to this Bill to apply for the 1991-92 and subsequent years :

Parts of taxable income

<u>exceeding</u>	<u>but not exceeding</u>	<u>Rate</u>
\$	\$	%
0	20,700	29
20,700	36,000	38
36,000	50,000	46
50,000	-	47

Tax payable by non-residents for the 1991-92 and subsequent years of income may be calculated from the following table:

Parts of taxable income

<u>exceeds</u> \$	<u>but not exceeding</u> \$	<u>Tax on total</u> <u>taxable income</u>
0	20,700	29 cents for each dollar of taxable income
20,700	36,000	\$6,003 plus 38 cents for each dollar of taxable income in excess of \$20,700
36,000	50,000	\$11,817 plus 46 cents for each dollar of taxable income in excess of \$36,000
50,000		\$18,257 plus 47 cents for each dollar of taxable income in excess of \$50,000

Subsection 12(2) of the Rates Act declares the notional rates for the purpose of calculating the averaging benefit or complementary tax under section 156 of the Income Tax Assessment Act 1936 (the "Assessment Act") for primary producers to whom the income averaging provisions of that Act apply. These notional rates are set out in Schedule 8 to the Rates Act. Subsection 12(6) declares, subject to sections 13 and 15, the rates payable by trustees assessed under section 98 of the Assessment Act on behalf of a beneficiary, or assessed under section 99 on accumulating income of certain trust estates. These rates are set out in Schedule 10 to the Rates Act.

Reference in Schedules 8 to 10 to the Rates Act, to \$5,100 - currently the tax-free threshold limit for resident individuals - will, by virtue of the operation of clause 3 and Schedule 1 to this Bill, be replaced with the revised tax-free threshold of \$5,250 to apply for assessments in respect of the 1990-91 year of income. This will affect the calculation of the notional rate in respect of certain trust income, and the rate payable by a trustee who is liable to be assessed and pay tax under section 99 in respect of certain income.

By clause 4 and Schedule 2 of the Bill, references in Schedules 8 to 10 to \$5,250 (the proposed 1990-91 tax-free threshold limit for resident individuals) and \$17650 (the upper limit of the first-step marginal tax rate for resident individuals) will be replaced with new limits

of \$5,400 and \$20,700 respectively. By the operation of subclause 4(2) these changes will apply to assessments in respect of the 1991-92 and subsequent years of income. This will affect the calculation of the notional rate in respect of certain trust incomes, and the rate payable by a trustee who is liable to be assessed and pay tax under section 99 in respect of certain income.

Clause 5 : Amendment of assessments

Clause 5 of the Bill authorises the Commissioner of Taxation to re-open an income tax assessment made before the Bill becomes law should this become necessary for the purposes of giving effect to the amendments proposed by Part 2 of the Bill.

PART 3 - AMENDMENTS OF THE INCOME TAX
ASSESSMENT ACT 1936 RELATING TO PROVISIONAL TAX

Introductory Note

Part 3 of the Bill will amend Subdivision A of Division 3 of Part VI of the Income Tax Assessment Act 1936 (the "Assessment Act") dealing with provisional tax.

The amendments specify the basis of calculating the amount of provisional tax payable for 1990-91 and for subsequent income years by provisional taxpayers who do not "self-assess" by seeking a variation of provisional tax for the relevant year of income.

The amendments of sections 221YA and 221YC of the Assessment Act and the insertion of new section 221YCAA will, in effect, incorporate the method of calculating provisional tax in the Assessment Act as a standing measure, applying for the calculation of the provisional tax payable for 1990-91 and for subsequent income years.

The amendments also propose that the uplift factor, applied to the preceding year's taxable income and to certain rebates and credits, for determining the provisional tax payable for an income year, be prescribed by regulation for the 1991-92 and subsequent income years. The uplift factor for 1990-91 is to be set by clause 13 of the Bill.

In previous years a measure for calculating provisional tax for the relevant year has been included in an amending Bill in each Budget sittings, but has not formed part of the Assessment Act. This has required the Parliament to consider largely repetitious rules each year. The new provisions will facilitate the calculation of provisional tax on a continuing basis from year to year, subject to any adjustment that may be necessary for a particular year and to the prescribing of the uplift factor.

The insertion of the standing measure for the calculation of provisional tax may safeguard against a repetition of the problem that occurred with the 1989-90 provisional tax legislation (the Income Tax Assessment Amendment Bill 1989) not being passed by the Parliament before it was dissolved in February 1990.

Other amendments will authorise the raising of provisional tax in respect of the 1990-91 and subsequent years of income, where the assessable income of the taxpayer in the year preceding the year for which the provisional tax is payable consists wholly of salary or wages. This change will apply only where two specific conditions are met.

Further, where the two conditions are met, the method of calculation of provisional tax payable for a year of income will be adjusted, whether the assessable income of the preceding year is comprised wholly, or partly, of salary or wages, to take account of the shortfall in the tax instalment deductions made from salary or wages in the preceding year.

Clause 6 : Principal Act

This clause provides for the Income Tax Assessment Act 1936 to be cited as the "Principal Act" in Part 3 of the Bill.

Clause 7 : Interpretation

Subsection 221YA(1) of the Principal Act defines certain terms used in Division 3 of Part VI (Provisional Tax) of the Principal Act. Clause 7 proposes the insertion of three new terms used in the proposed amendments of the Division by clauses 9 and 10.

"provisional tax uplift factor" is a term used in proposed new section 221YCAA to be inserted in the Principal Act by clause 10, and defines the percentage by which the preceding year's taxable income, and certain other components of the calculation, is to be increased in calculating the provisional tax payable by a taxpayer in respect of a year. The term means in relation to a year :

- (a) the percentage that is declared by the regulations to be the uplift factor for the year - not being a percentage exceeding 12 per cent; or
- (b) if no percentage is declared for the year, 10 per cent.

The upper limit in paragraph (a) of 12 per cent is the highest level at which the uplift factor has

been set since it has been used in the provisional tax calculation.

Clause 13 proposes that for the 1990-91 year of income the provisional tax uplift factor be 10 per cent.

"provisional tax uplift multiplier" is a term to be used in certain provisional tax anti-avoidance measures (refer Schedule 3, clause 11). In effect, the definition converts the provisional tax uplift factor into a multiplier for use in a formula.

"uplifted provisional tax amount" is defined for the purposes of the operation of new subsection 221YC(1) to be inserted in the Principal Act by clause 9, and has the meaning given by proposed new section 221YCAA to be inserted in the Principal Act by clause 10.

Clause 8: Certain employees to be subject to provisional tax

Clause 8 proposes to insert a new section - section 221YAB - in the Principal Act. Section 221YAB will effectively authorise the raising of provisional tax in respect of a taxpayer for a year of income where the assessable income of the taxpayer for the preceding year consists wholly of salary or wages (as defined in section 221A of the Principal Act). This will occur where the two conditions set out in paragraphs 221YAB(1)(a) and (1)(b) are satisfied in relation to a taxpayer for the year of income preceding the year for which provisional tax is to be payable.

Subsection 221YB(1) of the Principal Act outlines the purpose of Division 3 of Part VI of the Principal Act and limits the liability to pay provisional tax in accordance with the Division to a person deriving assessable income not being salary or wages. Proposed new subsection 221YAB(2) operating in conjunction with subsection (3) will, where section 221YAB applies to a taxpayer in relation to a year of income before the year for which provisional tax is to be payable, effectively remove the limitation so that provisional tax is payable where the assessable income consists wholly of salary or wages.

Subsection 221YAB(1) stipulates that section 221YAB applies where the two conditions set out in paragraphs (1)(a) and (1)(b) are satisfied in relation to a taxpayer for a year of income (called the "preceding year of income") that immediately preceded a particular year of income (the "current year of income"). Where section 221YAB applies, provisional tax will be payable even though the assessable income of the current year consists wholly of salary or wages.

Proposed paragraph (1)(a) outlines a condition that the amount calculated using the formula, Tax payable - Credited amounts, be not less than \$3,000 in the year of income preceding the year for which provisional tax is to be payable.

The component of the formula, Tax payable, is defined to mean the tax payable by a taxpayer in respect of the taxable income of the preceding year. In other words, the tax (including Medicare levy by the operation of subsection 251R(7) of the Principal Act) on the taxable income reduced by any rebates of tax. The term "tax payable" is exclusive of any additional tax (penalty) and any Higher Education Contribution debt. The term "taxable income" is exclusive of any net capital gains.

The other component of the formula, Credited amounts, lists the amounts to be credited or applied in reduction of the tax otherwise payable in respect of the preceding year. These credits are listed in subparagraphs (i) to (vii) of the term and include tax instalment deduction credit, provisional tax and prescribed payment credits and foreign tax credits.

Proposed paragraph (1)(b) outlines a condition that the amount calculated using the formula, (Notional gross tax - Qualifying rebates) - PAYE deductions, be not less than \$3,000 in the year preceding the year for which provisional tax is to be payable.

The element of a component of the formula, Notional gross tax, is the amount of tax (including Medicare levy) that would have been assessed in respect of the salary or wages (as defined in section 221A of the Principal Act) component of a taxpayer's assessable income of the year preceding the year of income for which provisional tax is to be payable. The amount of the salary or wages is exclusive of any of the amounts listed below that may have been received. Also, any rebate in the taxpayer's assessment is not taken into account. The receipts to be excluded are :

- (a) payments to which section 26AC of the Principal Act applies - amounts received on retirement or termination of employment in lieu of annual leave;
- (b) payments of a rebatable ETP annuity, or of a rebatable superannuation pension, in respect of which the taxpayer is entitled to a rebate under Subdivision 17 of Division 17 of Part III of the Principal Act;
- (c) eligible lump sums as defined in section 159ZR of the Principal Act - lump sum payments received on or after 1 July 1986 included in assessable income

that accrued, in whole or in part, in any earlier year of income;

- (d) payments included in assessable income by section 26AD of the Principal Act - amounts received on retirement or termination of employment in lieu of long service leave; and
- (e) eligible termination payments - payments covered by Subdivision AA of Division 2 of Part III of the Principal Act.

Another element of a component of the formula, Qualifying rebates, represents the sum of certain rebates allowed in the taxpayer's assessment of the preceding year, being the rebates generally claimable in the tax instalment deduction system to reduce the tax otherwise deductible from the salary or wages of an employee. That is, the concessional rebates for dependants (sections 159J, 159K and 159L), zone rebates (section 79A) and certain other rebates (sections 23AB and 79B).

The final component in the formula, PAYE deductions, is the sum of the tax instalment deductions, made under Division 2 of Part VI of the Principal Act (and credited under section 221H or 221K or applied under section 221Q of the Principal Act) from the salary or wages paid to the taxpayer in the preceding year.

Where the two conditions are met in respect of a taxpayer for a year of income, the situation of the taxpayer is :

- (a) the taxpayer has a balance to pay on assessment in respect of the year of \$3,000 or more; and
- (b) there was a shortfall of tax instalment deductions of \$3000 or more in the deductions required to be made under Division 2 of Part VI of the Principal Act from the salary or wages paid to the taxpayer during the year.

In this situation, subsections 221YAB(2) and (3) of new section 221YAB apply, for the purposes of the application of section 221YB of the Principal Act in creating a liability for provisional tax, so that so much of the assessable income of a taxpayer as consists of salary or wages is taken to be assessable income that is not salary or wages. That is, the composition of the person's assessable income satisfies the test in section 221YB, as assessable income not being salary or wages, and the person is liable to pay provisional tax.

The method of calculating provisional tax payable where section 221YAB authorises the payment of provisional tax on salary or wages is considered in the discussion of an amendment proposed to subsection 221YC(1A) of the

Principal Act by paragraph 9(b) of the Bill.

The effect of subsections 221YAB(2) and (3) in treating income in respect of a year of income as non-salary or wages, where the two conditions in subsection 221YAB(1) are met in respect of the preceding year of income, is to be applied also to subsection 221YDB(1) and paragraph 221YDB(1AA)(b) of the Principal Act.

Section 221YDB of the Principal Act imposes penalty on a taxpayer who underestimates taxable income in "self-assessing" provisional tax. The penalty is payable under subsection 221YDB(1), by taxpayers paying provisional tax other than by instalments, where a taxpayer's estimated taxable income, other than the part of it that represents salary or wages, is found on assessment to be less than 90 per cent of the taxpayer's taxable income, again excluding salary or wages. Subsection (1AA) imposes penalty where a taxpayer substantially under estimates his or her income in making an instalment estimate.

Where the conditions in proposed new section 221YAB are satisfied in respect of a taxpayer in the year preceding a year of income, and salary or wages is taken to be non-salary or wages assessable income, then the 90 per cent test in subsection 221YDB(1) and paragraph 221YDB(1AA)(b) will be determined on the basis of the total estimated taxable income and total taxable income of the taxpayer for the year of income.

It should be noted that subsection 221YAB(2) does not modify any references to salary or wages as the references apply for the provisions quantifying liability for penalty. Accordingly, any tax instalment deductions from salary or wages may be treated as:

- (a) "provisional tax payable in respect of the estimated taxable income" for the purposes of quantifying penalty under subsection 221YDB(1) - refer subsection 221YDB(1A); and
- (b) reducing the "tax payable" for the purposes of quantifying penalty under subsection 221YDB(1AA) - refer paragraph 221YDB(1AA)(d).

This operation of section 221YAB does not apply in relation to an estimate to vary provisional tax in respect of the 1990-91 year of income, where the estimate was furnished before the date of Royal Assent to this Bill (refer clause 14).

Under section 221YDA of the Principal Act a taxpayer may apply for a variation of the provisional tax that he or she has been called upon to pay in respect of a year of income. In an application for this purpose the taxpayer is required to estimate a number of matters for the year including the taxable income and the amount of tax

instalment deductions which have been and will be made under sections 221C and 221D of the Principal Act from the taxpayer's salary or wages during the year.

In calculating the revised provisional tax under subsection 221YDA(2), the Commissioner is required to estimate the amount of the tax instalment deductions that have been and will be made in the year. It is proposed to legislate for a penalty to apply where a taxpayer over-estimates the amount of any tax instalment deductions from salary or wages in an application to vary provisional tax.

By clause 12 of the Bill new section 221YAB will apply to the ascertainment of provisional tax (including instalments) for 1990-91 and for all subsequent years of income.

Clause 9 : Amount of provisional tax

Section 221YC of the Principal Act applies to ascertain the amount of provisional tax payable by a taxpayer in respect of a year of income.

Paragraph (a) of clause 9 proposes to omit existing subsections 221YC(1) and (1AA) of the Principal Act and substitute a new subsection (1). New subsection 221YC(1) states that (subject to Division 3 of Part VI of the Principal Act) the provisional tax payable by a taxpayer in respect of a year of income is the uplifted provisional tax amount of the taxpayer for the year. That is, the amount calculated under new section 221YCAA to be inserted in the Principal Act by clause 10 of the Bill.

Paragraph (b) proposes to amend subsection 221YC(1A) of the Principal Act to omit the word "included" and to substitute the words "consisted, in whole or in part, of".

The provisional tax payable under Division 3 of Part VI of the Principal Act is based on the taxable income (as uplifted) of the year of income preceding the income year for which the provisional tax is payable.

Where the assessable income of the preceding year included salary or wages, subsection 221YC(1A) of the Principal Act allows the Commissioner of Taxation to determine the provisional tax payable, being a part of the provisional tax otherwise payable under subsection 221YC(1).

The amendment of subsection 221YC(1A) by paragraph 9(b) of the Bill proposes to allow the Commissioner to determine the provisional tax payable (being a part of the provisional tax otherwise payable) where the assessable income of the preceding year consisted, in whole or in part, of salary or wages.

In the application of subsection 221YC(1A) of the Principal Act, the Commissioner reduces the provisional tax otherwise payable by an amount equal to the tax on the salary or wages component (using the rate scale for the provisional year and making a reduction for certain rebates of tax). In effect, the reduction is an estimate of the tax instalment deductions that would be expected to be made during the provisional year from the salary or wages by an employer - thus relieving the necessity for provisional tax to also be payable on the income in respect of the year.

Where the two conditions set out in new section 221YAB (proposed to be inserted in the Principal Act by clause 8 of the Bill) are met, and provisional tax will be payable on assessable income that consists wholly of salary or wages, the Commissioner will change the method of reducing the provisional tax otherwise payable, using the authority given by subsection 221YC(1A). The change will also be made where the two conditions are met and the assessable income of the preceding year consisted in part of salary or wages.

The amount now deducted from the provisional tax otherwise payable to account for the tax on the salary or wages component of the assessable income will be reduced, reflecting the shortfall in tax instalment deductions in the preceding year. The new method of calculation will thus take account of the fact that, on the practice of the preceding year, it can be presumed there will be a shortfall in the tax instalment deductions made from the salary or wages to be received during the year for which provisional tax is payable.

The relevant amount otherwise given as a reduction of the provisional tax payable will be reduced in the proportion that the total tax instalment deductions actually made from salary or wages in the preceding year bears to the tax calculated as payable on those salary or wages (as adjusted) in the preceding year. The adjustment will be in the same proportion that the component "PAYE deductions" of the formula in proposed new paragraph 221YAB(1)(b) bears to the amount of the other component of the formula, Notional gross tax - Qualifying rebates (refer clause 8).

Where no tax instalment deductions are made from the salary or wages in the preceding year, there will, of course, be no reduction available in the provisional tax calculation for tax on the salary or wages.

Taxpayers who consider that the adjustment made in the calculation of provisional tax, for the salary or wages in the assessable income of the preceding year, does not reflect the level of tax instalments that will be deducted from the salary or wages in the provisional year may seek a variation of the provisional tax payable.

In considering the amendment by paragraph 9(b) of the Bill reference should also be made to the new section 221YAB to be inserted in the Principal Act by clause 8 of the Bill. Some examples illustrating the operation of the new provisions are set out below.

Example 1

- . Taxpayer A derives assessable income of \$45,000, including \$25,000 salary or wages, during 1989-90.
- . Tax instalment deductions of \$500 were made from the \$25,000 salary or wages - the provisional tax credit is \$8,500.
- . Taxpayer A has a wholly dependent spouse - rebate \$1,000 in 1989-90 and \$1,080 in 1990-91.

Consideration of the two conditions in section 221YAB (refer clause 8) and the operation of subsection 221YC(1A) (refer clause 9).

A. Paragraph 221YAB(1)(a)
[Tax payable - Credited amounts]

<u>Tax payable</u> on \$45,000, including Medicare levy, at 1989-90 rates	\$14,369	
<u>less spouse rebate</u>	\$ 1,000	<u>\$13,369</u>
<u>Credited amounts</u> (\$500 + \$8,500)		<u>\$ 9,000</u>
Formula : \$13,369 - \$9,000		
<u>Excess</u>	=	<u>\$ 4,369</u>

Paragraph 221YAB(1)(b)

[(Notional gross tax - Qualifying rebates)
- PAYE deductions]

<u>Notional gross tax</u> , including Medicare levy, at 1989-90 rates on salary or wages of \$25,000		<u>\$ 5,519</u>
<u>Qualifying rebates</u>		
spouse rebate for 1989-90		<u>\$ 1,000</u>
<u>PAYE deductions</u> from salary or wages during 1989-90		<u>\$ 500</u>

Formula :
 (\$5,519 - \$1,000) - \$500

Excess = \$ 4019

B. 1990-91 provisional tax

Taxable income uplifted by 10%
 \$45,000 + \$4,500 = \$49,500

Tax on \$49,500, including
 Medicare levy, at 1990-91 rates \$16,198

Reduction allowed, by authority
 of subsection 221YC(1A), for
 salary or wages component of
 the assessable income:

Tax on \$27,500 salary
 or wages (as uplifted),
 including Medicare levy,
 at 1990-91 rates

\$6,333

less spouse rebate \$1,080

Amount previously deducted
 under subsection 221YC(1A)
 from provisional tax
 otherwise payable \$5,253

Adjusted amount to be
 deducted

= \$5,253 x $\frac{\$ 500}{\$4,519}$ = \$ 581

Provisional tax payable for
 1990-91

Tax on uplifted income \$16,198

less . spouse rebate for 1990-91
 . adjustment for salary
 or wages
 (\$1,080 + \$581)

\$ 1,661

Provisional tax \$14,537

Example 2

- . Taxpayer B derives assessable income of \$45,000,
 being all salary or wages, during 1989-90.
- . Tax instalment deductions of \$3,500 were made from
 the salary or wages
- . Taxpayer B has a wholly dependent spouse - rebate
 \$1,000 in 1989-90 and \$1,080 in 1990-91.

Consideration of the two conditions in section 221YAB
(refer clause 8) and the operation of subsection 221YC(1A)
(refer clause 9)

A.	<u>Paragraph 221YAB(1)(a)</u> [Tax payable - Credited amounts]		
	<u>Tax payable</u> on \$45,000, including Medicare levy, at 1989-90 rates	\$14,369	
	<u>less spouse rebate</u>	<u>\$ 1,000</u>	<u>\$13,369</u>
	<u>Credited amounts</u>		<u>\$ 3,500</u>
	Formula : \$13,369 - \$3,500		
	<u>Excess</u>	=	<u>\$ 9,869</u>
	<u>Paragraph 221YAB(1)(b)</u>		
	[Notional gross tax - Qualifying rebates] - PAYE deductions]		
	<u>Notional gross tax</u> , including Medicare levy, at 1989-90 rates on salary or wages of \$45,000		<u>\$14,369</u>
	<u>Qualifying rebates</u> Spouse rebate for 1989-90		<u>\$ 1,000</u>
	<u>PAYE deductions</u> from salary or wages during 1989-90		<u>\$ 3,500</u>
	Formula : (\$14,369 - \$1,000) - \$3,500		
	<u>Excess</u>		<u>\$ 9,869</u>
B.	<u>1990-91 Provisional Tax</u>		
	Taxable income uplifted by 10%, \$45,000 + \$4,500	=	\$49,500
	Tax on \$49,500, including Medicare levy, at 1990-91 rates		<u>\$16,198</u>
	Reduction allowed, by authority of subsection 221YC(1A), for salary or wages component of the assessable income :		

Tax on \$49,500 salary or wages (as uplifted), including Medicare levy, at 1990-91 rates	\$16,198
<u>less</u> spouse rebate	<u>\$ 1,080</u>
	<u>\$15,118</u>
Reduction to be made = \$15,118 x $\frac{\$ 3,500}{\$13,369}$	= <u>\$ 3,958</u>

Provisional tax payable for 1990-91

Tax on uplifted income	\$16,198
<u>less</u> . spouse rebate for 1990-91 . adjustment for salary or wages (\$1,080 + \$3,958)	<u>\$ 5,038</u>
Provisional tax	<u>\$11,160</u>

Clause 10 : Uplifted provisional tax amount

Clause 10 proposes the insertion of a new section - section 221YCAA - in the Principal Act.

New subsection 221YCAA(1) provides for two methods to calculate the uplifted provisional tax amount of a taxpayer for a year of income - the amount of provisional tax payable in accordance with new subsection 221YC(1) (refer clause 9). Paragraph (1)(a) states that where a taxpayer's provisional income (as defined in section 221YA of the Principal Act) for the current year of income (i.e., the year for which the provisional tax is payable) is equal to the taxpayer's taxable income of the year preceding the current year, the taxpayer's uplifted provisional tax amount for the current year is to be the basic uplifted provisional tax amount worked out under proposed subsection 221YCAA(2). Paragraph (1)(b) states that in any other case the taxpayer's uplifted provisional tax amount for the current year of income is to be the adjusted uplifted provisional tax amount worked out under proposed subsection 221YCAA(3).

By subsection 221YCAA(2) the basic uplifted provisional tax amount of a taxpayer for a year of income is to be calculated for the purposes of paragraph (1)(a) by using the formula :

Adjusted preceding year's tax - Qualifying reductions

The component "Adjusted preceding year's tax" in respect of a year of income (the "current year") is defined to mean the amount of income tax that would have been assessed in respect of the amount that would have been the taxpayer's taxable income of the next preceding year if certain adjustments were made. These adjustments listed in paragraphs (a) to (k) are discussed below.

Provisional tax for a current year of income is to be calculated by applying the rates of tax (without regard to the arrangements for the pro-rating of the tax-free threshold) and Medicare levy applicable for the year to the preceding year's taxable income increased by the provisional tax uplift factor (refer section 221YA, as amended) for the current year (10 per cent for 1990-91).

Where an amount of net capital gain has been included in the preceding year's assessable income by virtue of Part IIIA of the Principal Act, the provisional tax for the current year will be calculated by reference to the amount that would have been the taxable income for the preceding year if the net capital gain had not been included in the assessable income for that year.

Where an amount of income tax or Medicare levy was payable in the preceding year, an amount representing Medicare levy for the current year (the provisional year) is to be incorporated in the provisional tax calculation. In these situations the Medicare levy component of provisional tax will be calculated by applying the current year's Medicare levy rate (1.25 per cent for 1990-91) to the preceding year's taxable income as increased by the provisional tax uplift factor (10 per cent for 1990-91). Any increased low income thresholds to apply for levy purposes in the current year will be taken into account. In addition, wherever a part or full exemption from levy was obtained by an individual in the preceding year's assessment, the same exemption will be provided in the calculation of levy for current year provisional tax purposes.

For taxpayers deriving a notional income as specified by section 59AB (depreciation recouped) or section 86 (lease premiums) of the Principal Act, provisional tax, before deduction of rebates, is to be calculated by applying to the preceding year's taxable income increased by the provisional tax uplift factor, the current year's rate of tax applicable to the preceding year's notional income.

Taxpayers who are under 18 years of age at 30 June of a year of income may be liable for tax for that year under the special provisions applying to minors if, in the case of a non-resident, the minor had any eligible taxable income for the purposes of Division 6AA of Part III of the Principal Act for that year or if, in the case of a resident, that eligible taxable income exceeds \$416. For

the purposes of the provisional tax calculation for a current year of income, the portion of a minor's taxable income, as increased by the provisional tax uplift factor for that year, that is to be taken as eligible taxable income is to be in the same proportion as that which the preceding year's eligible taxable income of the taxpayer bore to his or her taxable income for the current year.

Where the preceding year's eligible taxable income of a taxpayer to whom the provisions of Division 6AA of Part III of the Principal Act applied included a net capital gains amount, the eligible taxable income for that year is, for the purposes of the calculation of provisional tax for the current year, to be adjusted to the amount that would have been the taxpayer's eligible taxable income if that net capital gains amount had not been included in the preceding year's assessable income.

In respect of a taxpayer who is an eligible person for the purposes of Division 16A of Part III of the Principal Act - that is, an artist, composer, inventor, performer, production associate, sports person or writer entitled to income averaging - the provisional tax liability is to be calculated on the basis that the taxpayer's eligible taxable income for the purposes of section 158H of the Principal Act is increased by the provisional tax uplift factor for the current year (i.e., 10 per cent for 1990-91).

For primary producers who do not "self-assess", subsection 221YCAA(2) will require that, for provisional tax purposes, any averaging rebate to which the primary producer is entitled is to be recalculated using the preceding year's taxable income increased by the provisional tax uplift factor for the current year. The rates of tax for the current year will be applied in the calculation on the basis of the average income used for the preceding year's assessment purposes. Average income will not be recalculated to reflect the notional increase in taxable income for provisional tax purposes.

A primary producer may qualify for a partial averaging benefit in the preceding year of income because his or her income other than from primary production in that year exceeded \$5,000. In such a case new subsection 221YCAA(2) will ensure that the proportion of the averaging adjustment - the same proportion as income from primary production bears to total taxable income - to be taken into account in calculating the current year's provisional tax is the same as the preceding year's proportion. That is, it is not to be reduced to reflect the notional increase, by the uplift factor, in income other than from primary production.

The component "Qualifying reductions" is defined to mean the sum of the rebates and credits detailed in paragraphs (m) to (r). They are discussed below.

With the exception of the rebates of tax and credits discussed below, rebates and credits in respect of the year for which the provisional tax liability is to be calculated (the current year) are to be taken into account as allowed in the assessment for the preceding year.

For taxpayers who were allowed rebates in their preceding year's assessment for a dependent spouse, daughter-housekeeper, invalid relative, parent or parent-in-law (section 159J of the Principal Act), a housekeeper (section 159L) or as a sole parent (section 159K), subsection 221YCAA(2) will require provisional tax for the current year to be calculated after adjusting the rebates on the basis of the increase in the level of rebates to be allowed in the current year because of the operation of section 159HA of the Principal Act.

Adjustments will also be made to any rebate allowed in the preceding year's assessment because the taxpayer is a resident in an isolated area (section 79A of the Principal Act), is a Defence Force member serving overseas (section 79B) or is a civilian serving with the United Nations (section 23AB). The provisional tax will be calculated after increasing any such rebate by 20 per cent of the adjustment made to the taxpayer's concessional rebate claim in the preceding year, as discussed in the previous paragraph.

For taxpayers entitled to a rebate of tax in respect of franked dividends received during the preceding year, new subsection 221YCAA(2) will require that, for the current year's provisional tax calculation, those rebates will be increased by the provisional tax uplift factor (10 per cent for 1990-91, as per clause 13 of the Bill).

Foreign tax credits allowed in a preceding year will be uplifted by the provisional tax uplift factor for the current year calculation.

Subsection 221YCAA (3) establishes the amount of the adjusted uplifted provisional tax amount for the purposes of paragraph (1)(b) where subsection 221YA(5) of the Principal Act applies to the taxpayer. Subsection 221YA(5) adjusts the taxable income of a taxpayer for the purposes of the application of the definition of "provisional income" where the Income Equalisation Deposit scheme applies to the taxpayer or the taxpayer obtains deductions for capital moneys expended in producing a qualified Australian film or for subscriptions to shares in licensed management and investment companies.

Clause 11 : Amendments relating to the provisional tax uplift factor

Clause 11 proposes consequential amendments to sections 221YHAAC and 221YHAAD of the Principal Act as set

out in Schedule 3 to the Bill. Sections 221YHAAC and 221YHAAD are part of the anti-avoidance measures which operate to overcome arrangements using family partnerships or family trusts by which partners or beneficiaries could avoid or reduce liability for provisional tax.

Subsection (2) of each of sections 221YHAAC and 221YHAAD sets out and quantifies what is to be regarded as the obtaining of a provisional tax benefit under an arrangement. In quantifying the benefit, account is taken of a taxpayer's share of relevant partnership or trust income of the year preceding the year in which the taxpayer is determined to have received a provisional tax benefit. In the calculations, the preceding year's income is to be uplifted by a factor "U", which is the provisional tax uplift multiplier for the year of income (refer clause 7) in which the provisional tax benefit is to be determined.

The provisional tax uplift multiplier will equate to the provisional tax uplift factor for the year of income (as defined in section 221YA - refer clause 7) plus 1. As mentioned in the notes to clause 7, this Bill will provide for the provisional tax uplift factor to be prescribed by regulation for 1991-92 and subsequent years. For 1990-91 the uplift factor is to be 10 per cent.

Following the determination of the provisional tax uplift factor for a year of income (by regulation or otherwise), the use of the component "U" (the provisional tax uplift multiplier) in the formulae in each of sub-subparagraphs 221YHAAC(2)(e)(i)(A), (ii)(A) and (iii)(A) and subparagraph 221YHAAD(2)(e)(iii) of the Principal Act will result in the effect of the uplift factor for the year of income automatically being incorporated into the formulae.

Clause 12 : Application of amendments

This clause contains the application provision relevant to the amendments made by Part 3 of the Bill.

By clause 12 the amendments made by Part 3 apply for the ascertainment of provisional tax (including instalments) payable for the 1990-91 year of income and for all subsequent years.

Clause 13 : Transitional - provisional tax uplift factor for 1990-91

This clause provides that in spite of any of the amendments to Division 3 of Part VI of the Principal Act made by this Bill, the provisional tax uplift factor for the 1990-91 year of income will be 10 per cent.

Clause 14 : Transitional - penalties under section 221YDB of the amended Act

This clause is relevant to the application of proposed new section 221YAB to be inserted in the Principal Act by clause 8 of the Bill. The clause will ensure that section 221YAB, as it applies in respect of subsection 221YDB(1) or paragraph 221YDB(1AA)(b) of the Principal Act, does not have retrospective application.

INCOME TAX AMENDMENT BILL 1990

This Bill will amend the Income Tax Act 1986 to formally impose - at the rates declared by the Income Tax Rates Act 1986, as amended by the Taxation Laws Amendment (Rates and Provisional Tax) Bill 1990 - the tax payable for the 1990-91 financial year and, until the Parliament otherwise provides, the 1991-92 financial year.

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

Clause 1 : Short title etc.

By subclause (1), the amending Act is cited as the Income Tax Amendment Act 1990.

Subclause (2) facilitates references to the Income Tax Act 1986, which in the Bill, is referred to as the "Principal Act".

Clause 2 : Commencement

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

Clause 3 : Levy of Tax

Clause 3 will amend section 7 of the Principal Act which operates to formally levy the tax imposed by section 5 of the Act. By this clause, paragraph 7(a) of the Principal Act will be extended so that tax, at the rates declared by the Income Tax Rates Act 1986, is to be levied and payable for the 1990-91 financial year. Following this amendment, paragraph 7(b) of the Principal Act will operate so that tax will be levied and payable for the 1991-92 financial year, until the Parliament otherwise provides.

MEDICARE LEVY AMENDMENT BILL 1990

This Bill will amend the Medicare Levy Act 1986 to impose Medicare levy for the 1990-91 financial year and, until the Parliament otherwise provides, the 1991-92 financial year. The Bill will also increase the level of the income thresholds below which levy is not payable.

Clause 1 : Short title etc.

By subclause (1), the amending Act is cited as the Medicare Levy Amendment Act 1990.

Subclause (2) facilitates references to the Medicare Levy Act 1986 which in the Bill is referred to as the "Principal Act".

Clause 2 : Commencement

This clause provides for the amending Act to commence on the day on which it receives the Royal Assent. But for this clause, subsection 5(1A) of the Acts Interpretation Act 1901 would bring it into operation on the twenty-eighth day after the date of Assent.

Clause 3 : Amendment of Principal Act

By clause 3 the Principal Act is to be amended as set out in the Schedule. The particular amendments are discussed below.

Levy in Cases of Small Incomes (section 7)

Section 7 of the Principal Act gives relief from Medicare levy to taxpayers on low incomes and phases in the levy for those taxpayers with taxable incomes that exceed the threshold below which no levy is payable.

The Schedule proposes amendments of subsections 7(1) and (2) of the Principal Act to omit the references therein to \$10,330 and to substitute references to \$11,745. As a consequence of the amendment of subsection 7(1), a taxpayer whose taxable income is \$11,745 or less will not be required to pay Medicare levy in the 1990-91 financial year.

An amendment of subsection 7(2) proposes to omit a reference to \$11,018 and to insert a reference to \$12,528. The levy for a taxpayer whose taxable income exceeds \$11,745 but does not exceed \$12,528 will be limited to 20 per cent of the excess of the taxable income over \$11,745.

By clause 4 of the Bill the amendments to section 7 of the Principal Act apply for the financial years commencing on or after 1 July 1990.

The amount of levy ascertained in this way is further reduced by any reduction to which the person is entitled by reason of the family income threshold provisions in section 8 of the Principal Act, or because the taxpayer is exempt from payment of the levy for part of the year of income (section 9 of the Principal Act).

Amount of Levy - Person who has Spouse or Dependants
(section 8)

Section 8 of the Principal Act grants full relief from Medicare levy in respect of a year of income to a person who has a family if two conditions are satisfied :

- . the person is married or is de facto married (as defined) on the last day of the year of income or the person is entitled to a rebate in his or her assessment in respect of the year of income for a daughter-housekeeper or a housekeeper or as a sole parent; and
- . the family income of the person in respect of the year of income (i.e., the taxable income of the person plus that of his or her spouse, if any) does not exceed the family income threshold in relation to the person.

By the Schedule, the basic level of the "family income threshold" for a taxpayer - defined in subsection 8(5) of the Principal Act - is to be increased from \$17,400 to \$19,045. The level of that threshold in a year of income will continue to be increased by a further \$2,100 for each dependent child or student in respect of whom the taxpayer or spouse, if any, would have been entitled to an income tax dependant rebate in that year if those rebates had not been discontinued.

The amendment proposed by the Schedule to a component of the formula in subsection 8(2) of the Principal Act will ensure the continued operation of that subsection, and subsections (3) and (4), in shading-in the amount of Medicare levy payable by a couple, or a sole parent, where the couple or sole parent is not entitled to exemption from levy by subsection (1), because the family income exceeds the family income threshold by a small or moderate amount. The formula limits the levy payable by a taxpayer (before any reduction under section 9 to which the taxpayer is entitled as a part year prescribed person) to 20 per cent of the excess of the family income over the family income threshold.

The Schedule also proposes an amendment to subsection 8(6) of the Principal Act to account for the increase in the basic level of the family income threshold to \$19,045.

Financial years for which Levy is Payable (section 11)

By the amendment proposed to paragraph 11(a) of the Principal Act, the Medicare levy - imposed by section 5 of the Principal Act - is payable for the 1990-91 financial year. Following this amendment, paragraph 11(b) of the

Principal Act will operate so that Medicare levy will be payable for the 1991-92 financial year, until the Parliament otherwise provides.

Clause 4 : Application of threshold amendments

By this clause the amendments to sections 7 and 8 of the Principal Act will apply for financial years commencing on or after 1 July 1990.

