

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO. 3) 1989

EXPLANATORY MEMORANDUM

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

GENERAL OUTLINE

This Bill will amend :

- . the Income Tax Assessment Act 1936 -
 - .. to repeal a number of provisions that are no longer operative and make other changes consequential upon those repeals.
 - .. to tax gains and allow a deduction for losses on the disposal or redemption of traditional securities, such transactions to be excluded from the capital gains and losses provisions;
 - .. to broaden the exemption from the capital gains and capital losses provisions for a taxpayer's sole or principal residence to include any legal or equitable estate or interest in a dwelling or a licence or right to occupy a dwelling (proposal announced on 22 November 1988);
 - .. to exempt from income tax periodical payments of maintenance (currently only exempt when received by a wife or former wife) received by a spouse, former spouse, de facto spouse, former de facto spouse or by or on behalf of a child;
 - .. to deny a deduction (currently only denied for a male taxpayer) for expenditure or payments in respect of maintenance by a taxpayer of his or her spouse, de facto spouse or a family member under 16 years of age;
 - .. to make consequential amendments to the provisions taxing the unearned income of minors following a change to the Social Security Act 1947 to replace the "handicapped child's allowance" with a "child disability allowance";
 - .. to increase from \$260 to \$262 the rebate of tax (and increase the income level above which it shades out) available to single taxpayers wholly or mainly dependent on social security unemployment, sickness or special benefits, Formal Training Allowances or certain Commonwealth educational allowances for the 1988-89 and subsequent income years;

- .. to allow income tax deductions for gifts to :
 - the Australian Ireland Fund;
 - funds for the relief of persons affected by recent earthquakes in the Armenian Soviet Socialist Republic (proposal announced on 16 December 1988);
- .. to correct a technical deficiency in relation to the grant of tax sparing by regulations under the foreign tax credit system;
- . the Taxation Administration Act 1953 -
 - .. to permit the Commissioner of Taxation to provide certain law enforcement agencies with taxation information and to restrict the use that may be made of the information;
 - .. to permit the Commissioner of Taxation to disclose information acquired under a taxation law to the Comptroller-General of Customs;
- . the Fringe Benefits Tax Assessment Act 1986 -
 - .. to correct a minor technical error in the Taxation Laws Amendment Act (No.4) 1988 in provisions relating to remote area housing benefits;

The Bill will also repeal :

- . the Income Tax (Drought Bonds) Act 1969;
- . the Loan (Drought Bonds) Act 1969;
- . the Taxation of Loans Act 1923,

and make consequential amendments to other Acts.

FINANCIAL IMPACT

The changes to the taxation of financial securities will result in a small but unquantifiable gain to revenue.

The measures which extend the principal residence exemption should result in a negligible cost to revenue.

The cost to revenue of the amendments in respect of maintenance payments is estimated to be \$100,000 per annum for 1988-89 and subsequent years.

The revenue cost of increasing the level of the beneficiary rebate for single taxpayers is estimated at \$200,000 in 1989-90.

The revenue cost of extending the income tax gift provisions to admit funds for the relief of persons affected by recent earthquakes in the Armenian Soviet Socialist Republic is estimated to be \$500,000 in 1989/90. Admission of the Australian Ireland Fund will cost about \$50,000 in a full financial year.

Other amendments proposed by the Bill will have negligible revenue impact.

MAIN FEATURES

The main features of this Bill are as follows :

Redundant Acts and provisions (Part 7 and Schedule 1)

The Bill proposes the repeal of a large number of redundant provisions of the Income Tax Assessment Act 1936, and of some Acts that were related to the operation of that Act and that are now also redundant. Numerous consequential amendments are also proposed.

Taxation of traditional securities (Clauses 10, 11, 13 and 18)

This Bill will exclude from the capital gains and capital losses provisions of the income tax law gains or losses on the disposal or redemption of traditional securities acquired by a taxpayer after the date of introduction of the Bill.

The Bill will include in the law specific provisions to tax gains on the disposal or redemption of traditional securities.

Under the existing law, certain gains and losses arising on the disposal or redemption of traditional financial securities are dealt with in accordance with the capital gains and capital losses provisions of Part IIIA of the Income Tax Assessment Act 1936. These provisions operate where traditional securities are acquired after 19 September 1985. The amendments will exclude traditional financial security transactions from Part IIIA where the security is acquired after the date of introduction of this Bill.

Traditional securities acquired after the date of introduction of this Bill will be dealt with in accordance with new provisions. Broadly, gains on such securities will be included as assessable income and losses will be

allowable as a deduction. Interest payable in relation to traditional securities will continue to be taxable in accordance with the provisions of section 25 of the Income Tax Assessment Act 1936.

Traditional securities are defined in the Bill as, broadly, securities in the form of debentures, bonds and other loans that do not have a deferred interest element. Generally, they include those securities that do not fall within Division 16E of the Income Tax Assessment Act 1936. Shares in the issued capital of a company are outside the definition of securities. The amendments will not effect the exemption from tax under section 23E for the redemption of Special Bonds nor will they apply to any prescribed securities within the meaning of section 26C or where a security is trading stock of a taxpayer.

Principal Residence Exemption
(Clauses 19 and 22)

The existing law excludes from the operation of the capital gains tax provisions a capital gain or capital loss on the disposal of a dwelling owned by a taxpayer to the extent that it was used as his or her sole or principal residence. This exemption is available only where the dwelling is owned under certain specified forms of title i.e. an estate in fee simple, a lease in perpetuity, a lease for a term of at least 99 years, a Crown lease, or via a share in a company carrying entitlement to occupy a flat or home unit in a building owned by the company under such a form of title.

The amendment proposed by clause 19 of the Bill will extend the scope of the principal residence exemption to cover a legal or equitable estate or interest in land on which a dwelling is erected, a licence or right to occupy a dwelling, or a share in a company that confers a right to occupy a flat or home unit in a building owned by the company under a legal or equitable estate or interest. Examples of assets that will now be subject to the principal residence exemption include rights or licences to occupy units in retirement homes and any form of residential leases.

The Bill also proposes a consequential amendment to the existing provisions under which the exemption extends (for up to four years) to vacant land acquired by a taxpayer on which a dwelling is subsequently constructed and becomes the taxpayer's sole or principal residence. Exemption is currently not available for a period during which the taxpayer or his or her spouse owned another dwelling occupied as the sole or principal residence of either of them.

The extension of the concept of 'ownership' of a dwelling to include a licence or right of occupation would have precluded the principal residence exemption from applying to vacant land on which a dwelling is constructed where the taxpayer had a licence or right to occupy another dwelling. To prevent this occurring the requirement that the taxpayer or his or her spouse not own another dwelling will be removed. However, to obtain the exemption for vacant land on which a dwelling is subsequently constructed the taxpayer will now be required to make an election. Where the election is made, no other dwelling will qualify as the taxpayer's sole or principal residence.

These amendments will apply from 20 September 1985 when application of the capital gains tax provisions commenced.

Clause 22 of the Bill contains transitional measures to preserve any entitlement to a capital loss where a dwelling was acquired by a taxpayer after 19 September 1985 and disposed of before 22 November 1988.

Maintenance payments
(Clauses 9, 12 and 20)

At present, periodical payments of maintenance are exempt from income tax when received from a husband or former husband. This Bill will extend the exemption to payments received from a wife or former wife, or by a person from a de facto spouse or former de facto spouse. The amendments will also ensure that periodical payments of child maintenance received by or on behalf of a child will be exempt from tax. The exemption will not apply if that the payer has divested himself or herself of an income producing asset or diverted otherwise taxable income in order to make the maintenance payment.

A consequential amendment will ensure that an income tax deduction is denied for expenditure or payments in respect of the maintenance of a spouse, a defacto spouse or a family member under 16 years.

The exemption of periodical payments of maintenance will apply to payments received on or after 1 July 1988. The amendment that denies a deduction for expenditure or payments in respect of maintenance will apply to payments made on or after the date on which the amending Act receives Royal Assent.

Minors in receipt of child disability allowance
(Clauses 15, 20 and 21)

The Bill will amend Division 6AA of Part III of the Principal Act which sets out the rules for taxing the unearned income of certain minors which is subject to the maximum marginal rate of personal tax.

The amendment will take account of a change in the Social Security Act 1947 whereby an allowance is now payable to a child who satisfies the definition of a disabled child in place of the allowance previously paid in respect of a handicapped, or severely handicapped, child.

Division 6AA does not apply to income received by a child in a year of income in respect of whom a handicapped child's allowance under the Social Security Act 1947 is payable in respect of a period that included the last day of the year of income and who is the subject of a medical certificate certifying the child to be a handicapped child, or a severely handicapped child, within the meaning of Part XII of that Act.

The amendments will insert new references in Division 6AA to account for the payment of an allowance to a disabled child, as defined in the Social Security Act 1947.

They will have effect for the 1987-88 and subsequent income years as payments of the new allowance under the Social Security Act began on 15 November 1987.

Beneficiary Rebate
(Clauses 16 and 20)

The Bill proposes to increase for 1988-89 and subsequent income years the maximum rebate of tax, and the income level above which the rebate shades-out, for taxpayers, other than married (including de facto married) taxpayers, in receipt of a social security unemployment, sickness or special benefit, a Formal Training Allowance or an allowance paid under certain Commonwealth educational schemes. The rebate will increase from \$260 to \$262 and will shade-out at the rate of 12.5 cents for each dollar of taxable income in excess of \$6192, so that no rebate will be available where taxable income exceeds \$8287.

Gifts
(Clause 14)

The Bill will give effect to the proposal announced on 16 December 1988 to authorise deductions for gifts of the value of \$2 or more made to a public fund established or maintained exclusively for the relief of persons affected by the earthquakes in the Armenian Soviet Socialist Republic. Gifts made for the relief of persons affected by the earthquakes will qualify for deduction where made between 8 December 1988 and 30 June 1989.

The Bill will also admit the Australian Ireland Fund to the gift provisions so that gifts made to the Fund after 9 May 1989 will qualify for deduction.

Tax sparing
(Clause 17)

A technical amendment is to be made to section 160AFF of the Income Tax Assessment Act 1936 which authorises the making of regulations so as to grant a foreign tax credit in respect of tax forgone by a developing country under a development incentive. The amendment will permit such tax sparing regulations to apply from the commencement of the 1987/88 income year rather than from 1 July 1987 to meet cases where a taxpayer has adopted for the 1987/88 income year a substituted accounting period that commenced before 1 July 1987.

Use of taxation information
(Part 5)

Law Enforcement Agency access to taxation information

The Taxation Administration Act 1953 will be amended to allow the Commissioner of Taxation to provide taxation information relating to serious offences to certain law enforcement agencies, and to restrict the use that may be made of the information.

The amendments will permit the Commissioner at his discretion to provide the information if he is satisfied that the information is relevant to determining whether a serious offence - that is an indictable offence - has been or is being committed or is relevant to proceeds of crime proceedings.

Taxation sourced information provided under these amendments may be used for investigation purposes but cannot be used as evidence in a court for non tax prosecutions, except in relation to a proceeds of crime order where a person has been convicted of a serious offence. Information concerning a person convicted of a serious offence is to be available for use as evidence in post-conviction confiscation and restraining order proceedings under the Proceeds of Crime Act 1987, corresponding State and Territory legislation or under Division 3 of Part XIII of the Customs Act 1901.

The Commissioner's decisions whether to provide information to a law enforcement agency are to be outside the review procedures of the Administrative Decisions (Judicial Review) Act 1977.

The Commissioner will be required to specify in his Annual Report to the Parliament the number of requests for information received from each law enforcement agency and the number of occasions on which information has been provided.

Australian Customs Service access to taxation information

The Taxation Administration Act 1953 will be amended to allow the Commissioner of Taxation to disclose information acquired under a taxation law to the Comptroller-General of Customs. There is already authority to do this in relation to information acquired under the sales tax laws.

Australian Customs Service officers who receive taxation information will only be permitted to communicate such information to persons, authorities or courts and administrative bodies, as may be necessary for the purpose of carrying into effect provisions of the customs and excise laws.

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

PART 1 - PRELIMINARY

Clause 1 : Short title

This clause provides for the amending Act to be cited as the Taxation Laws Amendment Act (No.3) 1989.

Clause 2 : Commencement

Subject to subclause 2(2), the amending Act is, by subclause 2(1), 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 after the date of Assent.

Subclause (2) provides that Part 6 of this Bill is to be taken to have come into operation immediately after the Royal Assent was given to the Taxation Laws Amendment Act (No.4) 1988. The background to this subclause - which is of a purely technical nature - is explained in the notes on clause 30 of this Bill.

PART 2 - AMENDMENT OF THE ADMINISTRATIVE
DECISIONS (JUDICIAL REVIEW) ACT 1977

Clause 3 : Principal Act

This clause facilitates reference to the Administrative Decisions (Judicial Review) Act 1977 which, in Part 2, is referred to as "the Principal Act".

Clause 4 : Schedule 1

This clause will include in the schedule of decisions that are outside the scope of review under the Principal Act decisions of the Commissioner of Taxation regarding the communication of taxation information to certain law enforcement agencies. Certain law enforcement agencies, by amendments contained in clause 28 (proposed section 3E of the Taxation Administration Act 1953) of this Bill - see notes on that clause - are in specified circumstances to be permitted to receive taxation information from the Commissioner of Taxation.

PART 3 - AMENDMENT OF THE FRINGE BENEFITS TAX
ASSESSMENT ACT 1986

Clause 5 : Principal Act

This clause facilitates reference to the Fringe Benefits Tax Assessment Act 1986 which, in this Part, is referred to as "the Principal Act".

Clause 6 : Remote area housing

This clause corrects a flaw in the Taxation Laws Amendment Act (No.4) 1988. That Act inserted, in subsection 142(4) of the Principal Act, an incorrect reference to paragraph (1)(ac) instead of to paragraph (2)(ac). Subsection 142(4) ensures, broadly, that the concessional tax treatment of certain remote area housing benefits can be later adjusted by the Commissioner if subsequent events show that the conditions on which the concessional treatment was given have not been satisfied.

Clause 7 : Application of amendments

This clause, which will not amend the Principal Act, contains application provisions relating to the operation of the amendment contained in clause 6 of the Bill.

The general application rule expressed in subclause (1) is that the amendment applies to fringe benefits tax assessments for the transitional and later years of tax. As such, the amendment being introduced by this Bill will apply from the commencement of the fringe benefits tax, 1 July 1986.

Subclause (2) varies the general application provision so that the amendment proposed by clause 6 does not apply to instalments of tax in respect of the transitional year of tax. It follows that amendments of transitional year assessments will affect only the overall fringe benefits tax liability of transitional year taxpayers, and not their instalments in that year.

PART 4 - AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936

Clause 8 : Principal Act

This clause facilitates references to the Income Tax Assessment Act 1936, in this Part, as "the Principal Act".

Clause 9 : Exemptions

Clause 9 proposes to amend section 23 of the Principal Act by replacing existing paragraph 23(1) with a new paragraph 23(1).

The existing paragraph exempts from income tax periodical payments of alimony or maintenance received by a woman from her husband or former husband, provided the husband has not divested himself of income producing assets or diverting from himself otherwise taxable income.

The new paragraph will exempt periodical payments of maintenance received by a spouse (including a de facto spouse) or former spouse, or payments for or in respect of a child, again subject to the proviso against divesting assets or diverting income.

The reference to "alimony" in existing paragraph 23(1) will be removed, as it is an outdated term that only applies to separation payments made by a husband to a wife or former wife. Such payments will be covered by the expression "maintenance".

New paragraph 23(1) provides that periodical payments in the nature of maintenance are referred to as "maintenance payments", and the person making the payments is referred to as the "maintenance payer". The paragraph requires the maintenance payments to be made by, or attributable to, the maintenance payer. The paragraph covers periodical maintenance payments not made directly by the maintenance payer, but made indirectly through a third party such as a Child Support Trust Account, State collection agency, or solicitor's trust account.

Under sub-subparagraph 23(1)(i)(A) the exemption is to be available for maintenance payments made to a spouse or former spouse of the payer. The definition of spouse, as in subsection 27A(1) of the Principal Act, as well as a legally married spouse includes a person who, although not legally married to the other person, lives with that person on a bona fide domestic basis as husband and wife. This definition of spouse ensures that the exemption will be available for maintenance payments made to a de facto or former de facto spouse.

Sub-subparagraph 23(1)(i)(B) provides an exemption for maintenance payments made to or for the benefit of a child or former child of the payer. The exemption will apply to maintenance payments received by the child or received on behalf of the child, eg, by a parent, relative, guardian or welfare officer. Under the definition of "child" in section 6 of the Principal Act, the exemption will also apply in respect of an adopted child, step-child or ex-nuptial child and to maintenance payments received by or on behalf of a former step-child of a previous marriage.

In normal usage a "step-child" is a child both born in wedlock and related to the step-parent through the remarriage of a parent. However, under sub-subparagraph 23(1)(i)(C) the exemption will also be available for maintenance payments to a child, including an ex-nuptial child, who is or was connected to the payer through either a marriage or a defacto relationship of a parent. However, the child must be or have been related to the payer at the time of the marriage or defacto relationship for the exemption to be available.

Subparagraph 23(1)(ii) requires the maintenance payer not to have divested himself or herself of an income producing asset or diverted income that would have otherwise been taxable. If this proviso is not satisfied, the maintenance receipts will not be exempt from income tax.

By subclause 20(2) of this Bill, the amendment proposed by clause 9 will apply to maintenance payments received on or after 1 July 1988.

Clause 10 : Redemption of Special Bonds redeemable at a premium

This clause amends paragraph 23E(2)(b) by inserting a reference to new section 26BB and new subsection 160ZB(6) - see notes on clauses 11 and 18 respectively. This consequential amendment ensures that the existing exemption from income tax and capital gains tax for Special Bonds issued under the Commonwealth Inscribed Stock Act 1911 is preserved.

Clause 11 : Assessability of gain on disposal or redemption of traditional securities

Introductory Note

Under the existing law certain gains and losses on the disposal or redemption of traditional securities acquired after 19 September 1985 are dealt with under the capital gains and capital losses provisions of the Principal Act. In accordance with amendments contained in this Bill traditional securities acquired after 10 May 1989 will no longer be dealt with under the capital gain tax provisions. Rather, gains and losses on the disposal or redemption of traditional securities will be specifically covered by measures contained in this Bill.

Clause 11 inserts a new section 26BB in the Principal Act. By section 26BB all gains on traditional securities when disposed of or redeemed are made assessable in the year in which the disposal or redemption takes place.

Clause 13 inserts new section 70B in the Principal Act to authorise a deduction for a loss on disposal or redemption of traditional securities.

The changes to the treatment of gains and losses on the disposal or redemption of traditional securities will in no way affect the taxation treatment of interest payable on traditional securities which will continue to be assessable income in accordance with section 25 of the Principal Act.

A traditional security is defined generally as a security which does not fall within the definition of a qualifying security within Division 16E of the Principal Act.

Subsection 26BB(1) contains the definitions of terms used in section 26BB. In general they have a corresponding meaning to similar terms used in Division 16E.

"acquire" is widely defined to include the acquisition of a security by issue, by purchase, transfer, assignment or otherwise, and extends to the security itself or the right to receive payment of the amount or amounts payable under the security.

"dispose" is also widely defined to include the disposition of a security by sale on the transfer, assignment or disposal in any way of the security or the right to receive payment of the amount or amounts payable under the security.

"eligible return" has the same meaning as in Division 16E by virtue of section 159GP. By subsection 159GP(1) a security carries an eligible return where the sum of all payments (other than periodic interest, as described in subsection 159GP(6)) under the security is reasonably likely to exceed its issue price. The payments referred to in the subsection are, in effect, payments in redemption or partial redemption of the security.

"periodic interest" has the same meaning as in Division 16E (in subsection 159GP(6)). Basically, it is any interest that is paid not more than one year after it commences to accrue. The interest may be payable by virtue of a coupon rate attached to the security, or the amounts and the timing of payment may be specified in the terms of the security.

"security" also has the same meaning as in Division 16E. In subsection 159GP(1) of that Division "security" is widely defined to include items that may not usually be regarded as securities, e.g., contracts, to encompass various arrangements that may give rise to a deferral of payment of income. Paragraph (a) of the definition of security in subsection 159GP(1) refers to items that are usually taken to be a security. Shares in the issued capital of a company are not included in this definition. Paragraph (b) refers to deposits with financial institutions, it being common for banks, etc., to offer deferred interest accounts

or deferred interest investments under which no interest is payable until the investment matures. Paragraph (c) brings loans within the scope of security. For example, loans under which interest payments are deferred for a period will fall within the definition of a security. Finally, paragraph (d) ensures that other terms of contractual arrangements whereby one person is required to pay an amount or amounts to another come within the term "security".

"traditional security" is in effect the counterpart of a "qualifying security" as defined in subsection 159GP(1) of the Principal Act. In general a "traditional security" includes any "security" that is not a "qualifying security". In particular, a traditional security is one which has the following characteristics specified in the definition in subsection 26BB(1):

- . the security must have been acquired (as defined) after the date of introduction of this Bill (paragraph (a));
- . the security does not have an "eligible return" (as defined). Briefly, a security will be taken to have an "eligible return" if the sum of the payments (other than payments of periodic interest) to be made under the security will exceed its issue price (subparagraph (b)(i)); or
- . if the security does have an "eligible return" and it is possible to calculate the precise amount of the eligible return at the time the security is issued, the amount of the eligible return must not exceed 1.5 per cent of the result obtained by multiplying the sum of the payments (other than periodic interest) by the number of years in the term of the security (subparagraph (b)(ii));
- . the security is not a prescribed security within the meaning of section 26C of the Principal Act, i.e., Commonwealth securities that do not bear interest. The section was inserted in the Principal Act in 1959 to remove any doubt that the discount element on Commonwealth zero-coupon securities was an amount in the nature of interest and therefore assessable income. This paragraph ensures that section 26C securities are excluded from these provisions (paragraph (c));

the security does not form part of the trading stock of the taxpayer. Gains and losses on the holding of trading stock are dealt with in accordance with the trading stock provisions of the Principal Act. Briefly, subsection 28(2) includes in assessable income the excess of the value of trading stock on hand at the end of a year of income over the value of that trading stock at the beginning of that year. Subsection 28(3) allows a deduction for the amount by which the value of trading stock at the beginning of a year exceeds the value at the end of the year (paragraph (d)).

Subsection 26BB(2) is the operative provision under which the amount of any gain on the disposal or redemption of a traditional security in the year of income in which the disposal or redemption takes place is to be included as assessable income. The gain is the difference between acquisition cost and the consideration received on disposal of the security. The subsection also applies to any gains arising from the partial redemption of securities. In such cases the gain will be calculated on a proportional basis.

Subsection 26BB(3) authorises the Commissioner of Taxation, where he is satisfied that the parties to a transaction are not dealing at arm's length in relation to the transaction, to substitute for the consideration in the transaction, either an arm's length amount (paragraph (a)) or if that amount cannot be ascertained such amount as the Commissioner determines (paragraph (b)), for the purposes of determining the gain under subsection 26BB(2). This is an anti-avoidance provision designed to ensure an arm's length standard is used in transactions in traditional securities.

Clause 12 : Payments to associated persons and relatives

Clause 12 is related to the amendment proposed by clause 9 which extends the exemption available for periodical payments of maintenance received by a wife or former wife to similar payments received by any spouse (including a de facto spouse) or former spouse, or by or on behalf of a child.

Clause 12 proposes to amend subsection 65(2) of the Principal Act to replace references in respect of a taxpayer's wife or a member of his family with references to a taxpayer's spouse (within the meaning of subsection 27A(1) of the Principle Act) or a member of his or her family. This means that a deduction will not be available to taxpayers of either sex in respect of maintenance payments or maintenance expenditure.

By subclause 20(3) the amendment to be made by clause 12 will apply to expenditure or payments made on or after the date on which the Bill receives Royal Assent.

Clause 13 : Deduction for loss on disposal or redemption of traditional securities

Clause 13 inserts a new section 70B in the Principal Act to authorise a deduction for a loss on disposal or redemption of traditional securities. New section 70B is the counterpart of section 26BB which includes gains in respect of traditional securities in assessable income.

Subsection 70B(1) extends application of definitions of terms in section 26BB to section 70B.

Subsection 70B(2) allows a deduction for a loss on disposal or redemption (including a partial redemption) of a traditional security in the year of income in which the disposal or redemption takes place. Subsection 70B(3) imposes the same arm's length standard to transactions resulting in losses as subsection 26BB(3) imposes on transactions resulting in gains. Paragraphs 3(a) and 3(b) allow the Commissioner to substitute as consideration either an arm's length amount or if that cannot be ascertained such amount as the Commissioner determines.

Clause 14 : Gifts, donations etc.

This clause will amend the provisions of the Principal Act that authorise income tax deductions for gifts of the value of \$2 and upwards of money - or certain property other than money - made to the funds, authorities and institutions that are listed in the provisions.

The amendment proposed by paragraph (a) of clause 14 will omit existing subparagraph 78(1)(a)(xlvi) and substitute a new subparagraph 78(1)(a)(xlvi). The effect of this amendment is to replace the reference to The Sir Robert Menzies Memorial Trust with the new name registered for this body - The Sir Robert Menzies Memorial Foundation Limited. By the operation of subclause 20(4) of the amending Bill, the change of name will have effect for income tax gift purposes after 14 January 1988 .

The amendment proposed by paragraph (b) of clause 14 will insert new subparagraphs 78(1)(a)(xciii) and 78(1)(a)(xciv) in the Principal Act. Subparagraph (xciii) will authorise deductions for gifts to the Australian Ireland Fund. Subclause 20(5) applies this amendment to gifts made to the Australian Ireland Fund after 9 May 1989. Subparagraph (xciv) will authorise deductions for gifts to a public fund established and maintained exclusively for the relief of persons affected by earthquakes in the Armenian Soviet Socialist Republic.

By new subsection 78(6AI), being inserted in the Principal Act by paragraph (c) of clause 14, gifts to any public fund for the relief of the earthquake victims will be deductible if made between 8 December 1988 and 30 June 1989 inclusive.

Clause 15 : Persons to whom Division applies

Clause 15 proposes to amend section 102AC in Division 6AA of Part III of the Principal Act, the special code dealing with the taxing of the income of certain minors.

Section 102AC determines whether a person comes within the scope of Division 6AA. A person is a "prescribed person" in relation to a year of income, that is, a person subject to tax in accordance with the special code if :

the person is under the age of 18 years on the last day of the year of income; and

is not an "excepted person" in relation to the year of income.

Subsection 102AC(2) specifies the persons who are "excepted persons" in relation to a year of income. Included in this category of persons in a year of income is a person -

- . in respect of whom a handicapped child's allowance under the Social Security Act 1947 is payable in respect of a period that included the last day of the year of income (new subparagraph 102AC(2)(c)(i)); or
- . in respect of whom the Commissioner of Taxation :
 - has received a medical certificate certifying that the person is a handicapped child, or a severely handicapped child, within the meaning of Part XII of the Social Security Act 1947; and
 - is satisfied that, on the last day of the year of income, was such a person (paragraph 102AC(2)(d)).

The payment of an allowance (the handicapped child's allowance) to a handicapped or severely handicapped child under the Social Security Act 1947 was replaced from 15 November 1987 by payment of an allowance (the child disability allowance) to a disabled child. The amendments of section 102AC by clause 15 will substitute references considered with the new allowance.

Subclause 15(a) will amend subparagraph 102AC(2)(c)(i) of the Principal Act to replace the reference to the handicapped child's allowance with a reference to the child disability allowance.

This amendment will have effect from the date of Assent of the Bill. However, by the operation of subsection 4(5) of the Social Security and Veterans' Entitlements Amendment Act (No.2) 1987 (Act No.130 of 1987), subparagraph 102AC(2)(c)(i) applies as if a reference to the handicapped child's allowance were a reference to the child disability allowance post 14 November 1987.

By subclause 15(b) of the Bill sub-subparagraph 102AC(2)(d)(i)(A) of the Principal Act is to be omitted and replaced so as to effectively substitute the reference in the sub-subparagraph to "a handicapped child or a severely handicapped child" with a reference to a "disabled child".

By subclause 20(6) the amendment proposed by subclause 15(b) will apply for the 1987-88 and subsequent income years. Transitional provisions proposed by clause 21 of the Bill are to apply for the 1987-88 and 1988-89 years of income so that a minor certified as a handicapped or severely handicapped child in respect of those years will continue to receive the exemption from the operation of Division 6AA.

Clause 16 : Beneficiary Rebate

Paragraph 160AAA(2)(e) of the Principal Act authorises a rebate of tax where a taxpayer's assessable income includes unemployment, sickness or special benefits paid under Part XIII of the Social Security Act 1947, a Formal Training Allowance or an allowance paid under certain Commonwealth education schemes. The rebate of tax is available for a taxpayer other than a married (including de facto) taxpayer. The maximum level of the rebate is \$260 and shades-out at the rate of 12.5 cents for each dollar by which the taxpayer's taxable income exceeds \$6,184.

Clause 16 of the Bill will amend paragraph 160AAA(2)(e) of the Principal Act to increase the maximum amount of rebate to \$262 and increase the taxable income level from \$6184 to \$6192 at or below which the maximum rebate is available. The rebate will shade out at the rate of 12.5 cents for each dollar of taxable income in excess of \$6192 and will shade out fully at a taxable income of \$8288.

The amendment to section 160AAA of the Principal Act proposed by this clause will apply, by the operation of subclause 20(7) of the Bill, in assessments of the 1988-89 and subsequent income years.

Clause 17 : Tax sparing

Subsection 160AFF(1) of the Principal Act enables regulations to be made in order to provide tax sparing relief by regulations in respect of income derived by a resident of Australia from a developing country. Such regulations may enable tax forgone by the developing country in respect of that income under a specified development incentive to be treated, for foreign tax credit relief purposes, as if it had been paid. Subsection 160AFF(4) provides that any regulation made under subsection 160AFF(1) after 1 July 1987 may take effect from a date earlier than that on which it was made, but not earlier than 1 July 1987.

Clause 17 will amend subsection 160AFF(4) to replace this reference to 1 July 1987 with a reference to the first day of the year of income commencing on 1 July 1987. This reflects the fact that where a taxpayer has adopted, with leave of the Commissioner, an accounting period being 12 months ending on some date other than 30 June, the accounting period which substitutes for the normal 1987/88 year of income may commence on a day earlier than 1 July 1987. By this amendment, regulations may be made under subsection 160AFF(1) in relation to relevant income derived by such a taxpayer from the commencement of that substituted accounting period.

Clause 18 : Exemption of certain gains and losses

This clause inserts a new subsection 160ZB(6) in the capital gains and capital losses provisions contained in Part IIIA of the Principal Act. By this subsection capital gains and losses are not to be taken to have accrued or to have been incurred on the disposal of a traditional security (as defined in section 26BB - see note on clause 11) that is acquired by the taxpayer after the date of introduction of this Bill.

Clause 19 : Exemption of principal residence

Clause 19 proposes two amendments to section 160ZZQ of the Principal Act. Section 160ZZQ is the provision which effectively excludes from the operation of Part IIIA a capital gain or capital loss on the disposal of a taxpayer's home, to the extent that it is used as the taxpayer's sole or principal residence. However, where the dwelling is constituted by or contained in a building (i.e., a dwelling other than a caravan, houseboat or mobile home) the exemption is currently available only where the taxpayer has certain specified ownership rights. In the case of a dwelling other than a flat or home unit, the taxpayer is taken to own the dwelling only if the title held in respect of the land on which the dwelling is

erected is an estate in fee simple, a Crown lease, a lease in perpetuity or for a lease for a term of at least 99 years.

In the case of a flat or home unit, the taxpayer must own such an interest in a stratum unit. Alternatively, the taxpayer may own a share in a company having an estate in fee simple, a Crown lease, a lease in perpetuity or for a term of 99 years or more in the land on which the building containing the flat or home unit is erected - the share being one which entitles the taxpayer to exclusive occupancy.

By paragraph (a) of clause 19 existing paragraphs (2)(a) and (2)(b) of section 160ZZQ will be replaced by two new paragraphs which will set out the circumstances where, for the purposes of the section, a taxpayer will be taken to own a dwelling contained in or constituted by a building.

By new paragraph (2)(a), where the dwelling is not a flat or home unit, the taxpayer will be taken to own the dwelling by ownership of a legal or equitable estate or interest in the land on which the dwelling is erected (subparagraph (i)) or a licence or right to occupy the dwelling (subparagraph (ii)).

By new paragraph (2)(b), a taxpayer will be taken to own a dwelling which is a flat or home unit by ownership of any of the following:

- . a legal or equitable estate or interest in a stratum unit (as defined in subsection 160K(1) of the Principal Act) in relation to the flat or home unit (subparagraph (i));
- . a licence or right to occupy the flat or home unit (subparagraph (ii)); or
- . a share in a company - being a company that has a legal or equitable estate or interest in the land on which the building containing the flat or home unit is erected - which entitles the taxpayer to occupancy of the flat or home unit (subparagraph (iii)).

Paragraph (b) of clause 19 will modify section 160ZZQ, which applies where, after 19 September 1985, a taxpayer acquires vacant land on which a dwelling is then constructed. In these circumstances, the period of ownership of the land may be taken to form part of the period during which the dwelling is the sole or principal residence of the taxpayer. A dwelling must subsequently be erected on the land by the taxpayer and become the taxpayer's sole or principal residence as soon as

practicable after the completion of its construction and continue to be so for a period of 12 months or more (new paragraphs (5)(a) to (d)).

Paragraph (5)(e) requires the taxpayer to elect for the subsection to apply in respect of the dwelling that is constructed. The election is to be made in the terms of new subsection 160ZZQ(5A) (refer to notes on that subsection).

In these conditions, new paragraph (5)(f) extends the period for which the subsequently erected dwelling will be taken to be the taxpayer's sole or principal residence to the shorter of the following periods:

- . the period from the date of acquisition of the estate or interest in the land to the date on which construction of the dwelling was completed (subparagraph (f)(i)); or
- . the period of four years immediately before the dwelling became the taxpayer's sole or principal residence (subparagraph (f)(ii)).

(This does not apply to a period when the taxpayer was the dependent child of another taxpayer.)

By new paragraph (5)(g), where a taxpayer owns another home during the construction period of the new home and the taxpayer has elected that the exemption apply to the new home, no sole or principal residence exemption is available for that other home.

Paragraph (b) of clause 19 will also insert new subsection 160ZZQ(5A). Paragraph 160ZZQ(5)(e) (refer to notes on that paragraph) requires a taxpayer to make an election in accordance with the terms of subsection (5A) as a condition for the availability of the extended exemption provided by subsection (5). Under subsection 160ZZQ(5A), the taxpayer must notify the Commissioner that he or she elects that subsection (5) is to apply to the new home during its construction period. The notification is to be given on or before the date of lodgment of the taxpayer's first income tax return for the later of:

- . the year of income in which the taxpayer commenced occupation of the new home as the taxpayer's sole or principal residence (paragraph (5A)(a)); or
- . the year of income in which the amendment to include subsection (5A) in the Principal Act commences (paragraph (5A)(b)).

The Commissioner may accept a later election.

The amendments to be made by clause 19 will apply to a dwelling acquired by a taxpayer after 19 September 1985 by virtue of subclause 20(8). Transitional measures contained in clause 22 will ensure that a taxpayer retains entitlement to a capital loss incurred on the disposal of an asset before 22 November 1988 which, as a result of the amendments proposed by clause 19, would not otherwise have been available.

Clause 20 : Application of amendments

By subclause (1) the Income Tax Assessment Act 1936 is in this section referred to as the 'amended Act'.

Sub-subclauses (2) to (8) specify the times from which the various amendments to the amended Act are to apply. These have already been explained in the notes on those amendments.

Clause 21 : Transitional - handicapped children

This clause is related to the amendment proposed by clause 15 of the Bill. It will implement transitional provisions to retain, for the 1987-88 and 1988-89 income years, an exemption from the application of Division 6AA of Part III of the Principal Act for certain minors who previously satisfied the definitions of a "handicapped child" or "severely handicapped child" within the meaning of Part XII of the Social Security Act 1947.

By clause 21 a minor is to be taken to be an "excepted person", that is, outside the operation of Division 6AA, in relation to the 1987-88 and 1988-89 years of income if :

- . the Commissioner of Taxation is provided with a certificate issued before 1 July 1989 by a legally qualified medical practitioner certifying that the minor is a handicapped child, or a severely handicapped child for the purposes of the Social Security Act 1947; and
- . the Commissioner is satisfied that on the last day of the 1987-88 or 1988-89 year of income, as the case may be, the minor was a handicapped child or a severely handicapped child, within the meaning of the Social Security Act 1947 as in force before 15 November 1987.

Clause 22 : Transitional - CGT principal residence exemption

Clause 22 is a transitional measure which will apply in respect of the amendments proposed by clause 19.

It is intended to ensure that certain capital losses incurred on the disposal of dwellings before 22 November 1988 will continue to be available. In some circumstances, the amendments proposed by clause 19 will have the effect that assets disposed of before 22 November 1988 will be subject to the principal residence exemption whereas before the amendments that exemption did not apply. Because the exemption excludes from the tax on capital gains both gains and losses, a taxpayer could potentially be disadvantaged by the disallowance of a previously available capital loss. Clause 22 provides that such a loss will continue to be available in respect of the disposal of an asset, where the disposal occurred before 22 November 1988, the date on which the proposed amendments were announced.

Clause 23 : Amendment of assessments

Clause 23 of the Bill authorises the Commissioner of Taxation to re-open an income tax assessment made before the Bill becomes law should this be necessary for the purposes of giving effect to the amendments proposed by the Bill.

PART 5 - AMENDMENT OF THE TAXATION
ADMINISTRATION ACT 1953

Clause 24 : Principal Act

This clause facilitates references to the Taxation Administration Act 1953 which, in this part, is referred to as "the Principal Act".

Clause 25 : Interpretation

Section 2 of the Principal Act sets out definitions of terms used in that Act. This clause will insert in section 2 definitions of new terms relevant to the operation of the secrecy provisions as proposed to be amended by other clauses of this Bill.

"authorised law enforcement agency officer" is defined to mean the head (itself defined) of a law enforcement agency (paragraph (a)) or an officer with the written authorisation of the head of the agency to perform the functions of an authorised law enforcement agency officer under this Act (paragraph (b)).

"head" is defined for the purpose of the definition of "authorised law enforcement agency officer" and proposed subsection 3B(1AA) as:

the Commissioner of the Australian Federal Police force (paragraph (a));

- . the commanding officer of the police force of a State or the Northern Territory (paragraph (b));
- . the Commonwealth Director of Public Prosecutions (paragraph (c));
- . the Chairman of the National Crime Authority (paragraph (d));
- . the Chairman of the National Companies and Securities Commission (paragraph (e));
- . the Commissioner for Corporate Affairs for a State (paragraph (f));
- . the Commissioner for Corporate Affairs for the Northern Territory (paragraph (g)); and
- . the Commissioner appointed under the Corporate Affairs Commission Ordinance 1980 of the Australian Capital Territory (paragraph (h)).

"law enforcement agency" lists the agencies that are to be permitted to receive taxation information. Those agencies are:

- . the Australian Federal Police (paragraph (a));
- . a State or Northern Territory police force (paragraph (b));
- . the Office of the Director of Public Prosecutions (paragraph (c));
- . the National Crime Authority (paragraph (d));
- . the National Companies and Securities Commission (paragraph (e)); or
- . a Corporate Affairs Commission established under a law of a State, of the Northern Territory or of the Australian Capital Territory (paragraph (f)).

Clause 26 : Annual report

Existing section 3B of the Principal Act requires the Commissioner of Taxation to furnish an Annual Report on the working of the Principal Act to the Treasurer as Minister responsible for taxation matters for presentation to the Parliament.

Paragraph (a) of clause 26 is a drafting measure to facilitate the inclusion of the proposed subsection 3B(1AA). The references to breaches or evasions of Part IV and breaches of undertakings given for the purposes of subsection 14C(2) have been moved from existing subsection 3B(1) to the proposed subsection 3B(1AA).

Paragraph (b) of clause 26 inserts subsection 3B(1AA) which will require the Commissioner to include certain information in the Annual Report required by subsection 3B(1) for each year ending 30 June.

Paragraph 3B(1AA)(a) requires the Commissioner to continue to include in the Annual Report information previously required by subsection 3B(1) regarding:

- . any breaches or evasions of Part IV (Exchange Control) (subparagraph (i)); and
- . any breaches of undertakings given by persons in respect of whom tax clearance certificates have been issued under subsection 14C(2) of that Part (subparagraph (ii)).

Paragraph 3B(1AA)(b) requires the Commissioner to specify information in relation to each law enforcement agency regarding:

- . the number of requests (if any) for information under subsection 3E(1) received by the Commissioner from each head (or on behalf of the head) of a law enforcement agency, during the year (subparagraph (i)); and,
- . the number of occasions (if any) during the year that information was communicated under subsection 3E(1) to authorised law enforcement agency officers representing prescribed agencies (subparagraph (ii)). Such disclosures may have been either in response to a request by an authorised law enforcement agency officer or on the Commissioner's initiative.

Under subparagraphs (i) and (ii) the number of requests and disclosures of information, respectively, will be grouped into general categories of offences. If a request or disclosure relates to two or more general categories of offence, the overlap will be explained in the Annual Report.

Clause 27 : Secrecy

Clause 27 will insert new subsection 3C(8) in the Principal Act. By subsection 3C(8) a reference in section 3C to a document or information acquired by a person is not

to include a reference to a document or information acquired under another provision of Part 1A authorising the disclosure of information. This ensures that the secrecy of information in the hands of recipients will be dealt with by the appropriate secrecy provisions. For example information revealed under section 3D of the Principal Act (Provision of Taxation Information to National Crime Authority) will be covered by the secrecy provision in subsection 3D(21).

Clause 28 : Provision of taxation information to other law enforcement agencies

Introductory note

Broadly, proposed section 3E provides the Commissioner of Taxation with a discretion to disclose taxation information to an authorised law enforcement agency officer. Such disclosure is conditional on the Commissioner being satisfied that the information is relevant to the investigation of a serious offence or post-conviction confiscation and restraining order proceedings. The information may be disclosed by the Commissioner of Taxation either on his own initiative or in response to a request by an authorised law enforcement agency officer. The Commissioner cannot be compelled to reveal information. Information disclosed under section 3E may only be used for investigation purposes except where it relates to confiscation and restraining order proceedings in relation to a person convicted of a serious offence. The amendment does not limit the use of taxation information for prosecution for a tax related offence.

The Commissioner's decision concerning the disclosure of information to a law enforcement agency is not to be reviewable under the Administrative Decisions (Judicial Review) Act 1977.

The term 'information' in section 3E is not expressly defined and has its normal meaning. Disclosure of information in this section includes the production of a document or the granting of access to a document.

Notes on the individual provisions of proposed section 3E follow.

Proposed subsection 3E(1) overrides any taxation secrecy provision and gives the Commissioner of Taxation a discretion to disclose information acquired under a tax law (a term defined in subsection (1)) to an authorised law enforcement agency officer. Proposed paragraph 3E(1)(a) makes the exercise of the discretion to disclose information conditional on the Commissioner being satisfied that the information is relevant to establishing whether a serious offence has been committed or is being committed. 'Serious offence' is defined in proposed subsection (1) to mean an indictable offence.

Proposed paragraph 3E(1)(b) authorises the disclosure of information if the Commissioner of Taxation is satisfied that the information is relevant to the making, or proposed or possible making, of a proceeds of crime order. 'Proceeds of crime order' is defined in proposed subsection 3E(11). Essential elements of the definition are that a person has been convicted of a serious offence and the order relates to that offence. Information communicated under paragraph 3E(1)(b) may be used in court as evidence in post conviction confiscation and restraining order proceedings under the Proceeds of Crime Act 1987, corresponding State or Territory legislation and under Division 3 of Part XIII of the Customs Act 1901.

Paragraph 3E(1)(b) also authorises the disclosure of information in relation to a proposed or possible making of a proceeds of crime order. Proposed subsection (10) (see notes on that subsection) makes it clear that "proposed or possible making, of a proceeds of crime order" refers to an order that is only a possibility or proceedings that are only a possibility, at the time because the person has not been convicted. In this situation information may be revealed under section 3E for intelligence purposes only. If the person is subsequently convicted of a serious offence the information may then be communicated to a court as evidence for the purposes of a related proceeds of crime order.

Proposed subsection 3E(2) imposes secrecy obligations on recipients of information under subsection 3E(1) or this subsection and includes the circumstances in which that information may be communicated to another person. Paragraph (a) provides that such information shall not be divulged or communicated to another person, or a record made of the information, except for:

- . the investigation of a serious offence (subparagraph (i)); or
- . an investigation in connection with the making, or proposed or possible making, of a proceeds of crime order (subparagraph (ii)).

Paragraph 3E(2)(b) prohibits a person receiving information under paragraph 3E(2)(a) or this paragraph from communicating the information to another person except for the purposes of the investigation set out in paragraph 3E(2)(a). Communication of information expressly includes divulging information to another person or making a record of the information. In effect paragraph 3E(2)(b) prescribes the circumstances (if any) in which subsequent recipients of taxation information may communicate the information to another person.

Proposed subsection 3E(3) directs that a person who has received information under subsection (1) or (2) shall not voluntarily give the information in evidence in any court proceedings (paragraph (a)) and, shall not be compelled to disclose the information to a court (paragraph (b)).

The effect of subsections (4) and (5) is to permit the use of taxation information in prosecutions for tax related offences or proceeds of crime proceedings. These subsections override subsections (2) and (3).

Proposed subsection 3E(4) allows an authorised law enforcement agency officer to communicate to another person or a court information received under subsection 3E(1) for the purpose of a prosecution for a tax-related offence or proceedings for the making of a proceeds of crime order.

Paragraph 3E(4)(a) allows an authorised law enforcement agency officer to communicate the information to another person, or a record being made of information for the purposes of a prosecution for a tax-related offence and proceedings for the making of a proceeds of crime order.

Paragraph 3E(4)(b) provides that information disclosed under subsection 3E(1) to an authorised enforcement agency officer may be communicated to a court in the course of proceedings before that court for the prosecution of a tax-related offence and proceedings for the making of a proceeds of crime order.

Proposed subsection 3E(5) imposes secrecy obligations on anyone receiving information under paragraph 3E(4)(a) or this subsection and sets out the circumstances in which the information may be communicated to another person or a record made of the information. The information may be communicated to another person or a record made of the information for the purposes of a prosecution of a tax related offence or proceedings for the making of a proceeds of crime order.

Proposed subsection 3E(6) makes it clear that a person who has received information under paragraph 3E(4)(a) or subsection 3E(5) cannot be compelled to disclose that information to any court.

Proposed subsection 3E(7) creates an offence of divulging or communicating information, or making a record of information, in contravention of this section. The maximum penalty for such an offence is a fine of not more than \$10,000 or imprisonment for not more than 2 years, or both. These penalties accord with the general level of penalties set for breaches of taxation secrecy provisions.

Proposed subsection 3E(8) makes it clear that subsection 3E(1) is an additional provision for the disclosure of information. Subsection 3E(1) does not affect any other provision of the Principal Act or of any other law relating to the communication of taxation information.

Proposed subsection 3E(9) permits the disclosure of information to a barrister or solicitor representing a person in relation to a particular prosecution or other court proceedings. Such a disclosure is treated for purposes of this section as a communication of information, for the purposes of, or in connection with such a prosecution or such proceedings, as the case may be. Similarly, the making of a record of information is treated for the purposes of this section as a communication of information for the purposes of, or in connection with such a prosecution or such proceedings.

Proposed subsection (10) is an interpretative provision on the operation of section 3E in relation to proceeds of crime proceedings. This subsection makes it clear that information may be revealed to an authorised law enforcement agency officer under section 3E for proceeds of crime purposes prior to the conviction of a person for a serious offence. Such information may only be used for intelligence purposes prior to conviction.

Subsection (10) specifies that a reference in section 3E to the possible making of a proceeds of crime order in respect of a person (paragraph (a)) or possible proceedings for the making of a proceeds of crime order in respect of a person (paragraph (b)) includes the situation where the making of an order is only a possibility, or proceedings are only a possibility, at the time because the person has not been convicted (within the meaning of section 5 of the Proceeds of Crime Act 1987) of an offence to which the order would relate.

Proposed subsection 3E(11) is an interpretative provision which includes definitions of terms used in section 3E.

"proceeds of crime order" means;

an order under Part II or III of the Proceeds of Crime Act 1987 or under a corresponding law of a State or Territory ("corresponding law" is defined in section 4 of the Proceeds of Crime Act 1987 as a law of a State (including the Northern Territory) that is declared by the regulations to be a law that corresponds to that Act) (paragraph (a)); or, an order under Division 3 of Part XIII of the Customs Act 1901 (paragraph (b));

- such an order must be either an order that is made in respect of a person who has been convicted (within the meaning of section 5 of the Proceeds of Crime Act 1987) of a serious offence (defined below) (paragraph (c)); and
- the order must relate to that offence (paragraph (d)).

"serious offence" means an offence against a law of the Commonwealth of a State or of a Territory that may be dealt with as an indictable offence. For the purposes of this section an offence is treated as an indictable offence notwithstanding the possibility of the offence being tried as a summary offence. An indictable offence is usually an offence of a more serious nature and is usually punishable by at least 12 months imprisonment.

"taxation secrecy provision" means a provision of a tax law (a defined term - see notes below) that prohibits the communication or divulging of information.

"tax law" means:

- a taxation law, which by the definition of taxation laws in section 2 of the Principal Act includes any regulations under such a law; (paragraph (a));
- any other Act of which the Commissioner of Taxation has the general administration; (paragraph (b));
- a repealed Act of which the Commissioner of Taxation had the general administration; (paragraph (c)); or
- regulations under an Act referred to in paragraph (b) or (c). (paragraph (d)).

"tax related offence" means :

- an offence against a tax law (subparagraph (a)(i)) or an offence against the Crimes (Taxation Offences) Act 1980 (subparagraph (a)(ii));
- an offence against the Crimes Act 1914 relating to a law referred to in paragraph (a) (paragraph b); or
- an offence against section 29D or 86A of the Crimes Act 1914, being an offence that relates to a liability to the Commonwealth arising under, or by virtue of, a tax law.

Section 3F : Provision of taxation information to
Comptroller-General of Customs

Clause 28 also inserts new section 3F in the Principal Act. By subsection 3F(1) the Commissioner of Taxation will be permitted to disclose to the Comptroller-General of Customs taxation information obtained by the Commissioner in the course of his duties. This subsection overrides any taxation secrecy provision. The information may be communicated by the Commissioner of Taxation either on his own initiative or in response to a request by the Comptroller-General of Customs.

Presently the Commissioner of Taxation is able to provide the Comptroller-General of Customs with information acquired under sales tax legislation. Under these amendments the Commissioner will be able to disclose any information that has come to his knowledge in the performance of the Commissioner's official duties.

The term 'information' in section 3F is not expressly defined and has its normal meaning. Disclosure of information in this section includes the production of a document or the granting of access to a document.

Proposed subsection 3F(2) makes it clear that the communication of information under subsection (1) is additional to any other disclosure provisions contained in the Principal Act or any other legislation.

Proposed subsection 3F(3) defines 'taxation secrecy provision' to have the same meaning as in subsection 3E (also to be inserted in the Principal Act by this clause). The term means a provision of a tax law that prohibits the communication or divulging of information.

PART 6 - AMENDMENT OF THE TAXATION LAWS
AMENDMENT ACT (No.4) 1988

Clause 29 : Principal Act

This clause facilitates reference to the Taxation Laws Amendment Act (No.4) 1988 which, in this Part, is referred to as "the Principal Act".

Clause 30 : Commencement

This clause substitutes a new subsection 2(2) in the Principal Act. The change takes into account the fact that the reference in the former subsection to the "Taxation Laws Amendment Act (No.3) 1988" is inappropriate because there is no such Act. The Bill introduced into the Parliament as the Taxation Laws Amendment Bill (No.3) 1988 ultimately became the Taxation Laws Amendment Act 1989.

The purpose of the original subsection 2(2) in the Principal Act was to ensure that changes proposed to be made by the Taxation Laws Amendment Bill (No.4) 1988 to the definition of a "car" would commence to operate only after relevant provisions of an earlier Bill - dealing with the same subject matter - had come into operation. The technical change made by this clause gives effect to that original purpose.

By subclause 2(2) of this Bill, this clause will come into operation immediately after the Taxation Laws Amendment Act (No.4) 1988 received Royal Assent on 24 November 1988.

PART 7 - REDUNDANT ACTS AND PROVISIONS

Clause 31 : Amendments relating to redundant provisions of the Income Tax Assessment Act 1936

The amendments to the Income Tax Assessment Act 1936 (the "Assessment Act") that are to be made by this Part are set out in Schedule 1 of this Bill. Those amendments will be formally made by this clause.

Clause 32 : Savings

Subclause 32(1) is a general savings provision. It will preserve the operation of the provisions of the present income tax laws that this Bill proposes to repeal so that they continue to be available in relation to assessments for past years. This is necessary to deal with cases where, at some time in the future an assessment or an amended assessment is to issue in relation to any income year in which a repealed provision had application.

It will also operate to preserve continuing deduction entitlements which arose before the cut-off date for a particular tax concession, even though the relevant concession provision is now being repealed. Section 62A of the Assessment Act illustrates this situation. Section 62A authorises a deduction, spread over the life of specified types of franchises, for capital expenditure on a revenue-earning facility erected pursuant to such a franchise. There can still be deductions allowable under this section, even though no expenditure under a franchise granted after 6 April 1978 is eligible for deduction.

Subclause 32(2) ensures that, where information respecting the affairs of a person has been communicated to certain Royal Commissions pursuant to the present subparagraphs 16(4)(k)(i) and (ii) of the Assessment Act, which are to be repealed (see later notes on Schedule 1) the prohibitions on disclosure of that information by persons associated with those Commissions continues.

Clause 33 : Repeal of redundant Acts and consequential amendments of other Acts

This clause repeals three redundant Acts that are related to the Assessment Act, and makes consequential amendments to other Acts.

Subclause 33(1) will repeal:

- . the Income Tax (Drought Bonds) Act 1969 which imposes tax on certain redemptions of drought bonds;
- . the Loan (Drought Bonds) Act 1969, which is the Act authorising the issue and redemption of drought bonds; and
- . the Taxation of Loans Act 1923, which gave the States authority to tax interest on Commonwealth loans if they taxed interest on their own loans. It also gave the Commonwealth specific taxing rights over interest on State loans.

The drought bonds scheme was introduced in 1969, its purpose being to encourage graziers to build up cash reserves in good years that could then be used in periods of drought. This scheme was replaced by the first income equalisation deposits scheme in 1976. The cost of the drought bonds was allowed as a taxation deduction. Upon redemption of the bond(s), tax was payable, equal in amount to the tax saved as a result of the deductions previously allowed. Both of the Acts relating to drought bonds are redundant, as no such bonds have been issued since 1976 and there are now none unredeemed.

The Taxation of Loans Act 1923 is no longer required as its scope of operation in the field of Commonwealth income tax is covered by various taxing provisions in the Assessment Act.

Subclause 33(2) makes consequential amendments to the Commonwealth Inscribed Stock Act 1911, by deleting references to the Taxation of Loans Act 1923 that is being repealed.

Subclause 33(3) will make the following consequential amendments to the Loan (Income Equalisation Deposits) Act 1976:

- . Formal recognition of the repeal of Division 16B of Part III of the Assessment Act (which relates to drought bonds) for the purposes of the definition of 'primary producer deposit' in subparagraph 3(1)(c)(ii) of the Loan (Income Equalisation Deposits) Act 1976 (paragraph (a));

- retention of the meaning of the terms 'stock' and 'parcel of stock' in the form contained in the Loan (Drought Bonds) Act 1976, before its repeal (paragraph (b)); and

By subclause 33(4), the reference to the Loan (Drought Bonds) Act 1969 (which is being repealed) contained in paragraph (f) of the definition of 'relevant tax law' in section 213 of the Taxation Boards of Review (Transfer of Jurisdiction) Act 1986 is to be deleted.

Clause 34 : Savings

This clause preserves the operation of the Income Tax (Drought Bonds) Act 1969 in respect of assessments relating to past years. It will operate in the same way as subclause 32(1) (explained earlier), which, for the purpose of raising past year assessments under the Assessment Act, preserves the operation of provisions that are to be repealed by this Bill.

PART 8 - CONSEQUENTIAL AMENDMENT OF CERTAIN OTHER ACTS RELATING TO THE COMMUNICATION OF TAXATION INFORMATION.

Clause 35 : Amendment of Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 : Amendment of the Income Tax Assessment Act 1936 relating to redundant provisions.

Introductory note

This Schedule specifies the amendments to be made by clause 31 of the Bill (see earlier notes on that clause) to the Income Tax Assessment Act 1936 (the Assessment Act) to remove from it a number of redundant provisions. The repeals entail numerous consequential amendments to other provisions and these are also specified in Schedule 1. The provisions listed in the Schedule fall into three broad categories:

- those provisions that are technically capable of future operation, but under which no new entitlements to deductions can arise, e.g., section 62A under which deductions are still allowable for capital expenditure made under specified pre-7 April 1978 franchises - the savings provision in clause 31 will protect existing entitlements such as this;
- redundant provisions that no longer have any application; and

- those provisions requiring amendment as a result of the repeal of redundant provisions.

Brief notes about some of the more formerly significant provisions being repealed are set out in the succeeding paragraphs.

Section 6D: Transactions involving shares held for eighteen months or more

This section came into effect on 12 April 1972 and applies to shares purchased after that date and before 22 August 1973. Broadly, the profit on the sale of such shares was not assessable. The provision became redundant with the introduction of section 26AAA (which itself ceased to apply for disposals of property after 25 May 1988).

Paragraph 16(4)(k) : Secrecy - Royal Commissions

Subparagraphs 16(4)(k)(i) and (ii) of the Assessment Act are to be repealed. Respectively, these subparagraphs refer to the Federated Ship Painters and Dockers Union Royal Commission, which reported on 26 October 1984, and to the Royal Commission relating to the importation, exportation or possession of drugs, which reported on 28 February 1983.

Because their work has been completed, it is no longer appropriate to refer to these Royal Commissions in specific terms. Moreover, subparagraph 16(4)(k)(iii) of the Assessment Act deals with the communication of information in a more general way so that the section applies wherever letters Patent issued by the Governor-General declare a relevant Royal Commission to be one to which the provisions apply. That provision is to remain in the law but as paragraph 16(4)(k) of the Assessment Act.

Subparagraphs 23(c)(vi) and (vii) : Exemptions from income tax of certain persons visiting Australia

These subparagraphs exempted from income tax the emoluments of experts who visited Australia to assist the government (paragraph (vi)), or industry (paragraph (vii)). The exemptions applied for the first year of a visit and was then subject to certification each year for a further 3 years. In 1973, section 24AA withdrew the exemptions, subject to transitional arrangements. Under those arrangements, visits had to be commenced before 30 June 1973 or occur pursuant to a contract entered into before 14 May 1973.

Section 24AA : Income of visiting experts

Subject to transitional arrangements, this provision withdrew the exemptions given in subparagraphs 23(c)(vi) and (vii), and in section 160ABA (see later notes on that section). With the repeal of subparagraphs 23(c)(vi) and (vii), and of section 160ABA, this section is also redundant.

Section 31B : Transitional provision relating to trading stock of winemakers

This section, introduced in 1976, was a transitional measure to phase in a standard method of valuing winemakers' trading stock. Under the former section 31A, winemakers used a concessional basis when valuing wine and spirit stock. Subject to the transitional provisions in section 31B, the general provisions for valuing trading stock now apply to wine and spirit stock. Generally, the last income year in which the transitional provisions applied was 1981-82.

Section 50M : Trading stock of winemakers

This section forms part of the so-called current year loss provisions contained in sections 50A to 50N of the Assessment Act. It had application for the 1977-78 income year, or any of the next four succeeding income years, and applied to a company to which both section 31B and general sections of the current year loss provisions applied. In effect, the concessions given in the transitional provisions of section 31B were prorated. Section 50M no longer has any application.

Section 51AA : Provisions with respect to allowable deductions consisting of interest

The provision limits a deduction for interest payable by companies incurred during the year of income ended on 30 June 1961 (or substituted accounting period) in gaining or producing assessable income. It did not apply to subsequent years.

Section 51AC : Export market development allowance

The section authorised the allowance of a deduction for specified classes of expenditure incurred after 30 June 1961 and before 1 July 1968 to promote exports of Australian goods and services. The section became redundant with the introduction of section 160AC, which replaced the deduction scheme with a special rebate, commencing on 1 July 1968. As noted, section 160AC is now also redundant and is to be repealed.

Section 53H : Deduction for cost of converting
oil-fired plant

The section authorised a deduction for expenditure incurred on or after 22 August 1979 and before 1 July 1984 in converting or adapting oil-fired plant to alternative energy sources. For expenditure incurred after 30 April 1981, the deduction was spread over two years. The deduction was withdrawn in 1983, and the provision is now redundant.

Section 57AA : Special depreciation allowance to
primary producers

This provision was introduced in 1952 and allowed a special depreciation rate of 20 per cent per annum (flat) for the cost of plant or structural improvements used for agricultural, pastoral or pearling operations. In 1973, the application of the section was limited to expenditure incurred on or before 21 August 1973. General depreciation provisions now apply to primary production activities.

Section 57AB : Depreciation on property used for
primary production in the Northern
Territory

This section was introduced in 1952 and, if the taxpayer so elected, authorised a full deduction for the cost of structural improvements by primary producer taxpayers in the Northern Territory. It ceased to have effect for expenditure incurred after 21 August 1973. General depreciation provisions now apply to such improvements.

Section 57AC : Special depreciation on
manufacturing plant and plant used in
primary production

This section became effective in June 1975, and authorised deductions for depreciation at double the normal rates for certain manufacturing or primary production plant that was first eligible for depreciation in the 1974-75 income year. Any elections, made under subsection 57AC(3), not to claim the double rates of depreciation are preserved by the general savings provision in clause 32 of this Bill (see earlier notes on that clause).

Section 57AD : Special depreciation on new plant first
used or installed on or after 1 July 1975
and before 1 July 1976

This section applied for the year ended 30 June 1976. It authorised depreciation at double rates for certain industrial and commercial plant. The general savings provision in clause 31 (see earlier notes) will preserve any deductions entitlements that may still exist.

Section 57AJ : Special depreciation on storage facilities for petroleum fuel

This provision conferred a 100 per cent depreciation deduction for petroleum storage facilities. A facility which was ordered (or construction of which commenced) before 20 May 1983 but after 1 October 1980, would attract the concession if used by the taxpayer before 1 July 1984 to produce assessable income (or if installed ready for such use and held in reserve). The depreciation deduction applied to the year of income in which the facility was first used to produce assessable income or was first installed ready for use to produce assessable income but held in reserve.

Section 58 : Depreciation on pipelines for transporting petroleum

Broadly put, the section provided a special depreciation rate of 20 per cent per annum (flat) on the cost of pipelines completed on or before 31 December 1969. The pipelines were to be used for transporting petroleum.

Section 62AA : Special deduction for investment in manufacturing plant

This section allowed a special deduction of 20 per cent of the capital expenditure incurred on manufacturing plant by a manufacturer. The provision had effect until 21 August 1973 and did not apply to expenditure incurred after that date unless the relevant contract had been entered into before then.

Section 62AB : Special deduction for investment in plant used in primary production

This section conferred a special deduction of 20 per cent per annum (flat) for the cost of investment in plant used in primary production. The concession was withdrawn for investment made after 21 August 1973, except where the expenditure was incurred under a relevant contract entered into before 22 August 1973. Because the special deduction was at a flat rate of 20 per cent per annum, the benefit could only last for five years.

Section 62A : Expenditure pursuant to franchise

Section 62A permits a deduction for capital expenditure on a revenue-earning facility erected pursuant to a government or public authority franchise. It applies only to franchises granted before 7 April 1978. Over the life of the franchise, a taxpayer could deduct the capital costs incurred in erecting the facility. Any remaining entitlements to deductions under this section will be preserved by the general savings provision in clause 32 of this Bill (see earlier notes on that clause).

Section 75 : Certain expenditure on land used for primary production

Where a primary producer incurred expenses of a capital nature in clearing or improving land, an outright deduction was allowed. The deduction was withdrawn for expenditure incurred after 21 August 1973 unless a relevant contract had been made prior to that date. The provision is now redundant.

Section 75C : Deduction of certain expenditure on fences

The provision allowed an outright deduction for capital expenditure incurred by a primary producer on the construction of fences. The fencing had to assist in combating bovine brucellosis or tuberculosis. The deduction was allowable only where the expenditure was incurred before 1 July 1986 and then only in the income year in which it was incurred.

Section 76 : Expenditure on fences

The section allowed a deduction for the capital cost of pest-proof fencing constructed by a primary producer. The concession extended to the cost of contracting fencing in saline-affected areas to prevent grazing while the land recovered. No deduction was allowed for expenditure incurred after 21 August 1973 unless it was incurred under a contract entered into before that date.

Section 77 : Losses in deriving exempt income

The section allowed a deduction for losses incurred in carrying on a business, the income of which was exempt. This deduction ceased to be available after 30 June 1983, but had effect up to 30 June 1986. It has no application now.

Sections 77B, 77C, 77D and 77E : Special treatment of capital moneys paid to mining and afforestation companies

Very broadly, this group of sections - together with paragraph 78(1)(b) which was repealed in 1985 - gave tax concessions for capital subscribed to mining and afforestation companies. Such companies often raise capital, as it is needed, by progressively calling up the amounts unpaid on their partly-paid (or contributing) shares. Calls on shares have to be paid by a fixed date. Forfeiture of shares if calls are unpaid is usually provided for in the articles of a company.

In a winding up of a company, holders of partly-paid shares can be called on to contribute capital equal to the amount unpaid on their shares. With no-liability companies (which are usually mining companies), there is no obligation to pay calls, but forfeiture of the shares occurs if a call is not paid. Usually, 2 weeks are allowed for payment, and after 6 weeks forfeiture may be automatic - see subsection 479(1) of the Companies Act 1981. The following notes on the repeal of sections 77B, 77C, 77D and 77E need to be read against this background.

- Section 77B: Calls paid by certain holding companies

Section 77B permits a deduction, which would otherwise be available to a company under paragraph 78(1)(b), to be passed back to a resident company. Similarly, a deduction allowable under section 77C (for certain call moneys paid after 9 May 1968 and before 8 May 1973) could be passed back to a resident company by virtue of section 77B. Paragraph 78(1)(b) was repealed in 1985 and would only apply to calls paid after 19 September 1985 if the calls were made on or before that date. By this Bill section 77C is to be repealed. In that light, and because of the forfeiture procedure set out in the introductory note above, the section is now redundant.

- Section 77C : Calls paid on shares for the purposes of exploration or prospecting for minerals or of afforestation

Paragraph (c) of the subsection 77C(1) definition of "calls paid on shares" effectively denied the section 77C deduction for calls paid on certain shares, if the calls were made after 7 May 1973. This rendered the section inoperative from that date.

- Section 77D : Moneys paid on shares for the purposes of certain exploration, prospecting or mining

Under this provision, a deduction was allowed for subscriptions of share capital moneys to mining companies. Such moneys had to be paid after 30 June 1969 and before 8 May 1973, unless paid after 7 May 1973 as a result of calls made before then on shares owned before then by the taxpayer. It

is not likely that any calls would remain outstanding now, as they would have been forfeited automatically (subsection 479(1) Companies Act 1981 - see the introductory note preceding the notes on section 77B).

Section 77E : Sale of shares in mining companies

Section 77E was introduced to prevent the misuse of sections 77C and 77D. It applied only to shares sold after 16 July 1972. With the withdrawal of the deductions available under section 77C and 77D for calls and moneys paid on shares after 7 May 1973, the application of section 77E is effectively restricted to the period between 16 July 1972 and 8 May 1973.

Section 78 : Gifts

By virtue of specific provisions contained in section 78 of the Assessment Act, a number of gifts were deductible under that section for only a limited time. In these cases, both the relevant gift provisions and the provisions which limit their application are redundant. The details of the bodies affected and the relevant provisions are as follows:

- Subparagraph 78(1)(a)(xi), the United Nations Appeal for Children; and subparagraph (xxxii), the Australian National Committee for World Refugee Year, both limited by subsection 78(3) to gifts made before 1 July 1963.
- Subparagraph 78(1)(a)(xxxviii), the Australian National Committee for the Freedom from Hunger Campaign, limited by subsection 78(4) to gifts made before 1 July 1974.
- Subparagraph 78(1)(a)(vii), broadly, public war memorial building funds, limited by subsection 78(6) to gifts made before 1 July 1974.
- Subparagraph 78(1)(a)(l), I.D.E.C. Kampuchean Relief Appeal, limited by subsection 78(6AAA) to gifts made between 1 July 1979 and 18 September 1980.
- Subparagraph 78(1)(a)(li), The Australian Red Cross East Timor Appeal, limited by subsection 78(6AA) to gifts made between 1 July 1979 and 30 June 1980.

- Subparagraph 78(1)(a)(lix), broadly, Italian earthquake victims relief funds, limited by subsection 78(6AB) to gifts made between 1 July 1980 and 30 June 1981.
- Subparagraph 78(1)(a)(lxi), I.D.E.C. African Relief Appeal, limited by subsection 78(6AC) to gifts made between 1 July 1980 and 18 September 1980.
- Subparagraph 78(1)(a)(lxv), broadly, International Year of Disabled Persons funds; subparagraph (lxvii), broadly, Polish relief appeals; and subparagraph (lxx), broadly, Tongan natural disasters funds; all limited by subsection 78(6AD) to gifts made between 1 July 1981 and 30 June 1982.
- Subparagraph 78(1)(a)(lxxi), broadly, Falkland Islands relief funds; and subparagraph (lxxii), broadly, Lebanese relief funds, both limited by subsection 78(6AE) to gifts made between 1 July 1981 and 30 June 1983.
- Subparagraph 78(1)(a)(lxxix), I.D.E.C. African Famine Appeal, limited by subsection 78(6AF) to gifts made between 27 June 1983 and 1 December 1983.

Subdivision BA of Division 3 of Part III (sections 82B, 82C and 82D) : Trading stock valuation adjustment

These provisions had effect from 1 July 1976 to 30 June 1979 and gave a special deduction to persons carrying on a business. Broadly, the deduction reduced the value of trading stock at year end to remove any stock value increase attributable to inflation. The Subdivision had effect only for the 1976-77 to 1978-79 financial years.

Subdivision BB of Division 3 of Part III (sections 82EA to 82EM) : Deductions in respect of Non-oil-fired plant

This Subdivision allowed a deduction of 40 per cent of the capital cost of replacing oil-fired plant with non-oil-fired plant. It applied only where the taxpayer ordered or commenced construction of the replacement plant before 20 May 1983. The deduction was available in the year the replacement plant was first used or installed ready for use to produce assessable income, provided the use (or installation ready for use) occurred not later than 30 June 1984.

Subdivision C of Division 3 of Part III (sections 82KA to 82KG) : Interest in respect of Housing Loans

The Subdivision gave a concessional deduction for interest on home loans for the sole or principal residence of a taxpayer. The amount of the deduction was reduced on a sliding scale once a net income of \$4000 was reached. The concession was withdrawn for interest accrued after 31 October 1978 or paid after 1 July 1979. These provisions are now redundant although other schemes giving tax relief for home loan interest payments have since been inserted in the Act. Of those schemes, only one remains in force and it will terminate at the end of the 1989-90 income year.

Subdivision E of Division 3 of Part III (sections 82KM to 82KS) : Deductions for expenditure in respect of Home Insulation

This Subdivision gave a concessional deduction for thermal insulation costs on the taxpayer's first home. The deduction was inserted in 1981 and withdrawn for payments made after 23 August 1983 unless they were made under a contract entered into before that date. If any future payments happen to be made under such a contract, they will remain deductible by the general savings provision in clause 32.

Sections 122E, 122F, 122G, 122NA and 122Q: General mining deductions

These sections, all now redundant, form part of Division 10 of Part III of the Assessment Act. Broadly, that Division authorises deductions for specified types of expenditure incurred in carrying out mining operations. Notes on these redundant sections follow:

- Section 122E : Election to deduct expenditure in year in which incurred

This provision allowed a miner to deduct certain kinds of capital expenditure in the year in which it was incurred, rather than spread the expenditure over the life of the mine. A deduction is not allowable for expenditure incurred after 30 June 1976.

- Section 122F : Election to deduct expenditure on housing and welfare over five years

A miner was given the right to elect, under this section, to deduct housing and welfare expenditure over a 5 year period rather than over the life of the mine. The section does not apply to expenditure incurred after 30 June 1976.

. Section 122G: Deductions of appropriations

A miner carrying on prescribed mining operations could elect, under this section, to have a deduction for moneys earmarked for spending in future years. The moneys had to be set aside for specified types of capital expenditure relating to mining operations. The concession was withdrawn with general effect from the end of the 1974-75 income year.

. Section 122NA : Division not applicable where deduction allowable in accordance with section 57AJ

This section prevented a double deduction. If a depreciation deduction was allowed or allowable under section 57AJ in respect of storage facilities for petroleum fuel, the special deductions specified in Division 10 of Part III were not also allowed or allowable. Because it is proposed by this Bill to repeal section 57AJ as it is now also redundant (see earlier notes in that section), repeal of section 122NA is also appropriate.

. Section 122Q : Reduction of allowable deductions where declaration lodged under section 77D

This section is complementary to section 77D and the former section 77AA. Section 122Q provides for a reduction of the allowable deductions under Division 10 of Part III of the Act where the company has made a declaration under section 77D or the former section 77AA. Section 77AA has already been repealed and section 77D will be repealed by this Bill (see earlier notes on that section). Section 122Q therefore can have no application, and will also be repealed.

Sections 124AEA, 124ANA and 124AR: Special deductions available for exploring, prospecting or mining for petroleum.

These provisions, all now redundant, form part of Division 10AA of Part III of the Assessment Act. Broadly, that Division provides special deductions for specified types of expenditure in exploring, prospecting, or mining for petroleum. Notes on these redundant sections follow.

. Section 124AEA : Unapplied moneys paid on shares specified in certain declarations

This section ensured that the 'net declared capital' - a term defined in section 124AR (see following notes) - was brought into account in that section as a result of declarations lodged under section 77D and the former section 77A. Sections 77D and 124AR are being repealed with the consequence that section 124AEA can have no further effect.

- Section 124ANA : Division not applicable where deduction allowable in accordance with section 57AJ

This section prevented a double deduction. If a depreciation deduction was allowed or allowable under Section 57AJ in respect of storage facilities for petroleum fuel, the special deductions specified in Division 10AA of Part III were not also allowed or allowable. Because this Bill will repeal section 57AJ as it is now also redundant (see earlier notes on that section), repeal of section 124ANA is also appropriate.

- Section 124AR : Reduction of allowable deductions where certain declarations lodged

Section 124AR provides the mechanism for calculating a company's Division 10AA deduction entitlement after the company has effectively transferred some of its deduction entitlements to its shareholders so that they could enjoy a tax rebate under sections 77D or 160ACA.

Sections 124AR, 77D and 160ACA interact. By this Bill, sections 77D and 160ACA are to be repealed (see the notes on those sections). In these circumstances, repeal of 124AR is also appropriate.

Division 16B of Part III (Sections 159-159G) : Drought Bonds

The drought bonds scheme (see the notes on subclause 33(1) for details) became unnecessary after introduction of the income equalisation deposits scheme for primary producers. No drought bonds have been issued since 31 August 1976 and the last bond was redeemed in 1985. As there are no unredeemed bonds in circulation, the Division is redundant.

- Section 160 : Rebate in case of disposal of assets of a business of primary production

This section provided a rebate of tax where the whole of the assets (including livestock) of a business of

primary production were sold and the livestock were sold at a profit. The rebate was intended to ease what could otherwise be a substantial tax burden when the business was closing down. By subsection 160(6), the section does not apply to assessments of income for the 1978-79 or subsequent income years.

Section 160ABA : Rebate of tax payable by visiting industrial experts

Where the remuneration of a visiting industrial expert was not exempt under subparagraph 23(c)(vii) of the Assessment Act, section 160ABA allowed such a person a rebate of tax to effectively limit the Australian tax on the relevant emoluments to the amount of tax that would have been payable on that income in the country in which the recipient was ordinarily resident. Section 24AA operates to restrict the concession to visits that commenced on or before 30 June 1973.

As indicated earlier in these notes, subparagraph 23(c)(vii) and section 24AA are also redundant and are to be repealed.

Section 160AC : Rebate for export market development expenditure

This section authorises a rebate of tax for export market development expenditure. The special rebate was in addition to the deductions ordinarily available and allowed a tax saving of up to 80 cents for every dollar expended (see earlier notes on section 51AC). Only expenditure incurred between 1 July 1968 and 30 June 1974 was eligible.

Section 160ACA : Rebate for money paid on shares for the purposes of petroleum exploration, prospecting or mining

This section permits a rebate of tax for shareholders who subscribed share capital for specified purposes, on or after 25 August 1977 and before 20 September 1985. To be eligible for the rebate, the shareholder had to subscribe to a company which was exploring, prospecting or mining for off-shore petroleum. The company also had to make a declaration that the subscribed moneys would be spent on particular business outgoings within a specified time. For share capital subscribed to an on-shore mining company involved in the same activities, the comparable period ran from 22 August 1979 to 19 September 1985.

The rebate is allowable in the subscriber's income tax assessment in the income year in which the relevant share capital is subscribed. It remains available, technically, for call payments made after 19 September 1985

on calls made before 20 September 1985, provided the call-paying taxpayer was the owner of the shares before that date.

It is most unlikely, however, that any such call moneys are still unpaid (see the introductory note that precedes the earlier notes on section 77B). Nonetheless, any deduction entitlements will be preserved by the general savings provision of this Bill, i.e., clause 32.

Section 160ACB : Sale of shares in petroleum mining companies and eligible petroleum companies

The section denies the otherwise allowable section 160ACA rebate of tax (see earlier notes) if the shares to which the rebate applies are sold, or otherwise disposed of, to a petroleum mining company (or a petroleum mining investment company) before the relevant call moneys are expended on mining or prospecting outgoings. Because it limits the rebates available under section 160ACA, which this Bill will repeal, this provision is also redundant.

Section 160ACC : Company not entitled to investment allowance in certain circumstances

If a declaration under section 160ACA (see the previous notes under that section) is lodged and an election under section 124AG (depreciation) is made, a claim for an investment allowance deduction for expenditure on plant cannot be made.

That deduction is only available when an election is made, under section 124AG, to depreciate plant over a number of years. If the entire cost of the plant can be deducted under section 124AH (which gives a special deduction for petroleum exploration expenditure), the investment allowance is not available. Nor is the investment allowance available if depreciation (instead of immediate deductibility) is claimed and the company lodges a declaration under section 160ACA.

As it is no longer possible to make a declaration under section 160ACA and receive the rebate, section 160ACC is redundant.

Section 160ACD : Rebate in respect of certain Territory income

This section operated to allow a rebate of tax as a phasing in arrangement when, in the 1985-86 financial year, Christmas Island resident individuals first became subject to Australian income tax on their ex-mainland source income. The tax was phased in over a three year period, ending at the close of the 1987-88 income year.

This period, during which the section 160ACD rebate applied, has expired and the residents are now subject to full tax on what was previously exempt income. Because the need for rebate has expired, repeal is appropriate.

Schedule 2 : Amendment of certain Acts relating to the communication of taxation information

Customs Administration Act 1985

Information communicated to the Comptroller-General by the Commissioner of Taxation

Schedule 2 inserts new section 16A in the Customs Administration Act 1985. Section 16A will govern the further communication (if any) of information disclosed by the Commissioner of Taxation to the Comptroller-General of Customs under section 3F of the Taxation Administration Act 1953. By subsection 16A(1) the Comptroller-General of Customs will only be permitted to communicate taxation information disclosed under section 3F to:

- . a person or body having responsibility in connection with the administration of a law of customs or excise for a purpose connected with the exercise of that responsibility (paragraph (a)); or
- . to a court or tribunal for a purpose of a proceeding relating to the determination of a matter under a law of customs or excise. (paragraph (b)).

By subsection 16A (2) a person will not be allowed to disclose taxation information where such disclosure would be in breach of the secrecy provisions contained in section 16 of the Customs Administration Act 1953 or any other secrecy provision of a customs or excise law.

Proposed subsection (3) makes clear that a reference to the disclosure of information includes the granting of access to a document or the production of a document.

Sales Tax Assessment Act (No 1) 1930

This Schedule also amends section 10 (the secrecy provisions) of the Sales Tax Assessment Act (No 1) 1930, under which the disclosure of information acquired by a taxation officer in the performance of official duties is prohibited except in certain specified circumstances.

Existing subsection 10(4) provides that the secrecy provisions do not prohibit the disclosure of sales tax information to the Administrative Appeals Tribunal in

connection with proceedings under an Act of which the Commissioner of Taxation has general administration or to the Comptroller-General of Customs.

Because of the amendments proposed by clause 28 to allow the Comptroller-General of Customs access to taxation information this amendment will omit from subsection 10(4) the reference to the Comptroller-General.