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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO. 4) 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Items to be Moved on Behalf of
the Government

(Circulated by authority of the
Treasurer, the Hon Ralph Willis, MP)

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General Outline and Financial Impact

Payment of interest on overpayments and early payments

Amends the Bill so that various Acts refer to the *Taxation (Interest on Overpayments) Act 1983* by its new title, i.e., the *Taxation (Interest on Overpayments and Early Payments) Act 1983*. The amendments also remove references in the *Income Tax Assessment Act 1936* and the *Petroleum Resource Rent Tax Assessment Act 1987* to the interest rate prescribed for the purpose of the *Taxation (Interest on Overpayments) Act 1983*, because this rate will no longer be prescribed in regulations.

Financial impact: None.

Employee share acquisition schemes

Amends the Bill to make a number of small changes to the employee share acquisition scheme provisions which will ensure that the measure has its intended effect.

Financial impact: The nature of the amendments are such that a reliable estimate cannot be made.



Payment of interest on overpayments and early payments

Explanation of the amendments

The following amendments relate to *Schedule 5* of the Bill.

The Bill makes a number of amendments to the *Taxation (Interest on Overpayments) Act 1983* (the Overpayments Act). One of the amendments will change the title of that Act to the *Taxation (Interest on Overpayments and Early Payments) Act 1983*. This is because in future interest will be payable on early payments of income tax as well as on overpayments of income tax. Another amendment will provide for the interest rate on overpayments and early payments to be set in the Overpayments Act. Previously the rate was set in regulations but, as explained in the Explanatory Memorandum to the Bill, this is no longer necessary.

Because some other Acts pick up the rate of interest prescribed for the Overpayments Act for their own purposes, the Bill makes some consequential amendments of those other Acts to reflect that the rate will no longer be prescribed. However, the Bill does not cover all the Acts affected. For that reason it is proposed to amend some other Acts in the same way.

As well as these consequential amendments, some others are required to deal with instances where other Acts refer to the Overpayments Act by its old title. The following amendments will change those Acts so that they cite the Overpayments Act by its new title.

Amendment 1

This amendment changes the citation in paragraph 26(jb) of the Tax Act so that it refers to the Overpayments Act by its new title. **[Item 24A]**

This amendment also changes the definition of 'basic statutory interest rate' in section 102AAB of the *Income Tax Assessment Act 1936* (the Tax Act) by removing the reference to the interest rate prescribed for the purpose of the Overpayments Act and replacing it with the rate specified

in section 214A of the Tax Act, less 4 percent, i.e., the rate set in the Overpayments Act to apply to overpayments and early payments of income tax. **[Item 24B]**

Amendment 2

This amendment includes section 102AAB of the Tax Act as a provision to which interest for in a particular period can be calculated under subsection 214A(2) of the Tax Act. **[Item 26]**

Amendment 3

This amendment includes section 65 of the *Petroleum Resource Rent Tax Assessment Act 1987* as a provision to which interest for in a particular period can be calculated under subsection 214A(2) of the Tax Act. **[Item 26]**

Amendment 4

This amendment changes citations in the following Acts so that they refer to the Overpayments Act by its new title:

- Paragraph 5A(1)(e) of the *Australian Capital Territory Taxation (Administration) Act 1969* **[item 36A]**
- Schedule 3 of the *Freedom of Information Act 1983* **[item 36B]**
- Paragraph 5A(1)(e) of the *Pay-roll Tax (Territories) Assessment Act 1971* **[item 36C]**
- Subsections 5(4) and 6(3) of the *Swimming Pools Tax Refund Act 1992* **[items 36F and 36G]**.

This amendment also removes from section 65 of the *Petroleum Resource Rent Tax Assessment Act 1987* the reference to the interest rate prescribed for the purpose of the Overpayments Act and replaces it with the rate specified in section 214A of the Tax Act less 4 percent. **[Items 36D and 36E]**

Amendment 5

This changes the application provision in the Bill so that amendments 1-4 above, to the extent that they refer to the interest rate provided for by section 214A of the Tax Act, will apply to interest payable in respect of periods commencing on or after 1 July 1994, or in respect of periods to the extent that they continue after 30 June 1994. This is consistent with the similar amendments being made in the Bill. **[Subitem 37(10)]**



Employee share acquisition schemes

Explanation of the amendments

The following amendments relate to *Schedule 6* of the Bill.

Amendment 6 : Company employee share benefit

Throughout the employee share acquisition scheme provisions it is a basic tenet that the provision of a share or right to an employee, other than a share arising from the exercise of a right, is a fringe benefit. This amendment will exclude from a "company employee share benefit" shares arising from the exercise of a right. *[Item 2, new paragraph 39FA(ca)]*

Amendment 7 : ESAS shares or rights

Also, to qualify for the concessions, the employer must only provide its own shares or shares of its holding company. This amendment will ensure that the qualifying conditions for the concessions will not be breached where a holding company provides shares or rights directly to the employees of the subsidiary company. *[Item 2]*

Amendment 8 : Permanent employees

To qualify for the concessions available to reduce the taxable value of an employee share benefit, an employer needs to, amongst other things, offer the shares or rights to all "permanent employees". The Bill excludes from the definition of "permanent employee" directors, employees who are only temporarily in Australia and non-residents. This amendment will exclude persons not physically present in Australia from the definition of "permanent employee". *[Item 2]*

Amendments 9 to 11 : Transitional provision

The transitional provision announced in the Treasurer's Press Release of 29 July 1994 applies only to shares or rights acquired by employees under the share scheme arrangement. Where shares or rights were also acquired under the arrangement by persons other than employees, the present

provisions of the Bill would disqualify the arrangement from the transitional provision - including any shares or rights acquired by employees. This amendment will ensure that, regardless of what other shares or rights may be issued under the arrangement, those issued to employees before 30 June 1995 fall for treatment under the transitional provision.

The transitional provision announced in the Treasurer's Press Release of 29 July 1994 also requires, amongst other things, that all shares or rights be provided by 30 June 1995. As a result of a drafting error, the date in the Bill is 30 July 1995. This amendment will change the date back to 30 June 1995, in line with the Press Release. **[Item 2]**

Amendment 12 : Valuation of non-quoted rights to acquire shares

The Bill specifies that the value of a right which is not quoted on a stock exchange is not to be lower than the market value of the underlying share less the lowest exercise price of the right where the valuation is not based on the Schedule 2 table. This amendment will apply that lower limit to the valuation of all rights which have not been quoted on a stock exchange. This amendment was foreshadowed in the Assistant Treasurer's Press Release of 13 October 1994. **[Item 6]**

Amendments 13 to 15 : Instructions for using Schedule 2 table

The wording in the instructions for using Table 1 of Schedule 2 which refers to the exercise period of a right differs from the wording in the instructions for using Table 2 of Schedule 2 (it also differs from the wording in the "General note"). This amendment will make the wording in the instructions for using Table 2 (and the wording in the "General note") the same as the wording in Table 1 to avoid any confusion in interpreting those instructions. **[Item 8]**

Amendment 16 : Scope of provisions

The provision of a share arising from the exercise of a right is not a fringe benefit. This amendment will ensure that the provision of shares arising from the exercise of a right will not be taxed under the previous employee share acquisition scheme provisions (section 26AAC of the *Income Tax Assessment Act 1936*) if the right was not taxed under these provisions. **[Item 11]**

Amendment 17 : Eligible termination payments

The Treasurer's Press Release of 29 June 1994 stated that share discounts subject to the new employee share acquisition scheme arrangements would no longer be taxed as eligible termination payments (ETP). While the Bill excludes from ETPs amounts included in the assessable income of

a taxpayer under the deferral concession by virtue of section 26AAD or under the non-cash business benefit provisions of section 21A, the actual provision of discounted shares or share rights has not been excluded. This amendment will exclude from ETPs any amount which would have been otherwise subject to the new employee share acquisition scheme arrangements. *[Item 13]*

Amendment 18 : Typographical correction

"Division 9 of Part III" should read "Division 9 of Part IIIA". *[Item 16]*

Amendments 19 to 22 : Cost base

The taxable value of an employee share benefit is generally the market value of the relevant share or right. Similarly, the cost base of that share or right (for capital gains purposes) is also generally the market value of the relevant share or right as calculated for fringe benefits tax (FBT) purposes. This amendment will specify that the cost base will be the greater of the amount actually paid for the share or right or the market value of the share or right for FBT purposes. *[Item 16]*







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