

ENVIRONMENT

Heritage rebate at last

FRANCA PETRONE welcomes the recent enactment of tax relief for owners of heritage-listed buildings.

After many years of lobbying by the National Trust and other bodies, the Federal Government has finally agreed to provide some tax relief for owners of heritage-listed buildings. The *Taxation Laws Amendment Bill (No. 4) 1993* (Cth) was passed by the House of Representatives and Senate on 24 March 1994.

The legislation will incorporate into the *Income Tax Assessment Act 1936* (Cth) sections which aim to provide 'an incentive for owners of heritage-listed properties to invest in the conservation of those properties in the interests of the nation's heritage' (Explanatory Memorandum). While the relevant sections technically take effect from 1 July 1994, administrative arrangements for their implementation have not yet been finalised, and thus they are not expected to be truly operative until September or October 1994.

The incentive provided by the new legislation will be by way of a rebate of 20 cents in the dollar for approved expenditure of at least \$5000 on heritage conservation works (s.159UQ). Heritage conservation works are defined in s.159UB to mean works for the purpose of conservation, maintenance, preservation, restoration, reconstruction or adaptation of a building or other structure that is of cultural significance and is listed on a recognised heritage register (to be declared in writing by the Minister). The declaration regarding recognised registers is pending.

Listing on heritage register

The Explanatory Memorandum indicates that the rebate is intended to relate to conservation works on buildings or structures listed in conventional Commonwealth, State or Territory heritage registers. Clearly, expenditure for work to structures listed in moveable works heritage registers, or buildings listed in the National Trust and/or local heritage registers will not be included, unless declared otherwise by the Minister.

These limitations are largely due to the fact that funds for the scheme are limited and thus the number of eligible buildings or structures must necessarily be limited. There was a suggestion in the Senate that in those States which did not have a formal State heritage list, such as Tasmania, or which only had relatively small undeveloped lists, such as Western Australia and the Northern Territory, the National Trust lists should be recognised, at least until the State lists were further developed. This suggestion would certainly put all States and the Territory on a more level playing field.

The Australian Constitution prevents the Government from allocating specific variable rebate limits for each State. Section 51(ii) of the Constitution gives the Commonwealth the power to make laws with respect to taxation, but so as not to discriminate between States or parts of States. It is therefore important to ensure at the outset that certain States will not be disadvantaged.

Cultural significance requirement

The requirement that the building or structure be of cultural significance *in addition* to being listed on a recognised register is an interesting one which begs the question whether certain buildings or structures could be excluded from the scheme on the basis that although listed, they are not of cultural significance.

Cultural significance is defined in *The Australia ICOMOS Charter for the Conservation of Places of Cultural Significance* (the 'Burra Charter') to mean 'aesthetic, historic, scientific or social value for past, present or future generations'. This fairly wide definition is embodied in the *Australian Heritage Commission Act 1975* (Cth) such that any building or structure listed under that legislation would necessarily be of cultural significance. Whether the same is true for all State heritage legislation however, is not as clear. In South Australia, for example, the *Heritage Act 1993* (SA) provides that a place may be entered in the State Heritage Register if it is of 'heritage value' (s.17). Heritage value is defined in s.16 of the Act. Under that section a building could be of heritage value if it demonstrated a high degree of technical accomplishment *or* was an outstanding representative of particular construction techniques or design characteristics (s.16(e)). Would such a building be considered to be of cultural significance for the purposes of the rebate scheme? The answer is not clear.

Yet another question unanswered by the legislation is whether work to buildings or structures which are provisionally listed will be eligible. From a reading of the legislation it would appear that such buildings or structures are excluded so that an owner would be best advised to delay any conservation work until the heritage status of the building or structure was determined.

Administration and operation of the scheme

The rebate scheme will be administered by the Department of Communications and the Arts. The rebate will be available to taxpayers who, either alone or with others, have a freehold interest in or hold a Crown lease over land on which a relevant heritage building or structure is situated (s.159UG).

Obtaining a rebate is a two-step process. A taxpayer who wishes to obtain a rebate must first apply to the Minister for Communications and the Arts ('the Minister') for a provisional certificate (s.159UG).

Before a provisional certificate can be issued the Minister must be satisfied that an application has been made in the prescribed form and contains all relevant information (s.159UG-159UJ); that the provisional certificate procedures have been complied with and that the issue of a provisional certificate would be in accordance with the provisional certificate criteria (s.159UJ).

The Minister must specify in writing the procedures which must be followed in issuing provisional certificates, as well as the criteria by which proposed heritage conservation works will be judged before a certificate is issued (s.159UF).

The procedures and criteria are currently in the process of being developed. They may require the Minister to take into account any number of factors including specified heritage conservation criteria and recommendations of recognised heritage bodies.

The criteria and procedures must also ensure that the amount specified as qualifying expenditure in any one provisional certificate is at least \$5000. This effectively means that people spending less than \$5000 on conservation works will not be eligible for the rebate. The original Bill proposed a \$10,000 threshold but a coalition amendment foreshadowed in the Senate brought the threshold down to \$5000. This was a very important amendment which makes the scheme both more accessible to the broad range of taxpayers who have heritage-listed properties and which significantly lessens the effect of such property owners delaying conservation works until the threshold is reached. (Contrary to popular belief not all owners of heritage-listed properties are rich and have grand mansions on roving grounds. There are many small cottages which are heritage-listed and which would require periodic expenditure on conservation works falling far short of the original \$10,000 threshold which was proposed.)

If all relevant requirements are met, the Minister must issue a provisional certificate provided the taxpayer gives the Minister a signed statement indicating that the taxpayer has obtained all necessary building and other approvals, and pays the prescribed fee. It is not yet clear what the fee (if any) will be.

When a certificate is issued it must state the taxpayer's name, describe the heritage conservation works proposed, specify the standard to which those works must be completed and set a qualifying expenditure limit in respect of the works (s.159UK).

The qualifying expenditure limit is the maximum amount of the expenditure that will be eligible for a rebate. The limit arises because the Government has placed a cap on the amount of revenue that it is willing to forego on this scheme. Consequently, the Minister must specify an amount, by written notice, as the maximum approval limit for each financial year in respect of applications for provisional certificates (s.159UD). The proposed limit for 1993-1994 is \$9.5 million which is expected to have a revenue cost of \$2 million (Explanatory Memorandum).

Thus, applications for rebates will be competitive. It is likely that not all applications will be approved even if they fall within the criteria and some taxpayers may get approval for part only of the expenditure that they will incur.

The closing date for applications for provisional certificates in relation to each financial year will be gazetted at least 21 days before the specified date (s.159UE). The Minister may consider applications lodged after that date but is not obliged to do so.

Only expenditure incurred while a provisional certificate is in force will be eligible for the rebate (s.159UM). In the absence of an extension, provisional certificates will generally remain in force for two years unless the taxpayer dies, disposes of his, her or its interest in the property or, being a partnership, company or trust, is dissolved or otherwise terminated. This

may give rise to problems in a partnership situation where one or more partners leave or a new partner is admitted, as this would automatically result in the dissolution of the old partnership and formation of a new one.

When the approved conservation work (of at least \$5000) has been completed to the standard specified in the provisional certificate, the taxpayer may apply for a final certificate (s.159UM). Such application can only be made while the provisional certificate is still in force.

The issue of a final certificate will result in the taxpayer being entitled to the rebate which will be granted only in the year of income in which the *application* for the final certificate was made. Thus, if a taxpayer applies for a final certificate in one financial year but the certificate is not issued until the next financial year, the taxpayer will need to request an amended income tax assessment. It would seem that this is an unnecessary expense for taxpayers which would easily be rectified by allowing the rebate to be claimed in the year in which the final certificate is *issued*. In any event, taxpayers should carefully consider the timing of their applications.

Tax rebate

The rebate, once granted, is 20% of the amount of eligible expenditure specified in the final certificate. The amount of eligible expenditure will be equal to the money actually spent on the works which is above the \$5000 threshold but does not exceed the amount originally approved in the provisional certificate.

If expenditure incurred by a taxpayer in carrying out heritage conservation work covered by a provisional certificate is *deductible* under some other provision of the legislation then only the amount spent in excess of that specified in the provisional certificate will be deductible. If a final certificate is not applied for or is not issued, then any amount which would have otherwise been deductible can be allowed in full (s.159UU).

The sum of the rebates allowable to a taxpayer cannot exceed the amount of tax otherwise payable by the taxpayer (excluding the Medicare levy) (s.160AD).

Conclusion

The heritage conservation rebate scheme is long overdue. It will be interesting to see how the rebate operates in practice. Unquestionably, it will cause some delays in the carrying out of heritage conservation works since expenditure will only qualify for a rebate once a provisional certificate has been granted. However, it will provide a much needed incentive for owners of heritage-listed properties to spend money on conserving those properties.

The maximum approval limit for heritage conservation work will result in applications for provisional certificates becoming highly competitive. It is hoped that over time the Government will see fit to raise the maximum approval limit generating benefits not only for the owners of heritage-listed properties, but also for the building and conservation industry generally. Similar schemes operating in Europe and the United States have proven to generate economic and other benefits sufficient to outweigh the cost of the scheme.

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