

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 6 September 1983

(Minister Assisting the Treasurer)

A BILL

FOR

An Act to amend the *Income Tax Assessment Act 1936* and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 **1. (1)** This Act may be cited as the *Income Tax Laws Amendment (Medicare Levy) Act 1983*.

(2) The *Income Tax Assessment Act 1936*¹ is in this Act referred to as the Principal Act.

Commencement

10 **2.** This Act shall come into operation on the day on which it receives the Royal Assent.

3. (1) Part VIIB of the Principal Act is repealed and the following Part is substituted:

“PART VIIB—MEDICARE LEVY

Interpretation

“251R. (1) In this Part—

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‘Medicare levy’ or ‘levy’ means Medicare levy imposed as such by any Act as assessed under this Act;

‘Repatriation Acts’ means the *Repatriation Act 1920*, the *Repatriation (Far East Strategic Reserve) Act 1956*, the *Repatriation (Special Overseas Service) Act 1962*, the *Interim Forces Benefits Act 1947* and the *Seamen’s War Pensions and Allowances Act 1940*.

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“(2) Subject to sub-sections (3), (4) and (5), a person shall be taken to have been a dependant of another person for the purposes of this Part during any part of the year of income in which—

(a) the first-mentioned person was a resident of Australia;

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(b) the first-mentioned person was—

(i) the spouse of the other person;

(ii) a child of the other person less than 16 years of age; or

(iii) a child of the other person not less than 16 years of age but less than 25 years of age and receiving full-time education at a school, college or university; and

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(c) the other person contributed to the maintenance of the first-mentioned person.

“(3) A child referred to in sub-paragraph (2) (b) (iii) shall not be taken to have been a dependant of a person for the purposes of this Part during a period being the whole or a part of a year of income unless the person would be entitled to a rebate in respect of that child under section 159J in his assessment in respect of income of that year of income but for sub-section 159J (1A).

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“(4) Where in relation to a period being the whole or a part of a year of income—

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(a) the parents of a child referred to in paragraph (2) (b) lived separately and apart from each other; and

(b) that child would, but for this sub-section, be taken, for the purposes of this Part, to be a dependant of each of his parents in respect of that period,

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that child shall be taken to be a dependant only of the parent (if any) to whom family allowance under Part VI of the *Social Security Act 1947* was paid or is payable in respect of that child in respect of that period.

“(5) For the purposes of paragraph (2) (c), a person shall be taken to have contributed to the maintenance of another person during any period during which the person and that other person resided together, unless the contrary is established to the satisfaction of the Commissioner.

5 “(6) In this Act (other than this Part, the definition of ‘year of tax’ in sub-section 6 (1), and Division 17 of Part III), unless the contrary intention appears, ‘income tax’ or ‘tax’ includes levy payable in accordance with this Part.

10 “(7) In determining for the purposes of this Part and of any Act imposing levy whether a person was, or but for sub-section 251U (2) would have been, or was not, a prescribed person during the whole or a part of the year of income that commenced on 1 July 1983, that year of income shall be deemed to be constituted by the period commencing on 1 February 1984 and ending on 30 June 1984.

15 **Medicare levy**

 “251S. (1) Subject to this Part, a levy by the name of Medicare levy is levied, and shall be paid, at the rate applicable under the relevant Act imposing the levy, for the financial year that commenced on 1 July 1983, and for each succeeding financial year, upon—

20 (a) the taxable income of the year of income of a person, not being a company or a person in the capacity of a trustee, who, at any time during the year of income, was a resident of Australia otherwise than by virtue of sub-section 7A (2);

25 (b) if the trustee of a trust estate is required to be assessed in pursuance of section 98 in respect of a share of the net income of the trust estate of the year of income, being a share to which a beneficiary who, at any time during the year of income, was a resident of Australia otherwise than by virtue of sub-section 7A (2) is presently entitled—that share of that net income; and

30 (c) if the trustee of a trust estate (other than a trust estate of a deceased person) is required to be assessed, and is liable to pay tax, in pursuance of section 99 or 99A in respect of the whole or a part of the net income of the trust estate of the year of income—that net income or that part of that net income, as the case may be.

35 “(2) Levy payable by a person in accordance with this Part is payable in addition to any tax payable by him in accordance with any other provision of this Act.

Levy not payable by prescribed persons or by certain trustees

40 “251T. Notwithstanding anything contained in section 251S, Medicare levy is not payable by—

 (a) a person (not being a person in the capacity of a trustee) who was a prescribed person during the whole of the year of income;

- (b) a person in the capacity of a trustee of a trust that is a Territory trust for the purposes of Division 1A of Part III in relation to the year of income, in respect of income of the trust of the year of income; or
- (c) a person in the capacity of a trustee of a trust, in respect of a share of the net income of the trust estate of the year of income (being a share to which a beneficiary who was a prescribed person during the whole of the year of income is presently entitled) in respect of which the trustee is required to be assessed in pursuance of section 98. 5

Prescribed persons

“251U. (1) Subject to this section, a person shall be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during a particular period if— 10

- (a) the person was entitled to free medical treatment during the whole of that period in respect of every incapacity, disease or disabling condition by reason that the person was a member of the Defence Force or was a relative of, or was otherwise associated with, a member of the Defence Force; 15
- (b) the person was entitled under any of the Repatriation Acts to free medical treatment during the whole of that period in respect of every incapacity, disease or disabling condition; 20
- (c) the person was, during the whole of that period, the holder of a card issued by the Commonwealth and known as a Health Care Card, a Pensioner Health Benefits Card or a Health Benefits Card and the amount of the income derived by the person or by his or her spouse was not taken into account in determining the eligibility of the person for the card; 25
- (d) during the whole of that period the person was a non-resident, or was a resident solely by virtue of sub-section 7A (2);
- (e) during the whole of that period the person was—
 - (i) the head of a diplomatic mission, or the head of a consular post, established in Australia; 30
 - (ii) a member of the staff of a diplomatic mission, or a member of the consular staff of a consular post, established in Australia; or
 - (iii) a member of the family of a person referred to in sub-paragraph (i) or (ii), being a member who forms part of the household of that person, 35

and was not an Australian citizen and was not ordinarily resident in Australia; or

- (f) the Minister for Health has certified that, had any service, treatment or care to which Medicare benefits under the *Health Insurance Act 1973* relate been rendered to the person or to another person during that period, the first-mentioned person would not have been entitled to Medicare benefits in respect of that service, treatment or care. 40

“(2) A person shall not be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during a particular period unless every person who was a dependant of the first-mentioned person during that period is to be taken, or but for this sub-section would be taken, to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during that period.

“(3) Where—

(a) a person would not, but for this sub-section, be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during a particular period; and

(b) the person would, but for sub-section (2), be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during that period by virtue of paragraph (1) (a), (b) or (c),

the person shall be taken to have been a prescribed person, for the purposes of this Part and of any Act imposing levy, during one-half of that period.

“(4) In this section—

(a) expressions that are defined by the Vienna Convention on Diplomatic Relations referred to in the *Diplomatic Privileges and Immunities Act 1967* have the same respective meanings as in that Convention; and

(b) expressions that are defined by the Vienna Convention on Consular Relations referred to in the *Consular Privileges and Immunities Act 1972* have the same respective meanings as in that Convention.

Penalty for false statement

“251V. (1) A taxpayer who includes in his return a false statement as to any matter affecting his liability to pay levy or the amount of levy properly payable by him is liable to pay as additional levy an amount equal to—

(a) if no levy was or would have been payable under an assessment made upon the basis of the false statement—twice the amount of levy properly payable by him; or

(b) if an amount of levy was or would have been payable under an assessment made upon the basis of the false statement—twice the difference between that amount and the amount of levy properly payable by him,

or \$2, whichever is the greater.

“(2) The Commissioner may, in any case, for reasons that he thinks sufficient, and either before or after making any assessment, remit the whole or any part of the additional levy.

“(3) Notwithstanding sub-section 193 (2), a Board of Review has power to review decisions of the Commissioner relating to the remission of additional levy payable under sub-section (1) where the additional levy payable, after the making by the Commissioner of his decision, exceeds the greater of the following amounts, namely, \$2 or an amount calculated, in respect of the period commencing on the last day allowed for furnishing the return and ending

on the day upon which the assessment of the additional levy is made, at the rate of 10% per annum of one-half of the amount of the additional levy payable under sub-section (1).

“(4) If in any case in which a taxpayer is liable to pay additional levy under this section a taxation prosecution is instituted in respect of the same subject matter, the additional levy is not payable unless and until the prosecution is withdrawn.

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“(5) In this section, ‘taxation prosecution’ means a proceeding by the Crown for the recovery of a pecuniary penalty under this Act.

Regulations

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“251W. (1) The regulations may make provision for and in relation to requiring any person to supply to the Commissioner for the purposes of this Part or of any Act imposing levy such information as is prescribed, being information that is in the possession of the person or to which the person has access.

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“(2) In sub-section (1), ‘person’ includes any authority or officer of the Commonwealth or of a State.

Notification of Medicare levy on notices of assessment

“251X. The notice of assessment of a taxpayer in respect of income of a year of income that the Commissioner is required to serve on the taxpayer under section 174 shall, if the taxpayer is liable in respect of that income to pay levy in addition to any tax payable under the provisions of this Act other than this Part, specify the amount of the levy.

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Calculation of provisional tax on estimated income

“251Y. Where section 221YDA applies for the purpose of determining the provisional tax payable by a taxpayer in respect of income of a year of income, the Commissioner may make such assumptions as he thinks appropriate as to any matters that are likely to affect the liability of the taxpayer to pay levy in respect of that year of income or to affect the amount of the levy properly payable by the taxpayer.”.

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(2) The repeal effected by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1979 and of all subsequent years of income.

(3) Part VIIB of the Principal Act as amended by this Act applies to assessments in respect of income of the year of income that commenced on 1 July 1983 and of all subsequent years of income.

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Consequential amendments

4. (1) The Acts specified in the Schedule are amended as set out in the Schedule.

(2) The amendments to the definition of “Australian tax” in sub-section 3 (1), and the definition of “the average rate of Australian tax” in sub-section 15 (1), of the *Income Tax (International Agreements) Act 1953* apply to

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assessments in respect of income of the year of income that commenced on 1 July 1979 and of all subsequent years of income.

(3) Sub-section 3 (10) of the *Income Tax (International Agreements) Act 1953*, as amended by this Act, applies to assessments in respect of income of the year of income that commenced on 1 July 1983 and of all subsequent years of income.

SCHEDULE

Section 4

| Act | Amendments |
|--|--|
| <i>Income Tax (International Agreements) Act 1953</i> | <p>Sub-section 3 (1) (definition of "Australian tax") Omit "but does not include health insurance levy imposed as such by any Act as assessed under Part VII B of the Assessment Act".</p> <p>Section 3— Add at the end thereof the following sub-section: "(10) For the purposes of this Act, Medicare levy shall be deemed to be income tax and to be imposed as such and, unless the contrary intention appears, references to income tax or tax shall be construed accordingly."</p> <p>Sub-section 15 (1) (definition of "the average rate of Australian tax") Omit "(other than health insurance levy imposed as such by any Act as assessed under Part VII B of the Assessment Act)".</p> |
| <i>Local Government (Personal Income Tax Sharing) Act 1976</i> | <p>Section 3— (1) Add ", and includes Medicare levy" at the end of the definition of "income tax". (2) Insert after the definition of "Local Government Grants Commission" the following definition: " 'Medicare levy' means the levy referred to in Part VII B of the Income Tax Assessment Act;". (3) Insert "and additional Medicare levy payable under section 251 V of that Act," before "but does not include" in the definition of "personal income tax".</p> <p>Section 4A— Insert "Medicare levy and" before "special surcharges".</p> |
| <i>States (Tax Sharing and Health Grants) Act 1981</i> | <p>Sub-section 4 (1) — (1) Add ", and includes Medicare levy" at the end of the definition of "income tax". (2) Insert after the definition of "income tax" the following definition: " 'Medicare levy' means the levy referred to in Part VII B of the Income Tax Assessment Act;".</p> <p>Sub-section 6 (8) - (1) Insert "Medicare levy or" before "a special surcharge". (2) Insert "Medicare levy or" before "that special surcharge".</p> |

NOTE

1. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; No. 46,

NOTE—continued

68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; and Nos. 14, 25, 39, 000 and 000, 1983.