

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO.3) 1985
AUSTRALIAN CAPITAL TERRITORY STAMP DUTY AMENDMENT
BILL 1985

BANK ACCOUNT DEBITS TAX AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM
PART A

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

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FOREWORD

Part A of this memorandum contains explanations designed to provide a broad guide to the three Bills that have been introduced to give effect to a number of taxation measures foreshadowed in the September 1985 Tax Reform announcement, in the 1985-86 Budget and in earlier announcements.

Part B of the memorandum, to be issued shortly, will contain a clause by clause explanation of the Bills.

GENERAL OUTLINE

Taxation Laws Amendment Bill (No. 3) 1985

This Bill will amend -

- . the Income Tax Assessment Act 1936 -
 - .. to provide for an annual election by general mining and petroleum companies to have undeducted exploration and development expenditure treated as transferable carry-forward losses (September 1985 Tax Reform announcement);
 - .. to withdraw the rebate of tax available in respect of share capital subscribed to petroleum exploration, prospecting or mining companies (September 1985 Tax Reform announcement);
 - .. to withdraw the income tax deduction allowable for one-third of calls paid on shares in an afforestation company (September 1985 Tax Reform announcement);
 - .. to impose on householders who are owner-builders a liability to make deductions of tax from prescribed payments made in connection with domestic building projects, the cost of which exceeds \$10,000, that are commenced on or after 1 July 1986 (September 1985 Tax Reform announcement);
 - .. to reduce the special income tax concessions for investments in the production of Australian films (September 1985 Tax Reform announcement);
 - .. to provide an additional live stock valuation option for horse breeders so that, under the trading stock provisions applicable to live stock, the cost of stallions may be written down at the rate of 50% per annum on a diminishing value basis and the cost of mares may be written down either at the rate of 33 1/3% per annum on a diminishing value basis or, depending on a mare's age, over a minimum period of 3 years (1985-86 Budget announcement);

.. to remove, with effect from 1 January 1986, the present exemption from income tax of payments received under the Tertiary Education Assistance Scheme (TEAS) and the Adult Secondary Education Assistance Scheme (ASEAS) (1985-86 Budget announcement); and

.. to ease the existing restrictions on the use of information that, under the income tax secrecy provisions, may be provided to a Royal Commission (proposal announced on 21 May 1985);

the Taxation Administration Act 1953 -

.. to permit the National Crime Authority to examine, in a private hearing, any director or officer of a company in relation to taxation information that relates to the affairs of the company;

the Income Tax (International Agreements) Act 1953-

.. to give the force of law in Australia to a comprehensive taxation agreement and protocol between Australia and Finland covering all forms of income flowing between the two countries. The agreement and protocol were signed on 12 September 1984; and

.. to specify that interest and royalties derived by residents of Australia from sources in Finland and in respect of which, under the agreement, Finland is required to limit its tax to an amount not exceeding 10% will not, by reason of the payment of the limited tax, be exempt from Australian tax; and

the Australian Capital Territory Taxation (Administration) Act 1969 -

.. to treat transfers of units in unit trusts as transfers of marketable securities subject to Australian Capital Territory stamp duty (1985-86 Budget announcement); and

.. to set down the rules governing liability for stamp duty on loan securities that is to be imposed by the accompanying Australian Capital Territory Stamp Duty Amendment Bill 1985 (1985-86 Budget announcement).

The Bill will also validate the regulation-making power under the following Acts -

- . the Australian Capital Territory Tax (Hire-Purchase) Business Act 1969;
- . the Australian Capital Territory Tax (Insurance Business Act) 1969;
- . the Australian Capital Territory Tax (Purchases of Marketable Securities) Act 1969; and
- . the Australian Capital Territory Tax (Sales of Marketable Securities) Act 1969.

Australian Capital Territory Stamp Duty
Amendment Bill 1985

This Bill will amend the stamp duty law applicable in the Australian Capital Territory (including Jervis Bay) -

- . to impose duty at specified rates on loan securities (1985-86 Budget announcement);
- . to increase the rates of duty on conveyances of real property (1985-86 Budget announcement); and
- . to validate the regulation-making power under the Australian Capital Territory Stamp Duty Act 1969.

Bank Account Debits Tax Amendment Bill 1985

This Bill will double the rates of the bank account debits tax applicable in the Australian Capital Territory, including Jervis Bay (1985-86 Budget announcement).

FINANCIAL IMPACT

Taxation Laws Amendment Bill (No. 3) 1985

The estimated revenue cost of providing that undeducted exploration and development expenditure may be treated as transferable carry-forward losses is \$70m in 1986-87 and \$65m in 1987-88.

The withdrawal of the rebate for share capital subscribed to petroleum exploration, prospecting or mining companies and of the deduction for calls on afforestation company shares will result in an estimated revenue saving of \$10m in 1986-87 and \$15m in 1987-88.

The measures to bring "owner-builders" within the scope of the prescribed payments system will lead to a revenue gain of \$16m in 1986-87 and \$4m in 1987-88.

The estimated net revenue saving from the reduction in the concessions for investments in Australian films is \$35m in 1986-87 and subsequent years.

The estimated cost of providing the additional live stock valuation option for horse breeders is nil for 1985-86. The nature of the provision is such that a reliable estimate of the cost of this measure for future years cannot be determined.

The potential saving to the revenue arising from taxing Tertiary Education Assistance benefits and Adult Secondary Education Assistance payments is estimated to be nil in 1985-86, \$4m in 1986-87, \$23m in 1987-88 and \$25m in 1988-89.

The measure permitting greater use of taxation information provided to a Royal Commission should have no effect on revenue.

The revenue gain from treating, for ACT stamp duty purposes, transfers of units in unit trusts as marketable security transfers is estimated at \$0.05m in a full year.

The comprehensive taxation agreement and protocol with Finland is expected to have a negligible impact on the revenue.

Australian Capital Territory Stamp Duty Amendment Bill 1985

The proposed imposition of ACT stamp duty on loan securities is estimated to yield a revenue gain of \$1.5m in a full year.

The estimated revenue gain from increasing the rates of stamp duty on real property conveyances is \$1.5m in a full year.

Bank Account Debits Tax Amendment Bill 1985

The revenue gain from doubling the rates of bank account debits tax in the ACT is estimated at \$4m in a full year.

MAIN FEATURESTaxation Laws Amendment Bill (No. 3) 1985Petroleum and general mining : Group loss transfer
(Clauses 24, 25, 29, 31 to 35)

Amendments proposed by the Bill will enable general and petroleum mining companies to elect to have undeducted exploration and development expenditure incurred in 1985-86 and subsequent income years treated as a deductible carry-forward loss. The annual election will allow mining companies to take advantage of existing provisions of the income tax law that permit the transfer of losses within a company group.

This measure was announced on 19 September 1985 as part of the Statement on Reform of Australian Taxation System.

Rebate for moneys paid on petroleum mining shares
(Clause 38)

The Bill will also implement the proposal, announced in the 19 September 1985 Statement on Reform of the Australian Taxation System, to withdraw the income tax rebate available in respect of share capital subscribed to petroleum exploration, prospecting and mining companies. The rebate will not be available in respect of moneys paid after 19 September 1985, other than moneys that are paid in respect of calls made on or before that date by a person who then owned or beneficially owned the shares.

Calls on afforestation shares
(Clauses 19, 26, 27 and 28)

By amendments proposed by the Bill, the income tax deduction for one-third of the calls paid by companies, certain trustees and non-resident individuals to an afforestation company will be abolished. This is another of the measures that were announced on 19 September 1985 in the Statement on Reform of the Australian Taxation System.

The deduction will cease to be allowable in respect of moneys paid after 19 September 1985, except where moneys are paid after that date in respect of calls made on or before that date by a person who at that time owned or beneficially owned the relevant shares.

Prescribed payments system
(Clause 40)

Under the prescribed payments system (PPS), a natural person who enters into a contract for a private or

domestic building project, the cost of which exceeds \$10,000, is treated as a householder, and is only required to report any prescribed payments made in connection with such a project to the Australian Taxation Office.

Many householders undertake domestic construction projects by arrangements under which they effectively assume the role of the builder. This may be done in one of two ways. The individual may apply to the relevant authority, e.g., the local council, for the building permit that is required in relation to the project to be issued in the individual's own name - an "owner-builder" permit. Alternatively, the individual may arrange for the building permit to be issued in the name of another person - often a tradesman in the building and construction industry - who inevitably has little, if any, connection with the work to be done in relation to the project. In either case, however, the individual is the person who assumes the role of the builder by personally organising the different stages of the building project with the various contractors or sub-contractors, as the case may be.

The Bill will exclude a person who enters into an arrangement of this kind from the general category of householders and will treat such a person instead as an "owner-builder". It is proposed that, as an owner-builder, a natural person will assume full PPS obligations, including a liability to make deductions of tax from prescribed payments made in connection with larger domestic building projects.

The new arrangements will apply in relation to all prescribed payments made on or after 1 July 1986 in connection with a construction project, the cost of which exceeds \$10,000, that is commenced on or after that date.

Investment in qualifying Australian films
(Clauses 22, 36, 37 and 41)

By amendments proposed in the Bill, the special income tax concessions available in respect of eligible investments in qualifying Australian films are to be modified. The amendments will give effect to the proposal outlined in the Statement on Reform of the Australian Taxation System made on 19 September 1985 and will -

generally reduce from 133% to 120% the income tax deduction available for an eligible investment, where the investment expenditure was incurred under a contract entered into after 19 September 1985; and

similarly reduce from 33% to 20% of the eligible investment the income tax exemption available in respect of net revenue from a film.

The reduced concessions will not apply if the post-19 September 1985 eligible investment is in a qualifying film that had its production budget guaranteed by an underwriter on or before 19 September 1985 and an investor has effectively taken up an interest in the film in place of the underwriter.

Additional live stock valuation option for horse breeders
(Clause 23)

The Bill will give effect to the proposal announced in the 1985-86 Budget to provide, under the trading stock provisions of the income tax law, a more generous live stock valuation option for horse breeders.

The existing bases of valuing live stock are to be retained - they are cost price, market selling value or, where there are circumstances that justify the adoption of some other value, that other value.

The additional live stock valuation option to be provided by this Bill will enable a horse breeder to elect, in the case of horses purchased after 20 August 1985, to value the horses on the following bases -

- | | | |
|------------------|---|--|
| <u>Stallions</u> | . | cost price reduced by 50% per annum (or lesser) on a diminishing value basis; |
| <u>Mares</u> | . | cost price reduced by 33 1/3% per annum on a diminishing value basis; or |
| | . | cost price reduced by a minimum of 3 annual amounts that will reduce the value of the horse to \$1 by the time the horse is aged 12 years or more. |

Safeguarding provisions will operate to counter artificial arrangements designed to bring within the scope of the new valuation option horses that would not otherwise be within its scope.

Taxing of certain Commonwealth educational assistance payments
(Clauses 21 and 39)

This Bill will also give effect to a 1985-86 Budget proposal to tax payments under the Commonwealth's Tertiary Education Assistance Scheme and Adult Secondary Education Assistance Scheme made in respect of a period after 1 January 1986. The living allowance (including any component for a student who is independent or living away from home, or who has a dependent spouse) and incidentals allowance payable under the schemes will be taxable. Any part of the living allowance attributable to dependent children will remain exempt from tax. The living allowance will be subject to tax instalment deductions under the pay-as-you-earn system.

The amendments also reflect the fact that the Commonwealth no longer provides secondary or technical scholarships, but pays allowances under various schemes for secondary assistance.

Use of taxation information
(Clauses 20, 49 and 50)

The Bill will give effect to a proposal announced on 21 May 1985 by amending the secrecy provisions of the income tax law to specify circumstances in which taxation-sourced information made available to a Royal Commission can be further disclosed or on-communicated by the Royal Commission.

As a consequence of these amendments, a Royal Commission with access to such taxation information will be permitted to disclose or communicate that information, including such details as may identify a taxpayer, during the course of a private session. The Royal Commission will also be able to examine any director or officer of a company in relation to taxation-sourced information that relates to the affairs of the company. Further, the amendments will authorise a Royal Commission to supply taxation information to a police officer who has been assigned to make an investigation on behalf of that Royal Commission, where that information is required for the purposes of the investigation.

In addition, the amendments will expressly permit taxation-sourced information received by a Royal Commission to be communicated to either the Director of Public Prosecutions or a Special Prosecutor, where the Commission is of the view that the information relates or may relate to an investigation of a tax-related offence.

To provide consistency in the use of taxation information by a Royal Commission and the National Crime Authority, the Bill will also amend the Taxation Administration Act to permit the National Crime Authority to examine, during the course of a private hearing by the Authority, any director or officer of a company in relation to taxation-sourced information that relates to the company.

Comprehensive taxation agreement between Australia and Finland
(Clauses 44 to 48)

The agreement is designed to avoid double taxation of all forms of income flowing between Australia and Finland and to prevent fiscal evasion of taxes covered by it.

Double taxation is avoided by allocating taxing rights between the two countries in relation to certain categories of income and by setting out how relief from double taxation is to be effected where income may be taxed by both countries. The basis of allocating taxing rights and providing double taxation relief is substantially similar to that adopted in Australia's other modern comprehensive taxation agreements.

The agreement provides that certain categories of income are to be taxed as follows -

- . Business profits, if they are derived by a resident of one country through a branch or other "permanent establishment" in the other country, may be taxed in the latter country; otherwise they are to be taxed only in the country of residence.
- . Dividends, interest and royalties may be subjected to tax in the country of source, but there are general limits on the tax that that country may charge on such income flowing to residents of the other country. These limits are 15 per cent for dividends and 10 per cent for interest and royalties generally.
- . Income from real property (which includes natural resource royalties) may be taxed in full in the country in which the property is situated.
- . Profits from international operations of ships and aircraft will be taxed only in the country of residence of the operator.
- . Income from independent personal services will be taxed only in the country of residence of the recipient unless the income is attributable to activities performed from a fixed base of the recipient in the other country, in which case the income may be taxed in the other country.
- . Income from dependent personal services, that is, employee's remuneration, will generally be taxable in the country where the services are performed.

However, where the services are performed during a short visit to one country by a resident of the other country, the remuneration is not an expense borne by a

resident of, or a permanent establishment in, the country visited, and the remuneration is subject to tax in the employee's country of residence, the income will be exempt in the country visited.

Government officials are to be generally taxed only by their home country.

Directors' fees may be taxed in the country of residence of the paying company.

Income derived by public entertainers from their activities as such are generally to be taxed by the country in which the activities are performed.

Pensions and annuities will generally be taxed only in the country of residence of the recipient except for certain Government service and social security pensions.

A student from one country who is temporarily present in the other country for the purpose of education will be free from tax in the latter country in respect of any payment received from sources outside that country for the purpose of his or her maintenance or education.

Double taxation relief to be allowed by the country of residence where it taxes income which, under the agreement, may be taxed in the other country will be -

in Australia, by the allowance of a credit against Australian tax for the other country's tax; however, under the existing Australian law, as amended by this Bill, the credit system of relief would apply in practice only in relation to interest and royalties, where that tax is subject to a limit expressed in the agreement, and to dividends received by individuals. Dividends received by Australian companies from Finland would be effectively free from Australian tax by the inter-corporate dividend rebate, and all other categories of income received by Australian residents from, and taxed in, Finland would be exempt from Australian tax by the operation of the present Australian law;

in Finland, generally by the allowance of a deduction against its tax for the Australian tax paid on income derived by residents of that country from sources in Australia, but dividends paid by an Australian company to a company that is a resident of Finland will be exempt from Finnish tax to the extent that exemption would apply under Finland's law if both companies had been residents of Finland.

The agreement also provides for such things as the exchange of information and for consultation between the taxation authorities of the two countries.

The agreement and protocol will not enter into force until the thirty-first day after the Australian and Finnish Governments have exchanged notes advising each other that all constitutional processes necessary to give the agreement the force of law in the respective countries have been completed.

Upon entering into force, the agreement and protocol will have effect in Australia for withholding tax purposes in respect of income derived by non-residents on or after 1 January in the calendar year following that in which it enters into force. For all other Australian taxes covered by the agreement it will have effect in respect of the income year beginning on or after 1 July in the calendar year after that in which it enters into force.

Stamp duty and tax on transfers of units in unit trusts
(Clauses 3, 4, 6, 7 and 9)

The Bill will give effect to the proposal announced in the 1985-86 Budget to impose Australian Capital Territory stamp duty and tax on transfers of units in unit trusts. For that purpose, the transfer of a unit in a unit trust is to be treated as a transfer of a marketable security. This will mean that, in respect of transfers of units that are effected through brokers, the tax payable on each purchase or sale will be 7 cents for each \$25 of the value of the consideration where that is less than \$100, or 30 cents for each \$100 of the value of the consideration where that is \$100 or more. Transfers other than through brokers will be subject to duty of 15 cents for each \$25 of the unencumbered value of each unit.

The tax on transfers of units through brokers will apply to purchases or sales made on or after the first day of the month following that in which the Bill receives the Royal Assent. The duty on other transfers of units will apply to transfers executed on or after that date.

Stamp duty on conveyances of real property by way of mortgage

(Clause 5)

Amendments to be made by the Bill, together with amendments proposed by the accompanying Australian Capital Territory Stamp Duty Amendment Bill 1985, will prevent the avoidance of stamp duty on conveyances under the Real Property Ordinance whereby legal title to property is transferred to a mortgagee but equitable title remains, by consent, with the mortgagor. To this end, the existing exemption from stamp duty on transfers under the Real Property Ordinance by way of mortgage is being removed. However, in those cases where the property is subsequently re-transferred to the mortgagor, a refund of duty will be available so that the net duty is that appropriate to a conventional mortgage.

The amendments will apply to conveyances by way of mortgage executed on or after the first day of the month following that in which the Bill receives the Royal Assent.

Stamp duty on loan securities

(Clause 8)

The Bill will also set out the rules governing liability for the new ACT stamp duty on loan securities, to be imposed by the accompanying Australian Capital Territory Stamp Duty Amendment Bill 1985. The proposed imposition of this duty was announced in the 1985-86 Budget.

The liability to pay the duty on a loan security will fall on the borrower. Ordinarily, the borrower must lodge a dutiable loan security with the Commissioner of Taxation for assessment within 30 days after the loan security is executed. However, if the maximum amount repayable under, or secured by, the loan security does not exceed \$15,000, the borrower is required to pay the duty immediately on the execution of the loan security. Failure to do so will give rise to an offence under the Taxation Administration Act 1953.

Other measures relating to stamp duty on loan securities are -

- . liability for further duty will arise where the amount repayable under, or secured by, a loan security is increased to an amount greater than that in respect of which duty has been paid;
- . collateral securities are to be exempt from duty except where duty has not been paid on the primary loan security;

provision is made for determining a company's liability to stamp duty on debentures according to amounts subscribed for debentures issued month by month; and

provision is made for the allowance of credits for duty paid under a law of a State, the Northern Territory or an external Territory on loan securities over property wholly or partly situated outside the ACT.

Validation of regulation-making power
(Clauses 10 to 17)

One effect of the Federal Court's decision in Amalgamated Television Services Pty Ltd v Australian Broadcasting Tribunal (1984) 54 ALR 57, is that a regulation-making power contained in one Act for the purposes of that Act does not authorise the making of regulations under another Act with which it is incorporated and which is required to be read as one with the first Act. Accordingly, this Bill will provide specific regulation-making powers in a number of ACT taxation laws that were previously thought to be provided by section 99 of the Australian Capital Territory Taxation (Administration) Act 1969. The laws being amended are the Australian Capital Territory (Hire-Purchase Business) Act 1969, the Australian Capital Territory (Insurance Business) Act 1969, the Australian Capital Territory (Purchases of Marketable Securities) Act 1969 and the Australian Capital Territory (Sales of Marketable Securities) Act 1969.

The regulation-making powers, other than for the Australian Capital Territory (Hire-Purchase Business) Act, under which no regulations have to date been made, will be deemed to have come into operation on 1 July 1969, so as to validate regulations already made.

Australian Capital Territory Stamp
Duty Amendment Bill 1985

This Bill will give effect to the 1985-86 Budget proposal to impose Australian Capital Territory stamp duty on loan securities and similar instruments and to increase the rates of Australian Capital Territory stamp duty on conveyances of real property.

Generally, the new stamp duty on loan securities will be imposed on a mortgage, a debenture of a body corporate, a bond or a covenant, where the loan security secures property situated in the Australian Capital Territory or is executed in the Australian Capital Territory by the borrower. The rate of duty payable will be \$5 where the maximum amount repayable under, or secured

by, the loan security does not exceed \$15,000 or, where that amount exceeds \$15,000, \$5 for the first \$15,000 and 40 cents for every \$100 and fractional part of \$100 that exceeds the first \$15,000. Loan securities for amounts up to \$500 will be exempt.

Complementary rules governing the imposition of duty on loan securities and similar instruments are contained in amendments of the Australian Capital Territory Taxation (Administration) Act 1969 proposed by the accompanying Taxation Laws Amendment Bill (No.3) 1985.

The existing rates of duty on a transfer of a freehold interest in land, or of a Crown lease of land for more than 5 years, are as follows:

For each \$100, and any fractional part thereof, of the value of the interest transferred or agreed to be transferred -

\$1.25 up to \$14,000;
 \$1.50 between \$14,001 and \$30,000;
 \$1.75 between \$30,001 and \$50,000;
 \$2.00 between \$50,001 and \$100,000;
 \$2.25 between \$100,001 and \$250,000; and
 \$2.50 above \$250,000.

The same rates, calculated by reference to the value of the consideration for the transfer or assignment, apply to transfers or assignments of other leases of land.

Those rates are to be replaced by the following new rate scale:

For each \$100, and any fractional part thereof, of the value of the interest transferred or agreed to be transferred -

\$1.25 up to \$14,000;
 \$1.50 between \$14,001 and \$30,000;
 \$2.00 between \$30,001 and \$60,000; and
 \$2.50 above \$60,000.

Both the new duty on loan securities and the increased rates of duty on conveyances of real property will apply to instruments executed on or after the first day of the month following the month in which the Bill receives the Royal Assent.

The Bill will also provide, with effect from 1 July 1969 (the date on which the Australian Capital Territory Stamp Duty Act 1969 came into operation), for the Governor-General to make regulations exempting from duty specified instruments executed by specified Commonwealth or

Territory authorities. Regulations to that effect were made in 1969 under the ACT Stamp Duty Act in reliance on the general regulation-making power contained in the Australian Capital Territory Taxation (Administration) Act 1969, which is incorporated and is to be read as one with the ACT Stamp Duty Act. However, as the recent decision of the Federal Court in Amalgamated Television Services Pty Ltd v Australian Broadcasting Tribunal (1984) 54 ALR 57, makes it clear that an incorporation provision of that kind does not extend to incorporate the regulation-making power, it is necessary to validate regulations already made.

Bank Account Debits Tax Amendment Bill 1985

This Bill will give effect to the 1985-86 Budget proposal to double the rate of tax on debits made to cheque accounts kept with banks in the Australian Capital Territory, including Jervis Bay. The rates of bank account debits tax applicable in other parts of Australia are to remain unchanged.

Existing anti-avoidance provisions relating to cheque accounts kept outside Australia will be extended by the Bill to ensure that arrangements to keep accounts outside the ACT (or outside Australia) to avoid ACT rates of tax are not effective. In addition, cheque accounts kept in Australia but outside the ACT, being accounts opened on behalf of ACT building society or credit union depositors, will be deemed to be accounts kept in the ACT and subject to ACT rates of tax.

The increased rates of bank account debits tax in the ACT will apply to debits made on or after the first day of the second month following that in which the Bill receives the Royal Assent.

