

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 21 August 1990

(Minister assisting the Treasurer)

A BILL

FOR

An Act to amend the law relating to taxation

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

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Taxation Laws Amendment (Rates and Provisional Tax) Act 1990*.

Commencement

- 10 2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Section 4 commences on 1 July 1991.

PART 2—AMENDMENTS RELATING TO RATES AND REBATES

Amendments applicable for 1990-91

3. (1) The Acts specified in Schedule 1 are amended as set out in that Schedule.

5

(2) The amendments made by subsection (1) apply to assessments in respect of income of the year of income commencing on 1 July 1990.

Amendments applicable for 1991-92 and subsequent years

4. (1) The Acts specified in Schedule 2 are amended as set out in that Schedule.

10

(2) The amendments made by subsection (1) apply to assessments in respect of income of the year of income commencing on 1 July 1991 and of all subsequent years of income.

Amendment of assessments

15

5. Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purpose of giving effect to this Part.

PART 3—AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936 RELATING TO PROVISIONAL TAX

20

Principal Act

6. In this Part, “Principal Act” means the *Income Tax Assessment Act 1936*¹.

Interpretation

25

7. Section 221YA of the Principal Act is amended by inserting the following definitions in subsection (1):

“‘provisional tax uplift factor’, in relation to a year of income, means:

- (a) the percentage, not exceeding 12%, that is declared by the regulations to be the provisional tax uplift factor for the year of income; or

30

- (b) if there is no such declaration—10%;

‘provisional tax uplift multiplier’, in relation to a year of income, means the amount calculated using the formula:

$$1 + \text{Uplift factor}$$

35

where ‘Uplift factor’ means the provisional tax uplift factor for the year of income (expressed as a decimal fraction);

‘uplifted provisional tax amount’ has the meaning given by section 221YCAA;”.

8. After section 221YA of the Principal Act the following section is inserted:

5 **Certain employees to be subject to provisional tax**

“221YAB. (1) This section applies where both of the following conditions are satisfied in relation to a taxpayer (not being a taxpayer in the capacity of a trustee) in relation to the year of income (in this section called the **‘preceding year of income’**) that immediately preceded
10 a particular year of income (in this section called the **‘current year of income’**):

- (a) the amount calculated using the following formula is not less than \$3,000:

Tax payable—Credited amounts

15

where:

‘Tax payable’ means the tax payable by the taxpayer in respect of the taxable income of the taxpayer of the preceding year of income;

20 **‘Credited amounts’** means the sum of the following amounts:

- (i) amounts applied under section 27CA in respect of payments made to the taxpayer during the preceding year of income;
- 25 (ii) amounts applied under subsection 160AN (2) in respect of credits to which the taxpayer is entitled, being credits relating to income derived by the taxpayer during the preceding year of income;
- 30 (iii) amounts credited under section 221H, or applied under section 221Q, in respect of deductions from the salary or wages paid to the taxpayer during the preceding year of income;
- (iv) amounts credited under section 221K in payment of the tax payable by the taxpayer in respect of income of the preceding year of income;
- 35 (v) amounts credited under section 221YE or 221YG in respect of provisional tax, or instalments of provisional tax, paid by the taxpayer in respect of income of the preceding year of income;
- 40 (vi) amounts applied under section 221YHG or 221YHZL in respect of deductions from payments made to the taxpayer during the preceding year of income;
- (vii) amounts that, apart from section 221ZY, would have

been credited or applied as mentioned in subparagraph (iii), (v) or (vi) of this definition;

- (b) the amount calculated using the following formula is not less than \$3,000:

(Notional gross tax—Qualifying rebates)—PAYE deductions 5

where:

‘Notional gross tax’ means the amount of tax that would have been assessed in respect of the amount that would have been the taxable income of the taxpayer of the preceding year of income if: 10

- (i) the assessable income of the taxpayer of the preceding year of income did not include amounts other than salary or wages; and
- (ii) the assessable income of the taxpayer of the preceding year of income did not include any of the following: 15
 - (A) payments of amounts to which section 26AC applied;
 - (B) payments of a rebatable ETP annuity, or of a rebatable superannuation pension, (within the meaning of section 159SJ) in respect of which the taxpayer is entitled in the taxpayer’s assessment to a rebate of tax under Subdivision AAB of Division 17 of Part III; 20
 - (C) eligible lump sums (within the meaning of section 159ZR); 25
 - (D) payments of assessable retirement amounts for the purposes of the definition of ‘salary or wages’ in subsection 221A (1);
 - (E) eligible termination payments (within the meaning of section 221A); and 30
- (iii) the taxpayer had not been entitled to any rebate in the taxpayer’s assessment in respect of income of the preceding year of income;

‘Qualifying rebates’ means the sum of the rebates under sections 23AB, 79A, 79B, 159J, 159K and 159L to which the taxpayer was entitled in the taxpayer’s assessment in respect of income of the preceding year of income; 35

‘PAYE deductions’ means the sum of the following amounts:

- (iv) amounts credited under section 221H, or applied under section 221Q, in respect of deductions from the salary or wages paid to the taxpayer during the preceding year of income; 40
- (v) amounts credited under section 221K in payment of the

tax payable by the taxpayer in respect of income of the preceding year of income;

- (vi) amounts that, apart from section 221ZY, would have been credited as mentioned in subparagraph (iv) of this definition.

“(2) For the purposes of the application of section 221YB, subsection 221YDB (1) (other than paragraphs (a) and (b) of that subsection) and paragraph 221YDB (1AA) (b) in relation to the taxpayer in relation to the current year of income:

- (a) so much of the assessable income of the taxpayer of the current year of income as consists of salary or wages is taken to be non-salary/wage assessable income; and
- (b) so much of the estimated taxable income (if any) of the taxpayer as represents salary or wages is taken to represent non-salary/wage assessable income.

“(3) A reference in this section to non-salary/wage assessable income is a reference to assessable income, not being salary or wages.”.

Amount of provisional tax

9. Section 221YC of the Principal Act is amended:

- (a) by omitting subsections (1) and (1AA) and substituting the following subsection:

“(1) Subject to this Division, the amount of provisional tax payable by a taxpayer in respect of income of a year of income is the uplifted provisional tax amount of the taxpayer for the year of income.”;

- (b) by omitting from subsection (1A) “included” and substituting “consisted, in whole or in part, of”.

10. After section 221YC of the Principal Act the following section is inserted:

Uplifted provisional tax amount

“221YCAA. (1) The uplifted provisional tax amount of a taxpayer for a year of income (in this section called the ‘**current year of income**’) is:

- (a) if the taxpayer’s provisional income for the current year of income is equal to the taxpayer’s taxable income for the year of income (in this section called the ‘**preceding year of income**’) that immediately preceded the current year of income—the basic uplifted provisional tax amount of the taxpayer for the current year of income worked out under subsection (2); or
- (b) in any other case—the adjusted uplifted provisional tax amount of the taxpayer for the current year of income worked out under subsection (3).

“(2) The basic uplifted provisional tax amount of the taxpayer for the current year of income is calculated using the formula:

Adjusted preceding year’s tax—Qualifying reductions

where:

‘**Adjusted preceding year’s tax**’ means the amount of income tax that would have been assessed in respect of the amount that would have been the taxable income of the taxpayer of the preceding year of income if: 5

(a) the taxable income of the taxpayer of the preceding year of income had (except for the purpose of determining the notional income for the purpose of section 59AB or 86) been increased by the provisional tax uplift factor for the current year of income; and 10

(b) the *Income Tax Rates Act 1986* (other than Division 4 of Part II), as that Act applies to assessments in respect of the current year of income, had been in force and applied to assessments in respect of the preceding year of income; and 15

(c) the *Medicare Levy Act 1986*, as that Act applies to assessments in respect of the current year of income, had been in force and applied to assessments in respect of the preceding year of income; and 20

(d) where:

(i) for the purposes of Division 6AA of Part III, the taxpayer’s eligible taxable income of the preceding year of income exceeded \$416; and 25

(ii) Subdivision C of Division 3 of Part II of the *Income Tax Rates Act 1986* applied to the taxpayer for the preceding year of income;

that eligible taxable income had been increased by the provisional tax uplift factor for the current year of income; and 30

(e) where:

(i) for the purposes of Division 6AA of Part III, the taxpayer had an eligible taxable income of the preceding year of income; and

(ii) Subdivision D of Division 3 of Part II of the *Income Tax Rates Act 1986* applied to the taxpayer for the preceding year of income; 35

that eligible taxable income had been increased by the provisional tax uplift factor for the current year of income; and

(f) for the purposes of Division 16A of Part III (other than the purpose of calculating the average eligible taxable income of the taxpayer of the current year of income), the eligible taxable income of the taxpayer of the preceding year of income had 40

been increased by the provisional tax uplift factor for the current year of income; and

(g) for the purposes of section 156, the deemed taxable income from primary production of the taxpayer of the preceding year of income had been increased by the provisional tax uplift factor for the current year of income; and

(h) where Division 16 of Part III applied in the taxpayer's assessment in respect of the preceding year of income—that Division had applied as if the conditions set out in paragraphs (a) to (g) (inclusive) were applicable for the purposes of making that assessment (other than for the purpose of determining the average income of the taxpayer for the purposes of the application of that Division); and

(j) the taxpayer had not been entitled to any rebate (other than a rebate under section 156 applicable in relation to the taxpayer in accordance with paragraph (h)) in the taxpayer's assessment; and

(k) the assessable income of the taxpayer of the preceding year of income had not included any net capital gain within the meaning of Part IIIA;

'Qualifying reductions' means the sum of:

(m) the rebates (other than a rebate under section 23AB, 79A, 79B, 156, 159J, 159K, 159L, 160AQU, 160AQX, 160AQY or 160AQZ) and credits (other than a credit under section 160AF) to which the taxpayer was entitled in the taxpayer's assessment in respect of income of the preceding year of income; and

(n) where the taxpayer was entitled to a particular rebate (in this paragraph called the **'location rebate'**) under section 23AB, 79A or 79B in the taxpayer's assessment in respect of income of the preceding year of income:

(i) if the location rebate was calculated by reference to one or more rebates (in this subparagraph called the **'concessional rebates'**) of a particular kind to which the taxpayer was entitled in respect of the preceding year of income under section 159J, 159K or 159L—the sum of the location rebate and 20% of the increase (if any) in the amount of each concessional rebate of that kind arising out of the operation of section 159HA in relation to the current year of income; or

(ii) in any other case—the amount of the location rebate; and

(p) where the taxpayer was entitled to a rebate of a particular kind under section 159J, 159K or 159L in the taxpayer's assessment in respect of income of the preceding year of income—the amount that would have been the amount of that rebate if

increases in the amounts of rebates arising out of the operation of section 159HA in relation to the current year of income had been in force and had applied to assessments in respect of the preceding year of income; and

(q) where the taxpayer was entitled to a credit under section 160AF in the taxpayer's assessment in respect of income of the preceding year of income—the amount of that credit increased by the provisional tax uplift factor for the current year of income; and 5

(r) where the taxpayer was entitled to a rebate under section 160AQU, 160AQX, 160AQY or 160AQZ in the taxpayer's assessment in respect of income of the preceding year of income—the amount of that rebate increased by the provisional tax uplift factor for the current year of income. 10

“(3) The adjusted uplifted provisional tax amount of the taxpayer for the current year of income is: 15

(a) where paragraph (1) (a) of this section would have applied to the taxpayer if subsection 221YA (5) had not been enacted:

(i) if the taxpayer is a taxpayer to whom paragraph 221YA (5) (a) applies, but paragraph 221YA (5) (b) does not apply, in relation to the current year of income—the amount that would have been the basic uplifted provisional tax amount of the taxpayer for the current year if Division 16C of Part III were not applicable in relation to the preceding year of income; or 20 25

(ii) if the taxpayer is a taxpayer to whom paragraph 221YA (5) (b) applies, but paragraph 221YA (5) (a) does not apply, in relation to the current year of income—the amount that would have been the basic uplifted provisional tax amount of the taxpayer for the current year of income if the taxable income of the taxpayer of the preceding year of income had been increased by the sum of the deductions allowed or allowable to the taxpayer under sections 77F, 124ZAF and 124ZAF A in the taxpayer's assessment in respect of the preceding year of income; or 30 35

(iii) if the taxpayer is a taxpayer to whom paragraphs 221YA (5) (a) and (b) apply in relation to the current year of income—the amount that would have been the basic uplifted provisional tax amount of the taxpayer for the current year of income if: 40

(A) Division 16C of Part III were not applicable in relation to the preceding year of income; and

(B) the amount that, apart from this sub-subparagraph, would have been the taxable income of the 45

taxpayer of the preceding year of income had been increased by the sum of the deductions allowed or allowable to the taxpayer under sections 77F, 124ZAF and 124ZAFA in the taxpayer's assessment in respect of the preceding year of income; or

(b) in any other case—the amount that would have been the basic uplifted provisional tax amount of the taxpayer for the current year of income if:

(i) the taxable income of the taxpayer of the preceding year of income had been equal to the amount that the Commissioner estimates would have been the provisional income of the taxpayer if Division 16C of Part III were not applicable in relation to the preceding year of income, increased by the sum of the deductions (if any) allowed or allowable to the taxpayer under sections 77F, 124ZAF and 124ZAFA in the taxpayer's assessment in respect of the preceding year of income; and

(ii) for the purposes of Division 16 of Part III, the deemed taxable income from primary production of the taxpayer of the preceding year of income were such amount (if any) as the Commissioner determines; and

(iii) for the purposes of Division 6AA of Part III, the amount of the eligible taxable income of the taxpayer of the preceding year of income were such amount (if any) as the Commissioner determines; and

(iv) for the purposes of Division 16A of Part III, the amount of the eligible taxable income of the taxpayer of the preceding year of income were such amount (if any) as the Commissioner determines.”.

Amendments relating to the provisional tax uplift factor

11. The Principal Act is amended as set out in Schedule 3.

Application of amendments

12. The amendments made by this Part apply to the ascertainment of provisional tax (including instalments) payable for the year of income commencing on 1 July 1990 and for all subsequent years of income.

Transitional—provisional tax uplift factor for 1990-91

13. In spite of anything in Division 3 of Part VI of the Principal Act as amended by this Act, the provisional tax uplift factor for the year of income commencing on 1 July 1990 is 10%.

Transitional—penalties under section 221YDB of the amended Act

14. (1) In this section:

“amended Act” means the Principal Act as amended by this Act.

(2) In spite of anything in Division 3 of Part VI of the amended Act, where both of the following conditions are satisfied in relation to an estimate furnished by a taxpayer under section 221YDA of the amended Act: 5

(a) the estimate relates to the year of income commencing on 1 July 1990;

(b) the estimate was furnished before the commencement of this section; 10

section 221YAB of the amended Act does not affect the application of subsection 221YDB (1) or paragraph 221YDB (1AA) (b) of the amended Act in relation to that estimate.

SCHEDULE 1

Section 3

AMENDMENTS RELATING TO RATES AND REBATES—1990-91

Income Tax Assessment Act 1936

Subsection 159P (3A):

Omit “29%”, substitute “25%”.

Income Tax Rates Act 1986

Subsection 20 (1):

Omit “\$5,100” and “\$425”, substitute “\$5,250” and “\$438” respectively.

Subsection 20 (2):

Omit “\$5,100” and “\$425”, substitute “\$5,250” and “\$438” respectively.

Table in Part I of Schedule 7:

Omit the table, substitute the following table:

Column 1	Column 2
Parts of taxable income	% rate
The part of the taxable income that:	
exceeds \$5,250 but does not exceed \$17,650	21%
exceeds \$17,650 but does not exceed \$20,600	25%
exceeds \$20,600 but does not exceed \$20,700	30%
exceeds \$20,700 but does not exceed \$35,000	38.5%
exceeds \$35,000 but does not exceed \$36,000	42.5%
exceeds \$36,000 but does not exceed \$50,000	46.5%
exceeds \$50,000	47%

Table in Part II of Schedule 7:

Omit the table, substitute the following table:

Column 1	Column 2
Parts of taxable income	% rate
The part of the taxable income that:	
does not exceed \$20,600	29%
exceeds \$20,600 but does not exceed \$20,700	34%
exceeds \$20,700 but does not exceed \$35,000	38.5%
exceeds \$35,000 but does not exceed \$36,000	42.5%
exceeds \$36,000 but does not exceed \$50,000	46.5%
exceeds \$50,000	47%

Subparagraph 2 (b) (ii) of Division 2 of Part I of Schedule 8:

Omit “\$5,100”, substitute “\$5,250”.

SCHEDULE 1—continued

Paragraph 2 (b) of Part I of Schedule 10:

Omit “\$5,100”, substitute “\$5,250”.

SCHEDULE 2

Section 4

AMENDMENTS RELATING TO RATES AND REBATES—1991-92
AND SUBSEQUENT YEARS

Income Tax Assessment Act 1936

Subsection 159P (3A):

Omit “25%”, substitute “21%”.

Income Tax Rates Act 1986

Subsection 20 (1):

Omit “\$5,250” and “\$438”, substitute “\$5,400” and “\$450” respectively.

Subsection 20 (2):

Omit “\$5,250” and “\$438”, substitute “\$5,400” and “\$450” respectively.

Table in Part I of Schedule 7:

Omit the table, substitute the following table:

Column 1	Column 2
Parts of taxable income	% rate
The part of the taxable income that:	
exceeds \$5,400 but does not exceed \$20,700	21%
exceeds \$20,700 but does not exceed \$36,000	38%
exceeds \$36,000 but does not exceed \$50,000	46%
exceeds \$50,000	47%

Table in Part II of Schedule 7:

Omit the table, substitute the following table:

Column 1	Column 2
Parts of taxable income	% rate
The part of the taxable income that:	
does not exceed \$20,700	29%
exceeds \$20,700 but does not exceed \$36,000	38%
exceeds \$36,000 but does not exceed \$50,000	46%
exceeds \$50,000	47%

SCHEDULE 2—continued

Subparagraph 2 (b) (ii) of Division 2 of Part I of Schedule 8:

Omit “\$5,250” and “\$17,650” (wherever occurring), substitute “\$5,400” and “\$20,700” respectively.

Paragraph 2 (b) of Part I of Schedule 10:

Omit “\$5,250” and “\$17,650” (wherever occurring), substitute “\$5,400” and “\$20,700” respectively.

SCHEDULE 3

Section 11

**AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936
RELATING TO THE PROVISIONAL TAX UPLIFT FACTOR**

Sub-subparagraph 221YHAAC (2) (e) (i) (A):

- (a) Omit “1.11A”, substitute “UA”.
- (b) Before the definition of component “A”, insert the following definition:
“U is the provisional tax uplift multiplier for the current year of income; and”.

Sub-subparagraph 221YHAAC (2) (e) (ii) (A):

- (a) Omit “1.11B”, substitute “UB”.
- (b) Before the definition of component “B”, insert the following definition:
“U is the provisional tax uplift multiplier for the current year of income; and”.

Sub-subparagraph 221YHAAC (2) (e) (iii) (A):

- (a) Omit “1.11A”, substitute “UA”.
- (b) Before the definition of component “A”, insert the following definition:
“U is the provisional tax uplift multiplier for the current year of income; and”.

Subparagraph 221YHAAD (2) (e) (iii):

- (a) Omit “1.11A”, substitute “UA”.
- (b) Before the definition of component “A”, insert the following definition:
“U is the provisional tax uplift multiplier for the current year of income; and”.

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; Nos. 46, 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, 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; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 51, 109, 112 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); No. 52, 1986 (as amended by No. 141, 1987); No. 90, 1986 (as amended by No. 141, 1987); Nos. 23, 58, 61, 120, 145 and 163, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 8, 11, 59, 75, 78, 80, 87, 95, 97, 127 and 153, 1988; Nos. 2, 11, 56, 70, 73, 97, 105, 107, 129, 163 and 167, 1989; No. 97, 1989 (as amended by No. 105, 1989); and Nos. 20, 35, 37, 45, 57, 58, 60 and 61, 1990.



9 780644 155267