



Taxation Laws Amendment (Infrastructure Borrowings) Act 1997

No. 104, 1997



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An Act to amend the law relating to infrastructure borrowings

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An Act to amend the law relating to infrastructure borrowings

[Assented to 30 June 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Development Allowance Authority Act 1992

Part 1—Termination of application, advice and certificate issue provisions etc.

1 At the end of section 93A

Add:

However, the incentives have been terminated for new cases by the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*.

2 At the end of paragraph 93B(a)

Add:

Note: As a result of amendments made by the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, no new applications can be made.

3 Subsection 93D(1)

Insert:

borrowings cut-off time means 12 pm, by legal time in the Australian Capital Territory, on 14 February 1997.

4 Subsection 93N(1)

Omit “A person”, substitute “Subject to subsection (7), a person”.

5 At the end of section 93N

Add:

New applications not to be made

(7) After the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, a person is not entitled to apply to the DAA for a certificate under this Chapter.

Certain past applications ineffective

- (8) If a person applied to the DAA for a certificate under this Chapter during the period from the borrowings cut-off time until the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the application has no effect, and is taken never to have had any effect.

6 Subsection 93O(1)

Omit “section 93P”, substitute “sections 93P and 93PA”.

7 Subsection 93P(1)

Omit “If”, substitute “Subject to subsection (4), if”.

8 At the end of section 93P

Add:

New advice not to be given

- (4) After the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the DAA must not give advice to the applicant under subsection (1).

Certain past advice ineffective

- (5) If the DAA gave advice to an applicant under subsection (1) during the period from the borrowings cut-off time until the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, that advice has no effect, and is taken never to have had any effect.

9 After section 93P

Insert:

93PA Termination of certificate issue provisions

- (1) After the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the DAA must not issue a certificate under this Chapter unless it gave written advice to the applicant for the certificate in accordance with subsection 93P(1) of this Act before the borrowings cut-off time.

- (2) Any certificate issued by the DAA under this Chapter during the period from the borrowings cut-off time until the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997* has no effect, and is taken never to have had any effect, unless the DAA gave written advice to the applicant for the certificate in accordance with subsection 93P(1) of this Act before the borrowings cut-off time.

10 Subsection 93X(6)

Repeal the subsection.

11 Section 93Y

Repeal the section.

Part 2—Restriction on varying existing certificates

12 Section 93T

Omit “If”, substitute “Subject to section 93TA, if”.

13 After section 93T

Insert:

93TA Conditions not to be varied if total tax payable reduced

Request to Commissioner of Taxation

- (1) If, after the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the DAA becomes satisfied as mentioned in section 93T of this Act in relation to an application to vary the conditions applying to a certificate, the DAA must request the Commissioner of Taxation in writing to make a determination in accordance with subsection (2).

Nature of determination

- (2) After receiving the request, the Commissioner must determine whether or not, if the conditions are varied in accordance with the application, there is likely to be, as a result of the variation, a reduction in the sum of the present values (worked out when the Commissioner makes the determination) of all amounts of tax that have or may become payable, under Acts of which the Commissioner of Taxation has the general administration, by the persons whose liability to tax may be affected by the variation.

Information to Commissioner

- (3) The DAA must give the Commissioner any information that the Commissioner requires for the purposes of making the determination.

Written advice of determination

- (4) The Commissioner must advise the DAA and the applicant in writing of the Commissioner’s determination.

Conditions not to be varied unless reduction unlikely

- (5) The DAA must not vary the conditions if the Commissioner's determination is that there is likely to be a reduction of the kind mentioned in subsection (2).

Objections

- (6) If the applicant is dissatisfied with the determination by the Commissioner, the applicant may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

93TB Reconsideration of pre-commencement variations

Request to Commissioner

- (1) If, during the period from the borrowings cut-off time until the commencement of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*, the DAA approved any variation of conditions applying to a certificate, the DAA must, as soon as practicable after the commencement of that Act, request the Commissioner of Taxation in writing to advise in accordance with subsection (2).

Commissioner to advise of determination

- (2) After receiving the request, the Commissioner must advise the DAA and the person who applied for the variation, in writing, of the determination that the Commissioner would have made under subsection 93TA(2) (assuming that section 93TA had been in force at the time) if the DAA had requested the Commissioner to make a determination in relation to the variation of the conditions immediately before they were varied.

Application of subsections 93TA(3) and (6) etc.

- (3) Subsections 93TA(3) and (6), and Part IVC of the *Taxation Administration Act 1953*, apply in the same way to the Commissioner's advice as they do to a determination under subsection 93TA(2).

Effect of advice

- (4) If the Commissioner advises that he or she would have determined that there was likely to be a reduction of the kind mentioned in subsection 93TA(2), the variation of the conditions has no effect, and is taken never to have had any effect.

Schedule 2—Amendment of the Income Tax Assessment Act 1936

1 After the heading to Division 16L of Part III

Insert:

Note: The issue of certificates that give rise to the tax concessions in this Division has been terminated for new cases by the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*.

*[Minister's second reading speech made in—
House of Representatives on 26 March 1997
Senate on 30 May 1997]*

(52/97)

I HEREBY CERTIFY that the above is a fair print of the Taxation Laws Amendment (Infrastructure Borrowings) Bill 1997 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General
1997

(52/97)