2013-2014

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (TEMPORARY BUDGET REPAIR LEVY) BILL 2014
INCOME TAX RATES AMENDMENT (TEMPORARY BUDGET REPAIR LEVY) BILL 2014
FAMILY TRUST DISTRIBUTION TAX (PRIMARY LIABILITY) AMENDMENT (TEMPORARY BUDGET REPAIR LEVY) BILL 2014
FRINGE BENEFITS TAX AMENDMENT (TEMPORARY BUDGET REPAIR LEVY) BILL 2014
INCOME TAX (BEARER DEBENTURES) AMENDMENT (TEMPORARY BUDGET REPAIR LEVY) BILL 2014
INCOME TAX (FIRST HOME SAVER ACCOUNTS MISUSE TAX) AMENDMENT (TEMPORARY BUDGET REPAIR LEVY) BILL 2014
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TRUST RECOUPMENT TAX AMENDMENT (TEMPORARY BUDGET REPAIR LEVY) BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer, the Hon J. B. Hockey MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	***Definition***
Commissioner	Commissioner of Taxation
DASP	departing Australia superannuation payment
FBT	fringe benefits tax
FHSA	first home saver account
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
IT(TP) Act 1997	*Income Tax (Transitional Provisions) Act 1997*

General outline and financial impact

Temporary budget repair levy

The following Bills amend the *Income Tax Assessment Act 1997* (ITAA 1997), the *Income Tax Rates Act 1986* (ITRA 1986), the *Income Tax (Transitional Provisions) Act 1997* (IT(TP) Act 1997) and other taxation imposition and ratings Acts to introduce a three-year progressive budget repair levy in the primary form of additional income tax on Australian resident and foreign resident individuals commencing in the 2014-15 financial year:

- Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014;
- Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014;
- Family Trust Distribution Tax (Primary Liability) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Fringe Benefits Tax Amendment (Temporary Budget Repair Levy) Bill 2014;
- Income Tax (Bearer Debentures) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Income Tax (First Home Saver Accounts Misuse Tax) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Income Tax (TFN Withholding Tax (ESS)) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Superannuation (Departing Australia Superannuation Payments Tax) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Superannuation (Excess Non-Concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Superannuation (Excess Untaxed Roll-Over Amounts Tax) Amendment (Temporary Budget Repair Levy) Bill 2014;

- Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 1) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 2) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Tax Laws Amendment (Interest on Non-Resident Trust Distributions) (Temporary Budget Repair Levy) Bill 2014;
- Tax Laws Amendment (Untainting Tax) (Temporary Budget Repair Levy) Bill 2014; and
- Trust Recoupment Tax Amendment (Temporary Budget Repair Levy) Bill 2014.

The temporary budget repair levy will also be reflected in a number of tax rates that are currently based on the top personal marginal tax rate (45 per cent), as well as those based on a calculation comprising the top personal rate and the Medicare levy (currently 1.5 per cent, but legislated to increase to 2 per cent from 1 July 2014), to maintain the integrity and ensure the fairness of the tax system, and minimise opportunities for avoiding the levy.

These changes will ensure that those with a greater capacity to pay make a larger contribution to reducing the budget deficit.

Date of effect: The levy is payable with respect to the 2014-15 financial year and the next two financial years.

Proposal announced: The measure was announced in the 2014-15 Budget.

Financial impact: The measure will have the following revenue impacts:

2013-14	***2014-15***	***2015-16***	***2016-17***	***2017-18***
–	$600m	$1,150m	$1,200m	$150m

Human rights implications: This Bill does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 1, paragraphs 1.99 to 1.112.

Compliance cost impact: This measure does not alter the existing compliance obligations for individuals, and only has a very minor transitional impact for entities that withhold tax with respect to individuals.

Chapter 1
Temporary budget repair levy

Outline of chapter

1.1 The following Bills amend the *Income Tax Assessment Act 1997* (ITAA 1997), the *Income Tax Rates Act 1986* (ITRA 1986), the *Income Tax (Transitional Provisions) Act 1997* (IT(TP) Act 1997) and other taxation imposition and ratings Acts to introduce a three-year progressive budget repair levy in the primary form of additional income tax on Australian resident and foreign resident individuals commencing in the 2014-15 financial year:

- Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014;
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- Superannuation (Excess Untaxed Roll-Over Amounts Tax) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 1) Amendment (Temporary Budget Repair Levy) Bill 2014;
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- Tax Laws Amendment (Untainting Tax) (Temporary Budget Repair Levy) Bill 2014; and
- Trust Recoupment Tax Amendment (Temporary Budget Repair Levy) Bill 2014.

1.2 The temporary budget repair levy will also be reflected in a number of tax rates that are currently based on the top personal marginal tax rate (45 per cent), as well as those based on a calculation comprising the top personal rate and the Medicare levy (currently 1.5 per cent, but legislated to increase to 2 per cent from 1 July 2014), to maintain the integrity and ensure the fairness of the tax system, and minimise opportunities for avoiding the levy.

1.3 These changes will ensure that those with a greater capacity to pay make a larger contribution to repairing the budget.

1.4 The levy is payable at a rate of two per cent of each dollar of a taxpayer's annual taxable income over $180,000. No levy is payable where the taxpayer has a taxable income of $180,000 or less except in cases where a tax law integrity rule applies the top personal marginal tax rate as a flat rate to certain types of income.

Context of amendments

Income tax rates and thresholds and tax liability

1.5 The income tax rates and thresholds determine the rates that are applied to an individual's taxable income.

1.6 The income tax liability of an individual is generally determined by the application of the income tax rates and thresholds to an individual's taxable income, which is reduced by any available tax offsets (see subsection 4-10(3) of the ITAA 1997).

1.7 A progressive tax liability occurs when an individual's rate of tax liability increases when their income increases.

Budget repair task

1.8 The Government's first Budget will start the process of repairing the nation's finances. The introduction of a temporary budget repair levy will mean that high-income individuals will contribute to the task of repairing the Budget based on their ability to pay.

1.9 The temporary budget repair levy's design retains progressivity in the tax system. Taxpayers with annual taxable income in excess of $180,000 will directly incur the levy. In 2014-15, around 400,000 taxpayers (or less than four per cent of taxpayers) will directly incur the levy on their personal taxable income.

Summary of new law

1.10 The effect of these Bills is to introduce an additional income tax in the form of a three-year progressive levy on taxable incomes in the 2014-15 financial year and the two following years.

- Individuals with a taxable income of $180,000 or less will not pay the levy except where their income (or part thereof) is subject to some other tax rate based on the top personal marginal tax rate or based on a calculation comprising the top personal rate.

- Individuals with a taxable income of more than $180,000 will pay a two per cent levy on that part of their taxable income above $180,000.

1.11 When a trustee has income that is taxed as if the income were that of an individual, they will be liable for the levy where the net income of the trust to which the trustee is liable to be assessed and pay income tax exceeds $180,000. This will ensure that trustees who pay tax in place of an individual will bear the same level of taxation as if the individual paid tax themselves.

1.12 An important integrity component of the measure requires the fringe benefits tax (FBT) rate to increase from 47 per cent to 49 per cent, so that the rate of FBT remains equal to the top personal marginal tax rate. However, to prevent lower income employees of not-for-profit institutions and hospitals and ambulance workers being adversely affected, changes are being made to existing exemption and rebate caps to maintain the cash value of those caps for the duration of the increased rate.

1.13 As the FBT year commences on 1 April and concludes on 31 March, the increase in the FBT rate is to be applied from 1 April 2015. To increase the rate part way through the FBT year would create a large administrative burden on employers. The increase in the FBT rate will cease on 31 March 2017 for a similar reason.

1.14 The levy cannot be reduced by non-refundable tax offsets. That is, the taxpayer's income tax liability for an affected financial year is calculated as the taxpayer's basic income tax liability on taxable income *less* their tax offsets, to which the levy liability is then added. However, a taxpayer with excess foreign income tax offsets after applying their foreign income tax offsets against their basic income tax liability may apply those excess offsets against their levy liability.

1.15 Where a taxpayer has a tax liability (as a result of the levy) and is also entitled to credits, such as an entitlement to a refund of excess refundable tax offsets or pay as you go withheld amounts, the Commissioner of Taxation (Commissioner) will apply the taxpayer's credit entitlement against both the taxpayer's basic income tax liability and levy liability under Division 3 of Part IIB of the *Taxation Administration Act 1953*.

1.16 For those taxpayers whose employer withholds tax throughout the year according to Australian Taxation Office withholding schedules, new withholding schedules will be issued by the Commissioner to take account of the levy, so that contributions are made towards the end of year tax liability throughout the year.

1.17 Upon enactment of these Bills, the Commissioner will generally be able to take account of the levy in determining the pay as you go instalment amounts.

1.18 The levy will also be reflected in a number of tax rates that are currently based on the top personal marginal tax rate, as well as those based on a calculation comprising the top personal rate and the Medicare levy. This will maintain the integrity and ensure the fairness of the tax system, and minimise opportunities for avoiding the levy.

Comparison of key features of new law and current law

New law	*Current law*
A temporary budget repair levy (in the form of additional income tax) is payable by Australian resident and foreign resident individual taxpayers on that part of their taxable income that exceeds $180,000 at a levy rate of two per cent.	No equivalent.
The levy rate is incorporated into other tax rates where those rates are based on the top personal marginal tax rate or based on a calculation comprising the top personal rate and the Medicare levy.	No equivalent.

Detailed explanation of new law

1.19 These Bills introduce an additional income tax liability for some taxpayers in the form of a three-year progressive levy.

1.20 The levy will be payable by individuals on their taxable income in the 2014-15 financial year and the following two financial years.

Working out the levy

1.21 The levy is worked out on the taxpayer's taxable income for an income year that corresponds to a financial year for which the levy is payable. ***[Schedule 1 to the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, item 2, section 4-11 of the Income Tax (Transitional Provisions) Act 1997]***

1.22 Individuals with a taxable income of $180,000 or less in an affected financial year will not be liable for the levy except in some cases where their income (or part thereof) is subject to a tax rate based on the top personal marginal tax rate or based on a calculation comprising the top personal rate.

1.23 Individuals with a taxable income of more than $180,000 will pay a two per cent levy on that part of taxable income above $180,000. ***[Schedule 1 to the Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 34 of the Income Tax Rates Act 1986]***

1.24 The methodology to work out the taxpayer's basic income tax liability is set out in subsection 4-10(3) of the ITAA 1997. The levy liability is not included in the taxpayer's basic income tax liability and the levy liability must be calculated in addition to the amount of basic income tax liability set out in subsection 4-10(3) of the ITAA 1997. ***[Schedule 1 to the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, item 2, subsection 4-11(3) of the Income Tax (Transitional Provisions) Act 1997]***

1.25 In working out the tax liability of an individual under section 4-10 of the ITAA 1997, taxpayers are reminded by a note that they may have to pay the levy in addition to the tax liability they calculated under that section. ***[Schedule 1 to the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, note to subsection 4-10(3) of the Income Tax Assessment Act 1997]***

1.26 While tax offsets (rebates) are available to reduce a taxpayer's basic income tax liability, non-refundable tax offsets that are in excess of a taxpayer's basic income tax liability cannot be used to reduce a taxpayer's liability to the levy except if that tax offset is a foreign income tax offset.

1.27 If a taxpayer is entitled to a foreign income tax offset in relation to a particular income year, the taxpayer applies the offset firstly against their basic income tax liability. If the offset is greater than that liability, then the excess can be applied against other tax liabilities in accordance with Division 63 of the ITAA 1997. If after applying the rules in Division 63, an excess foreign income tax offset remains, then that excess can be applied against the levy. ***[Schedule 1 to the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, item 2, subsection 4-11(3) of the Income Tax (Transitional Provisions) Act 1997]***

1.28 Allowing the foreign income tax offset to be applied against the levy ensures that Australia's domestic tax law operates in a manner consistent with Australia's obligations under its double tax treaties.

Taxation of the unearned income of minors

1.29 A minor is a person who is under 18 years of age.

1.30 Special rules apply to the income of minors. Under these rules, unearned income, such as a distribution from a family trust, may be taxed at higher rates.

1.31 These rules were introduced to discourage adults from splitting their income and diverting it to their children.

1.32 Some minors are excluded from the special rules and are called excepted persons. Ordinary rates of income tax apply to all the income of an excepted person.

1.33 Even if a minor is not an excepted person, ordinary rates of income tax still apply to certain types of their income that are called excepted income. This income generally refers to income earned by the minor through employment or businesses in cases where the minor has real and effective control over the disposal of the income.

1.34 In these cases, the levy will only apply on the annual taxable income of the minor that is above $180,000.

1.35 In other cases, the other income (unearned income) of the minor is subject to income tax at the top personal marginal tax rate.

1.36 To ensure that adults do not divert income to their children to avoid the levy, the income tax rates that apply to the unearned income of a minor will be increased by two percentage points in cases where that income is not otherwise subject to the levy because it is at or below the $180,000 threshold. ***[Schedule 1 to the Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 36 of the Income Tax Rates Act 1986]***

Maximum tax rate provisions

1.37 Certain types of income of an individual are subject to an effective tax rate cap. These caps are given effect through a tax offset mechanism that gives a taxpayer a tax offset to reduce the ordinary tax rates as they are applied to those types of income so that the effective marginal rate applied does not exceed a specified fixed rate.

1.38 These caps apply to parts of employment termination payments, other lump sum payments received on termination of employment and certain superannuation lump sum payments.

1.39 While the levy applies to these payments to the extent that a taxpayer's taxable income (including the lump sum) exceeds $180,000, the tax offset mechanism will continue to apply to further reduce a taxpayer's basic income tax liability by the levy amount so that the effective overall income tax rate applying to the lump sum payment does not exceed the relevant cap.

Trustees liable to taxation as individuals

1.40 The Bills ensure that trustees who pay tax in place of an individual will bear the same level of taxation as if the individual paid tax themselves.

1.41 This effect is automatic to the extent that the ITAA 1936, ITAA 1997 or the *Income Tax Rates Act 1986* states that the trustee is liable to tax as if they were an individual or as if the net income of the trust for which they must pay tax were the income of an individual. This is often the case under sections 98 and 99 of the ITAA 1936. ***[Schedule 1 to the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, item 2, section 4-11 of the Income Tax (Transitional Provisions) Act 1997]***

1.42 Where trustees are instead subject to prescribed income tax rates (often the top personal marginal tax rate), then where changes to the rate have been made to incorporate the levy, they are mentioned later in this Chapter.

Exemption by progression provisions

1.43 Where the foreign earnings of an individual working overseas are exempt from Australian tax under sections 23AF or 23AG of the ITAA 1936, these earnings are subject to what is generally referred to as 'exemption with progression' rules, where the exempt foreign earnings are taken into account in calculating the Australian tax to be paid on other assessable income the individual has derived or received.

1.44 The levy will be taken into account in calculating the tax to be paid in Australia on other assessable income the individual has derived where the combined amount of the exempt foreign earnings and the other assessable income derived by the individual exceeds $180,000.

Other tax rates based on the top personal marginal tax rate

Ordinary income tax rates

1.45 The following income tax rates that are aligned with the top personal marginal tax rate are increased by two percentage points so as to incorporate the levy:

- trustees liable to taxation under section 99A of the ITAA 1936 (about trust income that is not allocated to beneficiaries) — 45 per cent to 47 per cent;
- trustees liable to taxation under subsection 98(4) of the ITAA 1936 (about foreign resident individual beneficiaries) — 45 per cent to 47 per cent;
- non-complying superannuation funds — 45 per cent to 47 per cent;

- the non-arm's length component of the taxable income of a superannuation fund — 45 per cent to 47 per cent;
- non-complying approved deposit funds — 45 per cent to 47 per cent;
- the non-arm's length component of the taxable income of an approved deposit fund — 45 per cent to 47 per cent;
- the non-arm's length component of the taxable income of a pooled superannuation trust — 45 per cent to 47 per cent;
- the non-TFN contributions income of a superannuation fund or retirement savings account provider — 47 per cent to 49 per cent (less the ordinary rate of tax paid by the fund or provider); and
- the share of the net income of a partnership attributable to a partner not having control and disposal of that income — 47 per cent to 49 per cent.

[Schedule 1 to the Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 35 of the Income Tax Rates Act 1986]

Family Trust Distribution Tax (Primary Liability)

1.46 Section 3 of the *Family Trust Distribution Tax (Primary Liability) Act 1998* imposes tax payable under section 271-15, 271-20, 271-25, 271-30 or 271-55 in Schedule 2F to the ITAA 1936 (trust losses and other deductions), on the amount or value of income or capital where a trustee of a family trust has made a family trust election and a distribution is made to, or a present entitlement conferred on, an individual other than a member of the family group of the family trust.

1.47 The Bills will increase the rate of tax payable from 47 per cent to 49 per cent (which is the sum of the maximum income tax rate under Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent), the rate of the Medicare levy (2 per cent) and the levy rate (2 per cent)). ***[Schedule 1 to the Family Trust Distribution Tax (Primary Liability) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 5 of the Family Trust Distribution Tax (Primary Liability) Act 1998]***

Fringe Benefits Tax

1.48 Section 5 of the *Fringe Benefits Tax Act 1986* imposes tax on the fringe benefits taxable amount of an employer for each year of tax, and sets the rate of that tax.

1.49 The Bills will increase the rate of tax in respect of the fringe benefits taxable amount of an employer for a year of tax from 47 to 49 per cent (which is the sum of the maximum income tax rate under Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent), the rate of the Medicare levy (2 per cent) and the levy rate (2 per cent). ***[Schedule 1 to the Fringe Benefits Tax Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 6A of the Fringe Benefits Tax Act 1986]***

1.50 Public benevolent institutions, public and not-for-profit hospitals, public ambulance services and certain other tax-exempt entities are exempt from, or entitled to a rebate for, fringe benefits tax up to a prescribed annual cap per employee. The cap is $17,000 in the case of hospitals and ambulance services, and $30,000 in all other cases. An increase in the FBT rate would have the effect of reducing the cash value of benefits that can be provided under the cap to the employee

1.51 To ensure that the cash value of benefits that can be provided under the cap for employees of these organisations is not reduced as a result of an increase in the FBT rate, the Bills increase the annual maximum value of the capped FBT exemptions over the period for which the increased FBT rate applies.

1.52 This will mean that for public benevolent institutions and health promotion charities the exemption from FBT for benefits will increase to a grossed-up annual cap of $31,177 per employee (currently $30,000). For public and not-for-profit hospitals and public ambulance services the exemption from FBT for benefits will increase to a grossed-up annual cap of $17,667 per employee (currently $17,000). ***[Schedule 2 to the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, item 2, section 135Y of the Fringe Benefits Tax Assessment Act 1986]***

1.53 For certain other tax-exempt entities, such as charitable institutions, that are entitled to a 48 per cent rebate of the FBT otherwise payable up to a grossed up cap of $30,000 per employee, the Bills align the rate of the rebate with the FBT rate from 1 April 2015. This means that the rebate rate would increase to 49 per cent for the 2015-16 and 2016-17 FBT years, and then fall to 47 per cent from 1 April 2017. In addition, the cap would be increased from $30,000 to $31,177. ***[Schedule 2 to the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, items 1 and 2, sections 65J and 135Y of the Fringe Benefits Tax Assessment Act 1986]***

Income Tax (Bearer Debentures)

1.54 Where a company pays or credits an amount of interest in respect of a bearer debenture, and the company does not provide the Commissioner with the name and address of the holder of the debenture, a non-final withholding tax is imposed on the company which may be deducted from the interest payable to the holder. Exemptions apply in certain circumstances. The amount of tax withheld may subsequently be applied as a credit to the bearer on lodgement of their income tax return.

1.55 The Bills will increase the rate of tax from 45 to 47 per cent (which is the sum of the maximum income tax rate under Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent), and the new levy (2 per cent). ***[Schedule 1 to the Income Tax (Bearer Debentures) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 7 of the Income Tax (Bearer Debentures) Act 1971]***

Income Tax (First Home Saver Accounts Misuse Tax)

1.56 Section 4 of the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008* imposes income tax on payments from a First Home Saver Account (FHSA) held by an individual, to the extent that it is payable where an account holder has received a payment from their FHSA and has not complied with the requirements around the use of a FHSA payment.

1.57 The amount of tax is calculated by reference to the 'adjusted maximum tax rate', which is the sum of the maximum income tax rate under Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent) and the Medicare levy rate (2 per cent). The Bills will increase the rate two percentage points to incorporate the new levy. ***[Schedule 1 to the Income Tax (First Home Saver Accounts Misuse Tax) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 8 of the Income Tax (First Home Saver Accounts Misuse Tax) Act 2008]***

Income Tax (TFN Withholding Tax (ESS))

1.58 Section 3 of the *Income Tax (TFN Withholding Tax (ESS)) Act 2009* imposes income tax on amounts that are included in an individual's assessable income under Division 83A of the ITAA 1997 as a result of a company providing one or more ESS interests under an employee share scheme, where the recipient of the interest has not quoted an ABN or a tax file number (TFN).

1.59 The Bills will increase the rate of tax from 47 to 49 per cent, which is the sum of the maximum income tax rate under Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent), the Medicare levy rate (2 per cent) and the new levy (2 per cent). ***[Schedule 1 to the Income Tax (TFN Withholding Tax (ESS)) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 5 of the Income Tax (TFN Withholding Tax (ESS)) Act 2009]***

Superannuation (Departing Australia Superannuation Payments Tax)

1.60 Temporary residents who work in Australia, and have superannuation contributions paid by their employer, are entitled to receive their superannuation benefits once they leave Australia. This payment is called a departing Australia superannuation payment (DASP).

1.61 The rates of tax applied to a DASP depend upon the make-up of the payment. The tax-free component will continue to be tax-free following the introduction of the levy.

1.62 The other two rates will be increased to incorporate the levy. DASP payments from a taxed superannuation fund will be subject to a tax rate of 38 per cent during the period in which the levy applies. DASP payments from an untaxed superannuation fund will be subject to a rate of 47 per cent. ***[Schedule 1 to the Superannuation (Departing Australia Superannuation Payments Tax) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 6 of the Superannuation (Departing Australia Superannuation Payments Tax) Act 2007]***

1.63 Unlike other rates, the new 38 per cent rate for payments from taxed superannuation funds is increased by three rather than two percentage points.

1.64 This reflects the special context of DASPs from taxed superannuation funds. These payments have already been taxed at a rate of 15 per cent in the hands of the superannuation fund as either contributions or earnings. As a result, the tax paid by the departing temporary resident on the payment needs to be reduced to take account of the tax already paid. The resulting payment is then only 85 per cent of the original contributions and earnings. To ensure the contributions and earnings are subject to the top marginal tax rate (plus the levy) upon departure, an adjustment is required. In the interests of simplicity, both modifications are achieved by adjusting the tax rate which must then be rounded to the nearest whole tax rate.

1.65 The prior rate of 35 per cent results in the tax liability of the individual, after rounding, being the same as if they had paid tax at the maximum income tax rate under Part II of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent) on the full amount of their superannuation contributions and earnings. After adjusting for rounding, the new rate of 38 per cent will result in the same outcome taking into account the new levy of two per cent — that is, the taxpayer will pay tax at a rate of 47 per cent on full amount of their superannuation contributions and earnings reduced by the tax already paid by the relevant taxed superannuation fund.

Superannuation (Excess Non-concessional Contributions Tax)

1.66 Section 4 of the *Superannuation (Excess Non-concessional Contributions Tax) Act 2007* imposes excess non-concessional contributions tax, which is payable under section 292-80 of the ITAA 1997.

1.67 Section 292-80 of the ITAA 1997 provides that this tax is payable by an individual if they make excess non-concessional contributions in a financial year. Subdivision 292-C of the ITAA 1997 sets out the thresholds where non-concessional contributions become excess non-concessional contributions, and also how to work out the amount of an individual's non-concessional contributions.

1.68 The Bills will increase the rate at which excess non-concessional contributions tax is payable from 47 to 49 per cent of an individual's excess non-concessional contributions for a financial year (which is the sum of the maximum income tax rate under Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent), the Medicare levy rate (2 per cent) and the new levy rate (2 per cent). ***[Schedule 1 to the Superannuation (Excess Non-concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 6 of the Superannuation (Excess Non-concessional Contributions Tax) Act 2007]***

1.69 A taxpayer is also subject to a cap in respect of the concessional contributions they may make in an income year. Following amendments made to the tax law in 2013, excess concessional contributions are not subject to a special tax. Instead, they are included in the taxpayer's taxable income and taxed at (broadly) the taxpayer's marginal rate, including the Medicare levy rate (if applicable), and in the relevant years, the rate of the new levy. In addition, unless the taxpayer chooses to withdraw the amount from superannuation, the amount will also become a non-concessional contribution for the relevant financial year.

1.70 If a taxpayer chooses not to withdraw the amount and have it become a non-concessional contribution, the amount will be subject to the normal thresholds for non-concessional contributions in respect of the taxpayer for that financial year. If the taxpayer exceeds the relevant thresholds, some or all of the excess concessional contribution may also be an excess non-concessional contribution.

1.71 In this case, the contribution will, in effect, be subject to more than one type of income tax, being both included in the taxpayer's assessable income and then subject to excess non-concessional contributions tax. In the absence of any amendment, the total rate of tax on such a contribution could reach 98 per cent if the taxpayer is subject to the highest rate under Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent), the Medicare levy (2 per cent) and the new levy rate (2 per cent).

1.72 While few taxpayers are likely to choose to retain the excess concessional contribution in superannuation where this outcome would result, the overall tax payable on the contribution in this case will be limited to a maximum rate of 95 per cent to which an excess concessional contribution can be subject. The overall maximum rate will be given effect by reducing the rate of non-concessional contributions tax that would otherwise be applied. ***[Schedule 1 to the Superannuation (Excess Non-concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, subsection 6(3) of the Superannuation (Excess Non-concessional Contributions Tax) Act 2007]***

Superannuation (Excess Untaxed Roll-over Amounts Tax)

1.73 Section 4 of the *Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007* imposes tax on an excess untaxed roll-over amount, which is payable under section 306-15 of the ITAA 1997.

1.74 The amount of the tax is a percentage of the excess untaxed roll-over amount. The Bills will increase the amount of the tax from 47 per cent to 49 per cent, which is the sum of the maximum income tax rate under Part I of Schedule 7 to the *Income Tax Rates Act 1936* (currently 45 per cent), the Medicare Levy rate (2 per cent) and the new levy rate (2 per cent). ***[Schedule 1 to the Superannuation (Excess Untaxed Roll-over Amounts Tax) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 6 of the Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007]***

Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 1)

1.75 The *Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 1) 2007* imposes the tax payable under paragraph 102UK(2)(a) of the ITAA 1936. Section 102UK of the ITAA 1936 requires the payment of trustee beneficiary non-disclosure tax where a share of the net income of the trust is distributed to the trustee of a closely held trust and there is no correct trustee beneficiary statement.

1.76 The Bills will increase the rate of the tax from 47 to 49 per cent, which is the sum of the maximum income tax rate payable under the Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent), the Medicare levy rate (2 per cent) and the new levy rate (2 per cent). ***[Schedule 1 to the Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 1) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 5 of the Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 1) 2007]***

Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 2)

1.77 The *Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 2) 2007* imposes the tax payable under paragraph 102UM(2)(a) of the ITAA 1936. Section 102UM of the ITAA 1936 requires the payment of trustee beneficiary non-disclosure tax where a share of the net income of the trust is distributed to the trustee of a closely held trust, and section 102UK does not apply.

1.78 The Bills will increase the rate of the tax to 49 per cent, which is the sum of the maximum income tax rate payable under the Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent), the Medicare levy rate (2 per cent) and new levy rate (2 per cent). ***[Schedule 1 to the Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 2) Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 5 of the Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 2) 2007]***

Interest on non-resident trust distributions

1.79 Section 102AAM of the ITAA 1936, in conjunction with the *Taxation (Interest on Non-resident Trust Distributions) Act 1990*, imposes an interest charge on an Australia resident taxpayer who receives a distribution from a non-resident trust estate.

1.80 Unlike Australia, not all jurisdictions require trusts to fully distribute their taxable income for an income year. The purpose of the charge is to discourage the use of non-resident discretionary trusts to defer taxation. This is done by applying an interest charge to distributions of any profit or income that has accumulated in the foreign trust in respect of prior years without being subject to a comparable rate of taxation to an Australia resident trust.

1.81 For taxpayers that are not companies, the amount of interest is calculated by reference to the highest rate of tax payable under Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent).

1.82 The Bills will amend this calculation to increase the relevant tax rate by two percentage points on the amount of interest payable to take account of the new levy in the years to which the levy applies. ***[Schedule 1 to the Tax Laws Amendment (Interest on Non-Resident Trust Distributions) (Temporary Budget Repair Levy) Bill 2014, item 1, subsection 102AAM(10A) of the Income Tax Assessment Act 1936]***

Untainting tax

1.83 Division 197 of the ITAA 1997 deals with the tax consequences where companies 'taint' their share capital accounts. Broadly, a company's share capital will become 'tainted' if a company transfers an amount into its share capital account that is not already held as share capital or an equivalent.

1.84 If a company's share capital account becomes tainted, a franking debit arises in the company's franking account and the company will generally be prevented from franking any subsequent distributions from this account.

1.85 Division 197 of the ITAA 1997 allows a company to untaint its franking account by, amongst other things, paying untainting tax.

1.86 The Bills will make a minor technical amendment to increase the relevant tax rate by half a percentage point to reflect the increase in the Medicare levy from 1.5 per cent to 2 per cent from 1 July 2014. ***[Schedule 1 to the Tax Laws Amendment (Untainting Tax) (Temporary Budget Repair Levy) Bill 2014, item 2, subparagraph (b)(ii) of the definition of 'applicable tax rate' in subsection 197-60(3) of the Income Tax Assessment Act 1997]***

1.87 The Bills will also increase the relevant tax rate by two percentage points to take account of the new levy in the years to which the levy applies. ***[Schedule 1 to the Tax Laws Amendment (Untainting Tax) (Temporary Budget Repair Levy) Bill 2014, item 2, subsection 197-60(5) of the Income Tax Assessment Act 1997]***

Trust Recoupment Tax

1.88 The *Trust Recoupment Tax Act 1985*, in conjunction with the *Trust Recoupment Tax Assessment Act 1985* imposes a tax on amounts involved in certain trust stripping arrangements.

1.89 Broadly, under these arrangements, a trust with significant income would arrange for an income tax-exempt entity to be entitled to amounts of income but only after a lengthy period of time (generally 80 years). In the interim, amounts would in practice be retained by the trust. As the amounts were nonetheless considered income of the exempt entity, they are not subject to tax.

1.90 Under the rules put in place under the *Trust Recoupment Tax Assessment Act 1985*, if trust income is provided to an entity at some future time and the net present value of the income will have declined by more than 50 per cent by the time it is received, then the trustee, or in some circumstances certain individuals benefitting from the trust, will be subject to tax at a rate equal to the highest rate of tax payable under Part I of Schedule 7 to the *Income Tax Rates Act 1986* (currently 45 per cent).

1.91 The Bills will increase the relevant tax rate by two percentage points to take account of the new levy in the years to which the levy applies. ***[Schedule 1 to the Trust Recoupment Tax Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 6 of the Trust Recoupment Tax Act 1985]***

Administration

1.92 As the levy is in the form of additional income tax, it will be administered and collected as part of the existing income tax framework.

Consequential amendments

1.93 The Bills amend the *Taxation Administration Regulations 1976* to incorporate the new levy into the pay as you go withholding rates with respect to certain payments made where a tax file number or Australian business number has not been quoted. ***[Schedule 3 to Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, items 1 and 2, regulations 2A and 36 of the Taxation Administration Regulations 1976]***

1.94 The Commissioner will make the necessary changes to other pay as you go withholding arrangements to incorporate the levy where applicable. The Commissioner's power to make withholding schedules is contained in Subdivision 15-B of the *Taxation Administration Act 1953*.

Application and transitional provisions

1.95 The temporary budget repair levy applies to the:

- 2014-15 financial year;
- 2015-16 financial year; and
- 2016-17 financial year.

[Schedule 1 to the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, item 2, subsection 4-11(5) of the Income Tax (Transitional Provisions) Act 1997]

1.96 The ordinary income tax rules around substituted accounting periods apply to determine the corresponding income year that aligns with the financial year in which the levy applies, for those taxpayers who operate on an annual period that is not the financial year.

1.97 As the FBT year commences on 1 April and concludes on 31 March, the increase in the FBT rate is to be applied from 1 April 2015. To increase the rate part way through the year would create a large administrative burden on employers. The increase in the FBT rate will cease on 31 March 2017 for a similar reason. ***[Schedule 1 to the Fringe Benefits Tax Amendment (Temporary Budget Repair Levy) Bill 2014, item 1, section 6A of the Fringe Benefits Tax Act 1986]***

1.98 The incorporation of the levy into the other taxes applies as follows:

- family trust distribution (primary liability) tax — notices given by the Commissioner or present entitlements conferred, or distributions made, in a year in which the temporary budget repair levy applies;
- income tax (bearer dentures) — amounts of interest paid or credited in a year in which the temporary budget repair levy applies;
- first home saver account misuse tax — payments from a first home saver account made in a year in which the temporary budget repair levy applies;
- TFN withholding tax (ESS) — amounts included in an employee’s assessable income in respect of an employee share scheme interest for an income year that corresponds to a year in which the temporary budget repair levy applies;

- departing superannuation payments tax — payments received in a year in which the temporary budget repair levy applies;
- excess non-concessional contribution tax — excess concessional contributions made in a year in which the temporary budget repair levy applies;
- excess untaxed roll-over amounts tax — roll-over superannuation benefits taken to have been received in a year in which the temporary budget repair levy applies;
- trustee beneficiary non-disclosure tax — applies to the income years corresponding to the financial years in a year in which the temporary budget repair levy applies;
- interest on non-resident trust distributions — applies to the assessment years corresponding to the financial years in a year in which the temporary budget repair levy applies;
- untainting tax — choices made in an income year that corresponds to financial year in which the temporary budget repair levy applies; and
- trust recoupment tax — applies to the income years corresponding to the financial years in a year in which the temporary budget repair levy applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014
Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014
Family Trust Distribution Tax (Primary Liability) Amendment (Temporary Budget Repair Levy) Bill 2014
Fringe Benefits Tax Amendment (Temporary Budget Repair Levy) Bill 2014
Income Tax (Bearer Debentures) Amendment (Temporary Budget Repair Levy) Bill 2014
Income Tax (First Home Saver Accounts Misuse Tax) Amendment (Temporary Budget Repair Levy) Bill 2014
Income Tax (TFN Withholding Tax (ESS)) Amendment (Temporary Budget Repair Levy) Bill 2014
Superannuation (Departing Australia Superannuation Payments Tax) Amendment (Temporary Budget Repair Levy) Bill 2014
Superannuation (Excess Non-Concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill 2014
Superannuation (Excess Untaxed Roll-Over Amounts Tax) Amendment (Temporary Budget Repair Levy) Bill 2014
Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 1) Amendment (Temporary Budget Repair Levy) Bill 2014
Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 2) Amendment (Temporary Budget Repair Levy) Bill 2014
Tax Laws Amendment (Interest on Non-Resident Trust Distributions) (Temporary Budget Repair Levy) Bill 2014
Tax Laws Amendment (Untainting Tax) (Temporary Budget Repair Levy) Bill 2014
Trust Recoupment Tax Amendment (Temporary Budget Repair Levy) Bill 2014

1.99 These Bills are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

1.100 The Bills amend the *Income Tax Assessment Act 1997* (ITAA 1997), the *Income Tax Rates Act 1986* (ITRA 1986), the *Income Tax (Transitional Provisions) Act 1997* (IT(TP) Act 1997) and other taxation imposition and ratings Acts to introduce a three-year progressive budget repair levy in the primary form of additional income tax on Australian resident and foreign resident individuals commencing in the 2014-15 financial year.

1.101 The levy will also be reflected in a number of tax rates that are currently based on the top personal marginal tax rate (45 per cent), as well as those based on a calculation comprising the top personal rate and the Medicare levy (currently 1.5 per cent, but legislated to increase to two per cent from 1 July 2014), to maintain the integrity and ensure the fairness of the tax system and minimise opportunities for avoiding the levy.

1.102 These changes will ensure that those with a greater capacity to pay make a larger contribution to repairing the budget.

1.103 The amount of levy payable is at the rate of two per cent for each dollar of a taxpayer's taxable income in excess of $180,000. No levy is payable where the taxpayer has a taxable income of $180,000 or less except in cases where a tax law integrity rules applies to apply the top personal marginal tax rate to certain types of income.

Human rights implications

1.104 These Bills do not engage any of the applicable rights or freedoms.

1.105 However, the Committee has previously raised comments around the engagement of the right to an adequate standard of living with regard to taxation measures. For the purpose of completeness, the assessment against that right has been included below.

Right to an adequate standard of living

1.106 The person's right to an adequate standard of living is contained in article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 ensures the realisation of this right, recognising the essential importance of an adequate standard of living.

1.107 The Committee has commented that a change in tax rates could limit the standard of living available to Australians.

1.108 The Bills achieve a legitimate objective in that they will start the process of repairing the nation's finances. The introduction of a temporary budget repair levy will mean that high-income individuals will contribute to the task of repairing the Budget based on their ability to pay.

1.109 The temporary budget repair levy's design retains progressivity in the tax system. Taxpayers with annual taxable income in excess of

$180,000 will directly incur the levy. In 2014-15, around 400,000 taxpayers (less than 4 per cent of taxpayers) will directly incur the levy on their personal taxable income.

1.110 The levy's design is reasonable, necessary and proportionate to the task of repairing the nation's finances, being payable by those with a greater ability to pay. The two per cent rate is modest relative to the higher incomes of those taxpayers who will be required to pay the levy.

Conclusion

1.111 The Bills are compatible with human rights as they do not raise any human rights issues.

1.112 If the Bills did engage the right to an adequate standard of living, the Bills are nonetheless compatible with human rights because to the extent that it could be argued they may limit human rights, those limitations are reasonable, necessary and proportionate.

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Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 1) Amendment (Temporary Budget Repair Levy) Bill 2014

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Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 2) Amendment (Temporary Budget Repair Levy) Bill 2014

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Tax Laws Amendment (Interest on Non-Resident Trust Distributions) (Temporary Budget Repair Levy) Bill 2014

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