Taxation Laws Amendment Bill (No. 2) 1988

Date Introduced: 14 April 1988
House: House of Representatives
Presented by: Hon. Peter Duncan, M.P., Minister for Employment and Education Services

Digest of Bill

Purpose

To alter the rules relating to –
- tax agents' registration;
- special accelerated depreciation concessions for Australian trading ships;
- income tax deductions allowable for cash bids paid for offshore petroleum explorations permits;
- the foreign tax credit system;
- thin capitalisation;
- the exemption of payments made under the Aboriginal Secondary Assistance Scheme;
- availability of the beneficiary rebates to persons receiving Formal Training Allowance;
- calculation of 'separate net income' to exclude the family allowance supplement;
- exemption of the carer's pension and other more minor matters.

Background

Several Acts are amended by this Bill but the main changes, as described herein, are to the Income Tax Assessment Act 1936 (ITAA).

Registration of Tax Agents

Many practical problems regarding registration of tax agents arise from the lack of flexibility allowed in the existing provisions of the ITAA. For instance the existing law allows rights of appeal only on the question of
cancellation or suspension of registration. No right of appeal exists against refusal to register or re-register. The Administrative Review Council recommended that, in view of the emerging pattern for legislation to provide for rights of appeal from professional registration decisions, there should be a right of appeal to the Administrative Appeals Tribunal (the Tribunal) from decisions effecting tax agents’ registration under the ITAA. This Bill relieves the deficiency by providing for the extension of the right of appeal to more varied circumstances.

Under present law the Tax Agents’ Board (the Board) has virtually no discretion as to the circumstances in which registration is cancelled or suspended. In instances where cancellation is mandatory even appeal to the Tribunal is ineffective because no discretionary provisions are available. This Bill provides the Board with a discretion to decide, within the guidelines provided, whether or not it is satisfied that a particular person is a fit and proper person to be a tax agent. The existence of this discretion, combined with the right of appeal to the Tribunal would allow for a decision to be reviewed.

Tax agents, or their nominees, are required to sign a certificate on each income tax return for which they have charged a fee for preparation. In order to discharge the responsibility required in the certificate the tax agent or nominee would want to check each return before signing, even though the return may have been prepared by a competent employee. Checking each return can impose a heavy workload on taxation agents which may effect their ability to comply with the Australian Taxation Office lodgement program. This Bill provides for sole practitioners and partnerships to register suitably qualified employees as nominees.

The Bill proposes that when a company applies for registration as a tax agent it will be necessary for one or more of its directors to be suitably qualified for registration as a tax agent and for that/those directors to hold at least 25 per cent of the voting power of the company. The existing provisions do not prevent the registration as nominee of a suitably qualified employee who apart from signing returns takes little or no part in their preparation.

The Bill proposes increased registration fees, the introduction of re-registration fees and a three-year period of registration. The fee, arrived at after a cost recovery analysis is intended to cover costs associated with the registration of tax agents.
Accelerated Depreciation of Australian Ships

In line with a proposal announced on 2 April 1987, eligibility for the special accelerated depreciation concession for Australian trading ships will be restricted to new ships that satisfy both the existing eligibility criteria and those entitled to a 7 per cent grant, payable under the Ships (Capital Grants) Act 1987.

Cash Bidding for Offshore Petroleum Permits

Existing law allows for the writing-off over a ten-year period of cash bidding payments made under the Commonwealth's combined cash bidding and work programme system included in the offshore legislation of 1967. This Bill implements the announcement made on 17 September 1986 to extend eligibility for deduction to other types of payments, namely cash bids for exploration permits and production licences. Cash bids under equivalent State and Northern Territory cash bidding systems will also be eligible for deduction.

Other changes proposed by the Bill are outlined below.

Main Provisions

(1) Tax Agents' Registration

Clauses 39 to 53 which provide for changes to Part VIIA — Registration of Tax Agents, will commence on a day to be fixed by Proclamation.

A general power to cancel or suspend registration as a tax agent is proposed by clause 48 to replace the more limited powers of the existing section 251K.

Situations for which appeal may be made to the Administrative Appeals Tribunal are set out in the new section 251QA proposed by Clause 53. Clause 46, which omits existing subsections, and clause 41 which inserts new section 251BC and provides for who will be eligible for registration, combine to allow for appointment as nominees, suitably qualified employees of partnerships and individual tax agents.

The requirement that nominees of a company applying for registration as a tax agent must be directors holding not less than 25 per cent of the voting power is one of the changes contained in clause 41.

Changes to the rules regarding registration and the introduction of a fee for re-registration are proposed by clause 47. Clause 46 proposes an increase in the fee on initial registration.
Some of the other changes proposed are to the membership of the Tax Agents' Board (Clause 42 – section 251D), re-registration in the event of a change in the constitution of a partnership (Clause 47 – new subdivision C) and duration of the registration period (Clause 47 – new subdivision E).

(2) Other Changes

Eligibility for the special accelerated depreciation concession for Australian trading ships is proposed to be further restricted by the provisions of clause 15.

Extension of the amounts able to be included in allowable capital expenditure in respect of cash bidding payments for offshore petroleum exploration permits is made by the provisions of clauses 20 and 21.

Modifications to the foreign tax credit system are made by –

- amendment to section 23AG to create 'absentee credits' allowing continuity in the foreign service period of Australian residents used for calculating the income tax exemption on salaries and wages earned overseas;
- the insertion of section 79D which corrects a defect in the existing law with respect to the deductibility of foreign sources losses; and
- amendment of section 160AFC which will disallow as a credit, foreign tax which was imposed solely because of an entitlement of the taxpayer to a foreign tax credit in the taxpayer's country of residence.

The thin capitalisation rules are tightened by amendments made to section 159GZD, 159GZF, 159GZG and 159GZR.

In order to tax payments to students aged 16 years or more under the Aboriginal Secondary Assistance Scheme and payments to students of any age under the Aboriginal Study Assistance Scheme (in the same way as for AUSTUDY), clause 10 provides for the amendment of section 23 to exclude those payments from the income tax exemption.

The rebate of income tax available for persons receiving specified pensions is extended by clause 29 to include amounts received under the Aboriginal Secondary Assistance Scheme, the Aboriginal Study Assistance Scheme or paid by way of Formal Training Allowance.
The provisions for the calculation of 'separate net income' for dependant rebate purposes are updated by amendments contained in clause 28 which direct that the recently introduced 'family income supplement' and the 'handicapped child's allowance' be omitted.

Clause 12 is intended to correct an anomaly whereby a non-relative of less than pensionable age was able to receive a carer's pension exempt from income tax whereas a relative in similar circumstances was not. The distinction between relative and non-relative has now been removed.

For further information, if required, contact the Economics and Commerce Group.

30 June 1988

Bills Digest Service
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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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