Taxation Laws Amendment (Tax File Numbers) Bill 1988

Date Introduced: 1 September 1988
House: House of Representatives
Presented by: The Hon. Paul Keating, M.P., Treasurer

Digest of Bill

Purpose

To require a tax file number to be produced for a range of employment and investment transactions, and for the receipt of unemployment and sickness benefits. The requirements will be phased in and, generally, the result of non compliance will be that tax is withheld at the maximum rate.

Background

The tax file number (TFN) proposal is a direct result of the certain defeat of regulations needed to give effect to the proposed Australia Card. As it became clear that even if the Australia Card Bill were to come into force it could not operate, the government sought an option that would pass the Senate and recoup maximum funds. Inevitably, this raised the prospect that the TFN scheme would, in operation, be a defacto Australia Card. The main differences between the TFN and Australia Card proposals are dealt with in the Remarks section of this Digest.

Main Provisions

A new Part VA will be inserted into the Income Tax Assessment Act 1936 (the Principal Act) by clause 6.

Proposed section 202 deals with the objects of the proposed Part. They include to increase the efficiency of matching of information, to prevent evasion and to facilitate the administration of tax laws.

Proposed Division 2 deals with the issue of TFNs, their cancellation and alteration.
Use of TFN

Employment

People who commence new employment on or after 1 November 1988 will be required to complete an employment declaration which contains their TFN. All employees will be required to complete such a declaration by 1 April 1989 (proposed section 202C). The declaration will be valid for 28 days if, instead of quoting their TFN, it states that the employee has applied for a TFN or has requested to be informed of their TFN (proposed section 202CB). The sanction for a failure to comply with these provisions will generally be that tax is withheld at the maximum rate – see Sanctions below.

Investments

Proposed section 202D lists the types of investment for which a TFN will have to be produced to avoid the sanctions. They include: interest bearing accounts; loans to governments or companies; deposits with solicitors that are to be invested; units in unit trusts; and shares in public companies. By the end of the phasing-in period, i.e. 1 July 1991, all such investments must be accompanied by the investors' TFN (proposed section 202DB). Where the investment is jointly made by two people, both must give their TFNs. Where the investment is jointly made by more than two people, at least two TFNs must be recorded (proposed section 202DH).

Recipients of Certain Benefits

By virtue of section 221A of the Principal Act, the recipients of regular benefits are deemed to be in receipt of salary or wages and as such are deemed to be employees. Under proposed section 202C all the recipients of such benefits would be required to lodge a declaration containing their TFN. However, proposed section 202EA will exempt the recipients of most benefits from this requirement with the result that those in receipt of unemployment or sickness benefits will form the major class of those in receipt of benefits who will be required to give their TFN.

Where a recipient of benefits has investments that require them to provide their TFN, the above exemption will not apply. However, it will be sufficient if they provide their name and details of the benefit they receive (proposed section 202EB).

Exemptions

Proposed Division 5 deals with exemptions. Children who have an investment, other than shares, that requires their TFN to be quoted, and who do not have a TFN, will be taken to have provided their TFN if their parent or guardian provides a declaration stating the child's name and date of birth. If the parent/guardian holds the investment on the child's behalf, the requirement for a TFN will be satisfied if the parent's/guardian's TFN is supplied (proposed section 202E).

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Where an entity that is not required to lodge a return, and which does not have a TFN, becomes obliged to provide their TFN, this requirement will be taken to have been fulfilled if they make a declaration stating their name, address and reason why they don’t have to furnish a return (proposed section 202EC).

Recently arrived visitors (i.e. those who are not residents and have been in Australia for less than six weeks during the past year) will not be required to give a TFN if they make an appropriate declaration and produce their passport or become liable to withholding tax (proposed section 202ED).

Sanctions

Investment

Proposed section 221YHZC, which will be inserted by clause 15, deals with the withholding of tax from investment returns where a person is required to give their TFN and has failed to do so. However, where the return is a dividend that has been fully franked (i.e. full tax has already been paid), no extra tax is to be withheld. The proposed section also contains the formula for determining how much is to be withheld where a dividend is partly franked. The sanction will not apply where the investment income is less than the amount prescribed by regulation (this will generally be $420 in a full year – proposed regulation .54ZEK).

Employment

The authority to withhold tax from employees who do not provide their TFN will be contained in the regulations which will be amended by this Bill. Proposed regulation 54DAAB will contain the general power to withhold deductions, while proposed sub-regulation 54AB(3) sets the rate at 50.25% for residents and 49% for non-residents.

Secrecy

A new Sub-Division BA will be inserted into the Taxation Administration Act 1953 by clause 26. Proposed section 8WA will make it an offence to request a person’s TFN unless authorised by law or if the person requesting the TFN is acting on the other person’s behalf. The maximum penalty for a breach of this provision will be two years imprisonment and/or a $10 000 fine. The same penalty will apply for the unauthorised disclosure or recording of a TFN or tax information, or for conducting one’s affairs with the sole or dominant purpose of avoiding the TFN requirements. In addition, the penalty for a breach of the secrecy provisions in a number of tax Acts will be doubled to the same level as mentioned above (clause 29).
Remarks

There are substantial differences between this proposal and the Australia Card, with the largest differences evident in the range of transactions covered, the sanction for a failure to comply with the requirement, access to the information, and the amount of information recorded.

While this proposal will apply to investment, employment and some social security benefits, the Australia Card was intended to apply to a much wider range of transactions, such as payment by primary industry marketing authorities, the remittance of rent to landlords by real estate agents and the application for social security and Medicare benefits.

In the area of sanctions there is again a large difference between the proposals. Under the TFN proposal, the sanction will be that tax is withheld at the maximum rate. This compares with the Australia Card where individuals would be denied the opportunity to take part in the transaction if their Australia Card was not produced. For example, under the TFN proposal people may still operate bank accounts without giving their TFN, while under the Australia Card proposal accounts could not be operated without giving the card number. The Australia Card proposal also envisaged fines for a failure to record a card number. Under the TFN proposal, third parties will generally be liable to a penalty only if they fail to deduct the amount due for a failure to provide a TFN or fail to send a declaration to the Commissioner.

Access to the information recorded, and the amount of information stored, is greatly reduced in the TFN proposal as compared with the Australia Card proposal. The TFN is only to be used for tax purposes while the Australia Card register was to be used for tax, social security and Medicare purposes. As a result, the TFN will not become the central identification register that the Australia Card was likely to become.

In the tax field, the TFN will perform much the same function as the Australia Card, i.e. facilitate the correct identification of those in receipt of taxable income. However the difference in sanctions is very important.

The differences between the two proposals can also be gauged on the funds they are estimated to save. According to the Explanatory Memorandum circulated with the Australia Card Bill, that proposal would have resulted in savings of expenditure and gains of revenue to the extent of $877 million in 1993–94 when the full benefit of the scheme would come into effect. In the Explanatory Memorandum to this Bill, it is estimated that the TFN will raise revenue of $337 million in 1993–94.

For further information, if required, contact the Law and Government Group.

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