Taxation Laws Amendment Bill (No. 2) 1987

Date Introduced: 6 May 1987
House: House of Representatives
Presented by: Hon. Chris Hurford, M.P., Minister Assisting the Treasurer

Digest of Bill

Purpose

The major amendments contained in this Bill relate to: the substantiation requirements for motor vehicle expenses; the abolition of Division 7 tax; the extension of the imputation system to trusts treated as companies; minor adjustments to the imputation scheme; and the extension of the bank account debits tax to other financial institutions.

Background

Division 7 tax is imposed on the undistributed profits of resident, private companies where there has not been a sufficient distribution of profits. The amount of undistributed profits that will be subject to the tax is calculated by reference to the company's taxable income less any company tax paid, the retention allowance and dividends paid during the year. The retention allowance deals with the amount that companies may retain and is calculated at the rate of 10% for property income other than dividends from other private companies and 80% of trading income. The rate of undistributed profits tax is 50%. On 10 December 1986 the Treasurer released a press statement dealing with the introduction of the imputation system and also announcing the abolition of Division 7 tax, subject to transitional provisions.

Changes to the documentation that must be kept for the substantiation of motor vehicle expenses for the purposes of deductions and the fringe benefits tax were announced by the Treasurer on 29 October 1986 following criticism of the rules introduced by the Taxation Laws Amendment Act (No. 4) 1985 and the Fringe Benefits Tax Assessment Act 1986. The criticisms were largely centered on the amount of documentation that had to be kept, particularly the need to record each business trip and car expense if certain substantiation options were followed. There are three methods for establishing the amount deductible for car expenses. First, a log book may be used to record the cost of operation and the business use. Secondly, one-third of all recorded expenses may be deducted, while, thirdly, 12% of the price of the car may be deducted.

The bank accounts debits tax came into operation on 1 April 1983 and was imposed on most debits made to a bank account on which cheques drawn on the bank by the account holder may be debited. The tax not only applies to cheques drawn on such an account but also to all debits made to such an account including bank fees and automatic teller machine operations. On 28 November 1986 it was announced that the tax would be extended to other financial institutions which operate similar accounts.
Main Provisions

Sub-section 44(2) of the Income Tax Assessment Act 1936 (the Principal Act) exempts certain bonus shares that are issued to satisfy dividends, from tax. This exemption will be removed by clause 9 which will repeal this provision. Such shares will in future be subject to the imputation system.

Clauses 14 to 22 will modify the substantiation rules for vehicle expenses. Clause 14 will amend section 82KT of the Principal Act to insert a number of definitions including ‘applicable log book period’. This will generally be a continuous 12 week period. A ‘log book car’ is defined as one in respect of which no election has been made to use the formulas for calculating allowable deductions. The log book is to include, in respect of all business trips, details of the odometer readings before and after the trip, the purpose and date of the journey and the name of the driver.

Proposed section 82KTG deals with when a year will be treated as a log book year of income. This will generally occur when the year is the first year that a deduction is claimed, when the taxpayer elects that this be so (e.g. to change the underlying business percentage) or when the log book option is adapted.

The percentage of business use established by the log book will be assumed to be the percentage for the period that the person holds the car (i.e. the underlying business percentage) (proposed section 82KTH). Where a car is replaced, the business percentage of the original car will be carried over to the replacement (proposed section 82KTJ).

Deductions for car expenses will not be available unless documentary evidence has been obtained, although for fuel and oil expenses odometer records will suffice (proposed section 82KUA). In addition, deductions will generally not be allowed in relation to a log book year unless a log book is maintained (proposed section 82KUB) nor in relation to non-log book years unless a log book was maintained in the log book year (proposed section 82KUC). In both cases the taxpayer is to specify the nominated business percentage in their return and that is not to exceed the percentage established during the log book period.

Proposed section 82KUD deals with the amount of deduction where the log book method is used. This will generally be calculated on the percentage listed in the return as mentioned above. However, where it is a log book year, or the car is a low use car (i.e. less than 5000km business travel annually), and the difference between the percentage listed in the return and the reasonable estimate of the underlying estimated business percentage is greater than zero, the deduction will be the reasonable percentage of business use. This will also apply to cases where there has been a reduction in business use of greater than ten percent.

Where, in a return, the taxpayer lists a percentage business use that is greater than the percentage established during the log book period, the percentage listed will be deemed to be the lesser of the percentage of the log book period or the reasonable estimate of the underlying business percentage (proposed section 82KUE).

Clause 21 will amend section 82KY of the Principal Act to allow taxpayers to alter the method of calculating the deduction from year to year.
Proposed section 223A, which will be inserted by clause 46, contains the formula for calculating the penalty tax that will be payable for over estimating the business percentage.

Section 104 of the Principal Act, which imposes the liability for withholding tax, will be amended by clause 26 so that it will only apply to phasing-out dividends after 1 July 1986. Phasing-out dividends are dealt with in proposed section 105 which will be inserted by clause 27. The phasing-out dividend provisions are designed to prevent evasion in relation to dividends for the 1985-86 year which are distributed to other private companies which do not pay tax on such dividends and which in turn distribute their dividends, part of which would comprise the original dividend, in latter years. Basically, the provision will ensure that tax is payable on such dividends when finally distributed to the person who, under the old arrangements, would have been liable for the tax.

Section 124ZAA of the Principal Act forms part of Division 10BA which deals with Australian films. Clause 32 will amend this section to allow the Minister to treat a film as a non-qualifying film when there is a significant non-Australian film.

Clause 37 will add new sub-sections to section 160APP of the Principal Act. By proposed sub-section 160APP(2), no franking credit will arise where dividends are tax exempt in the hands of the shareholder. For partly exempt shareholders, a proportional franking credit will be allowed (proposed sub-section 160APP(3)). In addition, no franking credit will be allowed if the shareholder is a registered organisation under Division 8A of Part III of the Principal Act (i.e. friendly societies, trade unions and employer groups) - proposed section 160APP(4). Similarly, no franking credit will arise where the shareholder is a life insurance company and the assets from which the dividend was derived formed part of the insurance funds (proposed section 160APP(5)).

Clause 43 will insert a new Division 7A into the Principal Act to extend the imputation system to corporate trusts. Proposed section 160ARDA states that the purpose of the Division is to extend the Part (i.e. Part IIIA which deals with franking) to corporate trust estates and current corporate trusts (i.e. corporate unit trusts that fall with Division 6B or public trading trusts that fall within Division 6C), while proposed section 160ARDG will require such trusts to be resident trusts for franking, a similar position to companies.

An amendment to the Pay-roll Tax (Territories) Assessment Act 1971 will exempt the first years wages of an apprentice from pay-roll tax (clause 51).

The four Schedules to the Bill contain minor amendments to a number of Acts. The amendments contained in the First Schedule largely relate to including all financial institutions under the Bank Accounts Debits Tax Act 1982, the short title of which will be altered to Debits Tax Act 1982. The Second Schedule will amend a number of ACT tax Acts to reflect the transfer of the administration of those Acts to the Commissioner for Australian Capital Territory Revenue Collections. Similarly, the Third Schedule deals with the transfer of administration of A.C.T. pay-roll taxes. The Fourth Schedule deals with the Commissioners information gathering powers.

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

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