TRUST RECOUPEMENT TAX BILL 1984

Date Introduced: 9 October 1984
House: House of Representatives
Presented by: Hon. P.J. Keating, M.P., Treasurer

Short Digest of Bill

Purpose

To impose trust recoupment tax, a form of personal income tax, on trustees and/or intended beneficiaries in certain tax avoidance schemes involving stripping a trust which has allocated income to a charity but has arranged to pay over the income at a much later date.

Background

The Bill is associated with the Trust Recoupment Tax Assessment Bill 1984, which provides for the assessment and collection of trust recoupment tax, (see Bills Digest for that Bill for summary of legislation against tax avoidance through trust-stripping since 1978). The present Bill imposes liability to the trust recoupment tax so assessed.

The trust-stripping scheme against which the Bills are directed involves several trusts, through which income is successively channelled. The last trust is arranged to grant a vested and indefeasible interest in the funds to a charity, the income of which is exempt from tax. The interest is sufficient under tax legislation for the charity to be deemed to be 'presently entitled' to it. In fact the trust is arranged so that payment will not occur for many years, and the funds may be applied for the benefit of the intended beneficiaries in the meantime.

Trust recoupment tax is directed at recovering income tax avoided through these schemes. The legislation first establishes the circumstances in which the tax applies. The legislation then identifies the income on which tax has been avoided as that component of income vested in the charity but not presently payable ('primary taxable amount'). Tax on the primary amount is payable by the trustee at a rate, specified in this Bill, of 60 per cent (the maximum rate of personal income tax).
The assessment provisions go further to permit parties involved in the scheme to elect to be assessed in alternative ways, and to cater for circumstances where tax cannot be collected from a trustee or other person liable to tax.

Where a trustee is liable in respect of a primary taxable amount, the beneficiaries may elect to include that amount in agreed proportions in their personal returns and the trustee's liability is then extinguished.

It is possible that a party to the election will be a company. If so, the company is liable to trust recoupment tax at 75 per cent. This high rate is imposed because the shareholders will pay no tax (so the 75 per cent rate is in lieu of company tax at 46 per cent, and personal income tax). There is a further provision allowing the final beneficiaries (the shareholders) of that company's share to elect to include the benefit in their respective personal tax returns. In this case the company's income is treated as a 'company taxable amount' rather than an 'elected taxable amount' and taxed at 46 per cent rather than 75 per cent.

Where the trust has ceased to exist before an assessment to trust recoupment tax is levied against it, certain persons who have derived a benefit from the trust otherwise than by an arm's length transaction are made jointly and severally liable to tax on a 'secondary taxable amount' equal to the 'primary taxable amount'. This Bill imposes tax (on both the 'secondary taxable amount' and the 'primary taxable amount') at an equivalent rate of 60 per cent.

In summary, a tax avoidance scheme for avoidance of tax on a 'primary taxable amount' will be met in the first instance by rendering the trustee liable to tax at 60 per cent on that amount. The beneficiaries may replace that liability by including respective benefits in their personal returns. For an electing beneficiary which is a company, trust recoupment tax at 75 per cent is levied on the company's share ('elected taxable amount') unless those entitled to the income by way of dividend elect to include respective shares in their personal tax returns, in which case a lower rate of 46 per cent is imposed. Where a trust recoupment tax assessment in respect of a primary taxable amount is impracticable, the benefit is traced to 'eligible beneficiaries' in respect of 'secondary taxable amounts', on which 60 per cent tax is imposed.
Main Provisions

The Bill incorporates the Trust Recoupment Tax Assessment Bill 1984 and is to commence with that Bill (clauses 2 and 3).

The Bill specifies tax rates applicable in respect of various amounts defined in the assessment Bill, and levies tax on those amounts (clauses 4 and 5). The rates are 60 per cent in respect of 'primary' and 'secondary' taxable amounts, 75 per cent in respect of 'elected taxable amounts' and 46 per cent (the normal rate of company tax) in respect of 'company taxable amounts'.

For further information, if required, contact:

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