INCOME TAX LAWS AMENDMENT BILL (No. 2) 1981

Date Introduced: 27 May 1981
House: House of Representatives
Presented by: Hon. J.W. Howard, Treasurer

Purpose

New general income tax anti-avoidance provisions, Part IVA, replacing the previous anti-avoidance provision, section 260 of the Income Tax Assessment Act, 1936.

Background

The increasing growth of the tax avoidance industry in recent years has been, to a large extent, encouraged by the existing section 260 anti-avoidance provision which has been rendered ineffective by various decisions of the High Court of Australia.

The Bill introduces Part IVA in the Principal Act which seeks to overcome the weakness of section 260 as exposed by the High Court; including, the Court's attitude of looking to the legality of the form of transactions rather than the purpose for which they were entered into.

The Bill seeks to lay down objective tests to examine the purpose and circumstances of a person entering in an arrangement, with a view to seeking their sole or dominant purpose.

Whilst not specifically embodied in the legislation, the Treasurer has announced that the new provisions are not intended to affect normal family and business relationships, including those of a tax planning nature.

Main Provisions

Clause 7 introduces Part IV (sections 177A-177G). Section 177D provides that Part IVA applies to any scheme that has been or is entered into after 27 May 1981. Clause 10 specifies that the existing section 260 will not apply to arrangements entered into after 27 May 1981.
Schemes to which Part IVA applies

Section 177D sets out eight factors (refer pages 12-13 Explanatory Memorandum) which are to be considered in identifying the motives of persons entering into a scheme in order to obtain a "tax benefit".

In addition, section 177E is proposed to catch dividend stripping schemes which, whilst undertaken for tax avoidance purposes, may not in certain cases be covered by the tests of section 177D.

A "tax benefit" is defined by section 177C which makes two basic distinctions, namely, (a) an amount which, but for the scheme would have been included, or might reasonably be expected to have been included in assessable income; and (b) a deduction being allowed where the whole or a part of the deduction would not have been allowable, or might reasonably be expected not to have been allowable, but for the scheme.

The proposed section 177C, sub-section 2 introduced in clause 7 is to ensure that a taxpayer making an election, or exercising an option provided under the Principal Act which confers a tax concession, such as Income Equalization Deposits, is not caught by Part IVA as having obtained a "tax benefit".

Where a tax benefit has been obtained, section 177F gives the Commissioner of Taxation power to make the necessary determination to deny the benefit to the taxpayer; that is, include in full or in part an amount in assessable income or disallow in full or in part an amount as an allowable deduction.

The existing 60 day period in which an objection can be lodged continues to apply.

In addition to the above powers of adjustment, clause 9 amends section 226 of the Principal Act to impose a statutory additional tax on the amount of the "tax benefit" determined as above of two hundred per cent (200%). The Commissioner of Taxation's power to remit additional tax remains and clause 8, which complements clause 9, amends section 193 to allow a Taxation Board of Review to review the Commissioner's decision to remit additional tax, where the additional tax after remission exceeds 5% of the tax that would have been payable but for the remission.

Losses of Previous Years

Clauses 4 and 5 relate to the carrying forward of
tax losses. They amend sections 80 and 80AA of the Principal Act to ensure that losses of previous years which would not have been generated had Part IVA applied to schemes entered into prior to 28 May, 1981 will not be available to be carried forward as a deduction against income of 1980-81 or later years. Clause 11 is designed to safeguard the amendments proposed by clauses 4 and 5 through disallowing arrangements which might be employed to convert tax avoidance losses into losses of a different character which would still be available to be carried forward.

For further information, if required, contact:

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11 August 1981
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