INCOME TAX ASSESSMENT AMENDMENT BILL (No. 5) 1978

Date Introduced: 23 November 1978
House: House of Representatives
Presented by: Hon. John Howard, Treasurer

Purpose

To block tax avoidance schemes involving pre-payment schemes, trust income derived outside Australia, and trust-stripping.

Background and Main Provisions

The Treasurer announced in a Press Statement on 19 April 1978 that the first category of schemes involving pre-payments would be legislated against, effective from 20 April. These schemes involved the "taxpayer" obtaining a tax deduction for pre-payments of interest on a loan which is artificial in that it is then effectively cancelled by the taxpayer buying back the rights in it.

Clause 6 inserts new s.82KJ in the Income Tax Assessment Act 1936 so as to disallow any deduction for outgoings incurred as a result of a tax avoidance agreement where the outgoing exceeds the amount that might reasonably be expected to have been incurred at that time in respect of the related benefit (e.g. due to pre-payment), and property is acquired by the taxpayer or an associate, and the consideration payable for the acquisition of the property is less than what might have been reasonably incurred if the outgoing had not been incurred.

Clause 6 also inserts new s.82KK. Sub-section (1) specifies certain types of losses or outgoings to which the section applies under arrangements between associated parties for the purposes of securing that one party will obtain a deduction while the other party will not bear tax on a matching amount in the same year of income. Sub-sections (2) and (3) will deny a deduction for such outgoings where they were incurred as part of an arrangement for deferring tax on the amount receivable by the associate.

The second broad category, covered by a Press Statement of 8 June 1978, relates to avoidance of tax on income derived outside Australia through a trust or partnership.
Clause 11 inserts new sub-section 95(1) by which the 'net income' of a trust estate will be calculated broadly as if the trustee was a resident taxpayer. The effect of this will be to extend its assessable income to include income from outside Australia.

Clauses 12 and 13 amend s.97 and 98 respectively, covering the case of beneficiaries presently entitled to a share of the income of a trust estate. S.97 covers the case of beneficiaries not under a legal disability, and s.98 the case where they are under a legal disability (e.g. infancy). The amendments ensure that assessable income will include the net income of the trust estate (i.e. from sources in and out of Australia) derived when the beneficiary was a resident and, when the beneficiary is a non-resident, only income from sources in Australia.

Clause 14 inserts new sub-sections 99(2) and (3) to similarly extend tax to the ex-Australia component of accumulating income in resident trust estates in respect of which no beneficiary is presently entitled. New sub-sections 99(4) and (5) cover non-resident trust estates and will require the taxation only of Australian source income.

Clause 15 makes similar amendments to s.99A which imposes a special tax rate (61.5% for 1978-79) on trusts that are involved in tax avoidance arrangements.

Clause 7 amends s.90 relating to partnerships to define their net income as for a resident individual to ensure that ex-Australia income is included.

The third category involved 'trust-stripping', covered by the Treasurer's Statement of 11 June 1978. Here, the trustee avoids tax by directing income to the trust beneficiary who is presently entitled to a share of the income and not under any legal disability, and where the beneficiary also is tax-exempt for some reason, and there is a "reimbursement agreement" under which the beneficiary redirects the benefit of the trust income to the trustee.

Clause 18 inserts new sub-section 100A(1) which provides that, in cases involving tax avoidance arrangements of the above type, the beneficiary will be regarded as not being presently entitled to the income, so that it will be taxed in the hands of the trustee under s.99A instead of s.97. The amendment is to operate from 11 June 1978.