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THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX ASSESSMENT AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,

the Hon. P.J. Keating, M.P.)

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GENERAL OUTLINE

INCOME TAX ASSESSMENT AMENDMENT BILL 1990

This Bill will amend the Income Tax Assessment Act 1936 to require, from June 1990, instalments of tax deducted from the salary or wages of employees to be remitted to the Commissioner of Taxation twice-monthly where, in the financial year ended 30 June 1989, and/or a later financial year -

- the total of the deductions made by the employer exceeds $5 million; or

- in the case of a company/employer which is part of a wholly-owned group of companies, the total of the deductions made by the companies in the group exceeds $5 million (1989-90 Budget announcement).

FINANCIAL IMPACT

The estimated gain to the revenue from the introduction of twice-monthly payment of tax instalment deductions is S$50 million in 1989-90. This gain is in the form of a one off bring forward of revenue.

MAIN FEATURES

The main feature of the Bill is as follows:

Twice-monthly payment of tax instalment deductions (Clauses 3 to 5)

The Bill will give effect to the Government's 1989-90 Budget proposal to require certain employers (called "early remitters") to pay to the Commissioner of Taxation by the twenty-first day of a month the income tax which they deduct ("tax instalment deductions") from payments of salary or wages to their employees in the first 14 days of the month. Deductions from payments of salary or wages in the balance of the month are to be paid to the Commissioner no later than the seventh day of the next month.

The proposal will first apply to employers who made tax instalment deductions in excess of $5 million in relation to the financial year ended 30 June 1989. These employers will be required to remit the deductions on a twice-monthly basis, commencing with a payment on or before 21 June 1990 of the deductions made in the period 1-14 June 1990. Deductions in the balance of that month will be

payable no later than 7 July 1990. Initially it was proposed, in the 1989-90 Budget, that the scheme would commence with the first instalment payable by 21 December 1989. The necessary legislation, however, lapsed when the Parliament was dissolved.

Employers who are members of a wholly-owned group of companies will also be required to pay the deductions to the Commissioner on this twice-monthly basis if the aggregate annual remittances of tax instalment deductions in relation to the financial year ended 30 June 1989 of all the companies in the group exceed $5 million.

Employers who, or companies in a wholly-owned group which, first make tax instalment deductions in excess of $5 million in the year ending 30 June 1990, or a later year, will also be required to remit on the above twice-monthly basis, commencing in the September following the end of the relevant financial year.

An employer who becomes liable to make twice-monthly remittances at any time will be required to continue remitting on that basis unless the Commissioner determines otherwise. Where there is an arrangement for the purpose of avoiding or defeating the proposed requirements, the Commissioner would be authorised to determine that an employer is to pay the tax instalment deductions on the twice-monthly basis.

A more detailed explanation of the provisions of the Bill is contained in the following notes.

Clause 1 : Short title

Subclause (1) provides for the amending Act to be cited as the Income Tax Assessment Amendment Act 1990.

Subclause (2) facilitates references to the Income Tax Assessment Act 1936 which, in this Bill, is referred to as the "Principal Act".

Clause 2 : Commencement

The amending Act is to commence on the day on which it receives the Royal Assent. But for this subclause, the Act would, by reason of subsection 5(1A) of the Acts Interpretation Act 1901, commence on the twenty-eighth day after the date of Assent.

Clause 3 : Interpretation

Introductory note

For the purposes of enabling income tax to be collected from employees by instalments, employers are required, by section 221C of the Principal Act, to deduct amounts prescribed by the Income Tax Regulations (generally referred to as "tax instalment deductions") from the salary or wages that are paid to employees.

Employers who employ more than ten employees, or make ten or more eligible termination payments, in a twelve month period are required to register as "group employers". As a group employer they must forward any tax instalment deductions made in a month to the Commissioner of Taxation no later than the seventh day of the next succeeding month. An employer who is not a group employer is required to purchase tax stamps, and keep a tax deduction sheet, in respect of any tax deducted.

The amendments in this Bill will require certain group employers to pay the tax instalment deductions to the Commissioner on a twice-monthly basis. These employers are referred to as 'early remitters'. Deductions made from the salary or wages of employees of early remitters in the first 14 days of a month are to be payable to the Commissioner no later than the twenty-first day of that month. Deductions made in the balance of the month are to be remitted no later than the seventh day of the next month.

Group employers who are not early remitters will continue to pay the tax instalment deductions made in a month to the Commissioner by the seventh day of the next month.

Clause 3 of the Bill will amend section 221A of the Principal Act which contains definitions that apply for the purposes of Division 2 of Part VI of that Act, dealing with the collection by instalments of tax from individuals. The clause inserts the following definitions in subsection 221A(1) :

"early remitter" is to have the meaning given by section 221EC which is proposed to be inserted in the Principal Act by clause 4 of the Bill (refer to later notes on that clause). The term defines a group employer who is required to remit tax instalment deductions twice-monthly, broadly, to be an employer whose total annual remittances of tax instalment deductions to the Commissioner exceed $5 million. Early remitters will include the Commonwealth, a State or a Territory including an authority of the Commonwealth, State or Territory.

"eligible employer group" has the meaning given by section 221ED which is proposed to be inserted in the Principal Act by clause 4 of the Bill (and is also discussed in later notes on that clause). The term defines a group of companies for the purpose of deciding whether any company in such a group is subject to the twice-monthly basis for remitting tax instalment deductions.

Clause 4 : Certain group employers to be early remitters

Clause 4 inserts two new sections - sections 221EC and 221ED - in the Principal Act.

By section 221EC, the group employers who will be treated as 'early remitters', and therefore required to pay their tax instalment deductions to the Commissioner on a twice-monthly basis, are defined.

A group employer will be an early remitter in accordance with subsection 221EC(1) in relation to a particular month (termed the deduction month) - unless excluded from being an early remitter in respect to that month because of a notice issued under subsection (3) (refer to the notes on that subsection) - if any of three situations apply. An employer who qualifies as an early remitter will continue as such unless the Commissioner determines otherwise under proposed new subsection 221EC(3).

The first situation, set out in proposed paragraph 221EC(1)(a) is that before the beginning of a particular month - called the "deduction month" - the total PAYE remittances of the group employer in relation to any financial year ending on or after 30 June 1989 exceeded $5 million. As discussed later in these notes, the term "PAYE remittances" is defined in paragraph 221EC(8)(a) to mean, in relation to a financial year, amounts of tax instalment deductions the employer was required to pay to the Commissioner in respect of the year under paragraph 221F(5)(a) of the Principal Act.

The second case concerns a group employer member of an "eligible employer group" as defined in proposed new section 221ED discussed later in the notes on this clause. Such a group employer will be an early remitter in relation to a deduction month where, before the beginning of the month, both of the following apply :

(a) at the end of any financial year ending on or after 30 June 1989 ("the threshold year"), the group employer was a part of an eligible employer group (subparagraph (b)(i)); and

(b) the total PAYE remittances (refer to the later notes on paragraph 221EC(8)(b)) for the threshold year of all employers in the eligible employer group at the end of that year exceeded $5 million (subparagraph (b)(ii).

The third situation is where the Commissioner has served a notice on the group employer under proposed new subsection 221EC(5) (refer to the notes below on that subsection) requiring the group employer to be an early remitter in respect of a particular period (paragraph (c)).

Paragraph 221EC(2)(a) ensures that a group employer cannot be an early remitter in relation to any month prior to June 1990. As a consequence, the requirement to pay tax instalment deductions to the Commissioner on a twice-monthly basis will not apply to any deductions made before 1 June 1990.

Example

Assume that in the financial year ended 30 June 1989 the tax instalment deductions made by a group employer exceeded $5 million. That employer will be an early remitter in respect of all tax instalment deductions made on and after 1 June 1990, and will remain an early remitter regardless of the level of any subsequent deductions unless and until the Commissioner issues a notice under subsection 221EC(3) which is discussed below.

By paragraph 2(b) group employers who are early remitters because of the operation of paragraphs (1)(a) or (b) (refer to the earlier notes on those paragraphs) are not to be treated as early remitters in relation to July and August of a particular financial year, unless they were an early remitter in relation to June of the previous financial year. This subsection, which will first be relevant to July and August 1990, gives employers who become early remitters following the end of any financial year after that which ended on 30 June 1989 sufficient time to make the necessary accounting or administrative changes so as to be able to comply with the new remittance rules.

Example

Assume a group employer, in relation to the financial year ending 30 June 1990, had tax instalment deductions in excess of $5 million for the first time.

Because the group employer was not an early remitter in respect of June 1990, that employer

will become an early remitter in relation to tax instalment deductions made on or after 1 September 1990.

This rule only applies in the year in which a group employer first becomes an early remitter. The rule will also not apply if a group employer is notified, under subsection 221EC(5) (refer to the later notes on that section), that it is to be an early remitter.

Under subsection 221EC(3) the Commissioner may serve a notice in writing on a group employer determining that the employer is not an early remitter in relation to

- any month or months specified in the notice (subparagraph (a)(i)); or
- all months after and including a month specified in the notice (subparagraph (a)(ii)).

Employers so notified will be freed from the obligations placed on early remitters by this Bill for the period indicated in the notice.

In deciding to make a determination under paragraph (3)(a) the Commissioner would consider matters such as the number of employees in respect of whom tax instalments are deducted, the amount of the tax deductions, the location of the employer or any undue imposition that would be placed on the employer in complying with the law.

Paragraph (3)(b) allows the Commissioner to vary or revoke a determination made under paragraph (3)(a) by serving a notice on the employer advising of the variation or revocation.

By subsection 221EC(4) a notice under subsection (3) in relation to a particular month does not have effect unless the notice was served before the fifteenth day of the preceding month. As a consequence, if a notice under this subsection is given to a group employer on, say, the seventeenth of a month, the employer will remain an early remitter in relation to deductions made in the next month, reverting to a single remittance basis in the following month. This will give group employers the opportunity to make any necessary accounting or administrative changes that may be necessary to comply with such a notice.

The subsection will also have an operation where an employer is an early remitter in relation to the month of September of a year and is required under proposed paragraph 221F(12A)(c) (see the later notes on clause 5 of the Bill) to give a notice to the Commissioner on or before 14 August of the year. Unless the Commissioner determines

that such an employer is not to be an early remitter under paragraph (3)(a) by the 14 August, the obligation to notify the Commissioner under proposed paragraph 221F(12A)(c) will still exist.

Under subsection 221EC(5) the Commissioner may serve a notice in writing on a group employer determining that the employer is to be an early remitter in relation to

- any month or months specified in the notice (subparagraph (a)(i)); or
- a month and all subsequent months specified in the notice (subparagraph (a)(ii)).

The power given to the Commissioner to require a group employer to be an early remitter is intended to overcome arrangements to avoid the early remittance provisions, such as the moving of employees into a new company that does not already qualify as an early remitter, while retaining only a few or no employees in the company that has qualified as an early remitter. In this circumstance, the Commissioner can require the new company to remit on the twice-monthly basis.

Group employers who are so notified will be subject to all the obligations placed on early remitters by the new measures, for the period indicated in the notice. In deciding to issue a notice the Commissioner may have regard to the matters set out in subsection 221EC(7) which is discussed below.

The Commissioner may vary or revoke a determination made under paragraph (5)(a) by serving a notice on the group employer advising of the variation or revocation (paragraph (b)).

Subsection 221EC(6) will ensure that a notice issued under subsection (5) will not have any effect until the second month following the month in which the notice was served. This subsection is intended to ensure that employers who become early remitters because of the application of subsection (5) have reasonable time to change any accounting or administrative arrangements necessary to comply with the requirements of an early remitter.

Example:

> An employer is served a notice under paragraph 221EC(5)(a) on 17 May 1991 determining that the employer is an early remitter. The first month for which the group employer will be treated as an early remitter is July 1991.

Subsection 221EC(7) lists matters that the Commissioner may take into account when exercising the power under subsection (5) determining that a group employer is an early remitter (see the previous notes on that subsection). These matters are broadly:

- any arrangement that was entered into or carried out after 15 August 1989 (the date of announcement of the proposal) where the purpose, or one of the purposes, of the arrangement is to avoid the requirement to pay tax instalment deductions to the Commissioner by the twenty-first day of a month, in accordance with proposed new subparagraph 221F(5)(a)(i) (refer to later notes on clause 5 of the Bill in relation to that subparagraph) (paragraph (a));

- where appropriate, the extent to which the group employer concerned pays the salary or wages of employees who were formerly paid by another employer (paragraph (b)); and

- any other matters the Commissioner considers relevant (paragraph (c)).

Subsection 221EC(8) defines two terms necessary for the operation of the tests in subsection 221EC(1) for determining whether a group employer is an early remitter. By paragraph 8(a) a reference in paragraph 221EC(1)(a) to the PAYE remittances of a group employer for a financial year, is to be taken as a reference to the amounts of tax instalment deductions the group employer was required to pay to the Commissioner under paragraph 221F(5)(a) of the Principal Act (including that paragraph as varied under subsection 221F(7)) in respect of deductions made during that financial year. Subsection 221F(7) authorises the Commissioner to vary the requirements of subsection 221F(5) to remit monthly.

Paragraph (8)(b) defines a term used in paragraph 221EC(1)(b) to quantify the total amount of income tax instalment deductions made by an eligible employer group (refer to the later notes on section 221ED) that causes the employer companies in the group to become early remitters. For this purpose, the reference to the PAYE remittances for a financial year of employers that were included in an eligible employer group at the end of a financial year (refer to the earlier notes on subsection 221EC(1)), is a reference to the amounts of tax instalment deductions of all the employers in that group that were required to be paid to the Commissioner under paragraph 221F(5)(a) of the Principal Act (including that paragraph as varied under subsection 221F(7)) in respect of deductions made during that financial year. The "eligible employer group" test is applied at the end of a financial year. The "PAYE remittances" test is imposed on the group having regard to

the companies then in the group, whether or not they were in the group at all times during the year, or after the year unless the Commissioner has by notice under subsection 221EC(3) discussed earlier determined that the company is not an early remitter.

Example

Companies A, B, C and D are, at the end of the financial year ending 30 June 1990, included in a wholly owned group of companies.

Companies A, B and C have been group companies for all of the financial year. Company D, however, became part of the group on 31 May 1990.

Tax instalment deductions made by each company during the financial year were :

Company A	$2 million
Company B	$1 million
Company C	$1 million
Company D	$2 million
	$6 million

Each employer will be an early remitter because the total deductions required to be paid to the Commissioner under paragraph 221F(5)(a) of the Principal Act in relation to that financial year by all employers in the group at the end of the year exceeded $5 million.

In determining the amount of PAYE remittances for a financial year, it does not matter whether the remittances were actually paid to the Commissioner during or after the financial year to which they relate - the test is that the remittances were in respect of deductions in the relevant year.

Example

Assume a group employer made tax instalment deductions of $5.6 million from salary or wages paid to employees during the financial year ended 30 June 1989, but the actual deductions remitted to the Commissioner in that year were only $4.9 million ($0.7 million is being outstanding).

The group employer will be an early remitter from 1 June 1990. The amount of tax instalment deductions required by paragraph 221F(5)(a) to be paid to the Commissioner in relation to the financial year ended 30 June 1989 exceeded $5 million, even though the actual payments received were less than that amount.

Subsection 221EC(9) is a relieving measure to ensure that an employer is not treated as an early remitter in relation to a month where it proves it did not know or could not reasonably be expected to know, before the beginning of that month, that it would be an early remitter in respect of that month.

For example, subsection 221EC(9) would operate in determining whether an employer has committed an offence for the purposes of subsection 221F(14) by not paying tax instalment deductions to the Commissioner by the required day. This defence will apply equally to the employer or to any other person who may be charged in relation to an offence arising from Division 2 of Part VI (other than subsection 221F(12A) - which, as indicated in later notes on clause 5 of the Bill, is a form of notification required of new early remitters).

Section 221ED : Eligible employer groups for determining early remitters.

Clause 4 also proposes to insert a new section - section 221ED - in the Principal Act. The new section details the method by which employers will be grouped into eligible employer groups for the purposes of proposed new paragraph 221EC(1)(b) (refer to the earlier notes on that paragraph). Company/employers that are part of an "eligible employer group" may be treated as early remitters, subject to the $5 million qualifying threshold that applies to the aggregate tax instalment deductions of all employers in the group.

Subsection 221ED(1) defines an eligible employer group, for the purposes of Division 2 of Part VI of the Principal Act, to consist of any collection of 2 or more companies each of which is a group company in relation to each of the others.

Subsection 221ED(2) specifies for the purposes of this section, 2 tests which must be satisfied if, a company is to be treated as group company in relation to another company. They are that :

- one of the companies is a subsidiary of the other (paragraph (a)); or
- each of the companies is a subsidiary of the same company (paragraph (b)).

Subsection 221ED(3) specifies the circumstances in which a company (the 'subsidiary company') is to be taken as a subsidiary of another company (the 'holding company') for the purposes of section 221ED.

Under paragraph (a), a company is a subsidiary of another company (that is, they are within a company group) if all the shares of the company are beneficially owned by the other company.

Paragraph (b) establishes a group relationship of a company in relation to another company if all the shares in the first-mentioned company are beneficially owned by a company that is, or two or more companies, each of which is, a subsidiary of the other company.

By paragraph (c) the necessary group relationship of a company and another company is also established if all the shares in the first-mentioned company are owned by the other company and by a company that is, or by two or more companies each of which is, a subsidiary of the other company.

Subsection 221ED(4) extends the operation of subsections (1), (2) and (3) by establishing a group relationship between companies which are part of a wholly-owned chain of subsidiaries of a holding company. Thus, in a corporate structure under which all of the shares in a subsidiary are owned by one or more wholly-owned companies that are interposed between a holding company and the end subsidiary company, a group relationship will be found between them.

Clause 5 : Group Employers

Section 221F of the Principal Act sets down the requirements on certain employers to register with the Commissioner of Taxation as "group employers" and to pay to the Commissioner the amount of tax instalments deducted from the salary or wages of employees, in accordance with section 221C of the Principal Act. In particular, subsection 221F(5) outlines certain duties of employers including, by paragraph 5(a), the duty of paying the deductions to the Commissioner no later than the seventh day of the month succeeding the month of deductions.

Subclause 5(a) of the Bill will omit existing paragraph 221F(5)(a) of the Principal Act and substitute a new paragraph (5)(a) requiring early remitters (as defined) to pay to the Commissioner on a twice-monthly basis the amount of tax instalment deductions made from the salary and wages of their employees . Group employers who are not early remitters will continue to be required to remit deductions monthly.

New subparagraph 221F(5)(a)(i) will require early remitters who, in relation to a month, have made tax instalment deductions in the first 14 days of that month to pay the deductions to the Commissioner no later than the twenty-first day of the month.

Where the group employer is an early remitter in relation to a particular month and tax instalment deductions were made in the balance of a month after the fourteenth day, those tax deductions are to be paid to the Commissioner no later than the seventh day of the next month (subparagraph 221F(5)(a)(ii)). Also under this subparagraph, employers who are not early remitters will continue to pay to the Commissioner by the seventh day of a month all tax instalment deductions made in the preceding month.

Subclause 5(b) will further amend section 221F of the Principal Act by inserting new subsections (12A) and (12B).

Under new subsection 221F(12A), a group employer will be guilty of an offence where the employer :

- is an early remitter in relation to September of a particular year, as a result of meeting the requirements of proposed paragraph 221EC(1)(a) or (b)(refer to the earlier notes on clause 4 in relation to those paragraphs) (paragraph (a)); and

- was not an early remitter in respect to August of that year - that is, the employer becomes an early remitter because of the level of tax instalment deductions made in the financial year just ended (paragraph (b)); and

- does not give to the Commissioner, on or before 14 August in that year, a notice in accordance with regulations made for the purposes of the subsection (paragraph (c)).

If convicted, a fine not exceeding $50 may be imposed in respect of each day from (and including) 15 August of the relevant year until the day on which the employer gives the required notice in accordance with paragraph (12A)(c).

The obligation to furnish a notice to the Commissioner in accordance with paragraph (12A)(c) will first be required of group employers who become early remitters because they have met the conditions of paragraphs 221EC(1)(a) or (b) in relation to the financial year ending 30 June 1990.

New subsection 221F(12B) affords a defence to any proceedings under, or arising out of, new subsection 221F(12A). It is a defence if, in respect of a particular day, the defendant is able to show that it did not know, and could not reasonably be expected to have known at least 7 days before that day, that the employer concerned was an early remitter in relation to the month (September) to

which the offence relates. This defence is available both to the employer and any other person who may be charged with an offence arising from a failure to comply with subsection 221F(12A).

If after 14 August of the relevant year, the employer becomes aware that it should have furnished a notice under paragraph 221F(12A)(c), it will have 7 days in which to meet the requirements of the paragraph before committing an offence.