

1998-99

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

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NEW BUSINESS TAX SYSTEM (INTEGRITY AND OTHER MEASURES) BILL  
1999

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SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendment to be moved on behalf of the Government

(Circulated by authority of the  
Treasurer, the Hon Peter Costello, MP)

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## **General outline and financial impact**

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The amendment is made for the avoidance of any doubt that Part IVA of the *Income Assessment Act 1936* (ITAA 1936) will operate in respect of schemes where an amount is not included in assessable income but instead a discount capital gain is made.

***Date of effect:*** to assessments for the year of income including 21 September 1999 and later years of income.

***Financial and compliance cost impact:*** There are unlikely to be any financial and compliance costs because the amendment supports the existing operation of the law, and is made for the avoidance of doubt. The general anti-avoidance provisions will only affect taxpayers who are contemplating entering into such schemes.

## Overview

- 1.1 The amendment to Part IVA of the ITAA 1936 will avoid any doubt that Part IVA operates in respect of a scheme which would allow a taxpayer to convert an amount of income into a discount capital gain.
- 1.2 The amendment is for the avoidance of doubt and does not limit the generality of the other provisions in Part IVA.

## Explanation of amendments

- 1.3 Part IVA is the general anti-avoidance provision located in the ITAA 1936. It empowers the Commissioner to cancel a tax benefit obtained by a taxpayer, where a scheme has been entered into or carried out for the sole or dominant purpose of obtaining a tax benefit.
  - 1.4 Section 177C of the ITAA 1936 defines the obtaining of a tax benefit in connection with a scheme, for the purposes of Part IVA, as being, amongst other things, an amount that has not been included in the taxpayer's assessable income of an income year, where it would have been included or might reasonably be expected to have been included in assessable income in that income year, in the absence of the scheme.
  - 1.5 Part IVA would already apply to schemes with the required dominant purpose which exploit the capital gains tax concession provided by the Bill, by converting amounts that would have been, or might reasonably be expected to have been, included in assessable income into a discount capital gain.
  - 1.6 The amendment inserts a new item 20A into Schedule 9 of the Bill which amends section 177C of the ITAA 1936. The inclusion of these provisions draws attention to and emphasises the Parliament's intention that Part IVA can apply to these schemes. *[subsections 177C(4) and (5)]*
  - 1.7 The amendment avoids any doubt that a tax benefit can be identified as having been obtained in connection with such a scheme. *[subsection 177C(4)]*
  - 1.8 Further, the amendment makes it clear that the generality of any other provision of Part IVA is not limited by the inclusion of these provisions *[subsection 177C(5)]*. Accordingly, where a tax benefit obtained in connection with a scheme can be identified under subsection 177C(1), then the amendment will not disturb that conclusion, by implication or otherwise.
  - 1.9 The amendment will apply to assessments for the year of income including 21 September 1999 and later years of income. *[subitem 21(2) of Schedule 9 to this Bill]*
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