1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO. 5) 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and new items to be moved on behalf of the Government

(Circulated by authority of the
Treasurer, the Hon Ralph Willis, MP)

78 Cat. No. 95 4396 1

9 780644 368612

Printed by Authority by the Commonwealth Government Printer

General Outline and Financial Impact

Taxation of social security payments

The amendments will make two minor technical corrections to provisions for disability wage supplement. The amendments are necessary because of the use of a section number already used in connection with another provision in earlier amendments to the *Income Tax Assessment Act 1936* (ITAA) which received Royal Assent in December 1994.

Financial impact: Nil

Payment of instalments by companies

The amendments will make minor technical corrections to the anti-avoidance provision dealing with temporary estimates lodged by instalment taxpayers designed to put a taxpayer in a smaller class and also make consequential amendments to two other provisions in Division 1C. Amendments will also be made to the anti-avoidance provision which deals with schemes under which income or deductions are transferred between instalment taxpayers for the purpose of reducing instalments.

Financial impact: Nil

Social Security changes

Explanation of the amendments

The following amendments relate to Schedule 1 of the Bill.

Amendments 1 and 2: Change of section number

The section containing the provisions in the Bill for the tax treatment of the disability wage supplement was inadvertently allocated the number 24ABJ. That number had already been allocated to the section containing tax provisions for widow allowance in the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*. The amendments to the Bill will substitute the number 24ABJA for 24ABJ at the two relevant points in the Bill.

Payment of instalments by companies

Explanation of the amendments

The following amendments relate to Schedule 1 of the Bill.

Amendment 3: Liability to pay instalments

An instalment taxpayer is liable to pay instalments under the new company tax instalment regime in accordance with a table contained in subsection 221AZK(2). Under the table, the timing and amount of payments differ depending upon whether the instalment taxpayer is classified as small, medium or large. Under subsection 221AZK(3) an instalment taxpayer is classified according to the taxpayer's "likely tax" for the current year, calculated on the first day of month 9.

It is possible, however, for a taxpayer to have more than one amount of "likely tax" on the first day of month 9. This may happen where an estimate is lodged during that day. Accordingly, to make it clear which "likely tax" is used when classifying an instalment taxpayer, subsection 221AZK(3) will be amended so that an instalment taxpayer will only be classified at the <u>end</u> of the first day of month 9. ***[Item 78A]***

Amendment 4 to 7: Temporary estimates designed to put a taxpayer in a smaller class

New section 221AZKA operates to ensure that under the new company tax instalment regime an instalment taxpayer cannot use the more concessional dates for small or medium taxpayers by lodging an artificially low estimate of tax liability before the time at which the taxpayers are classified (i.e. the first day of month 9 of the year of income). As currently worded, the new subsection 221AZKA(1) deals only with estimates lodged before the first day of month 9 and a later estimate lodged on or after the first day of month 9.

As estimates to change an instalment taxpayer's classification can be lodged at any time up until the end of the first day of month 9 (see Amendment 3), this subsection is also to be amended so that it refers to estimates made before the end of the first day of month 9 and to a later estimate made after the first day of month 9. As a consequence of this amendment, similar amendments have been made to subsections 221AZKA(3) and (4). ***[Item 79]***

Amendment 8: Medium taxpayer treated as large taxpayer

Section 221AZMA broadly operates to treat a medium instalment taxpayer which is a member of a large company group as a large instalment taxpayer. As currently worded, the section refers to an instalment taxpayer which, apart from the section, would be classified as medium at the beginning of the first day of month 9. In order to bring the timing of the classification into line with Amendment 3, paragraph 221AZMA(b) is to be amended so that it refers to the classification time as being the end of the first day of month 9. ***[Item 79A]***

Amendments 9 and 10: Schemes to reduce or defer instalments

Medium and large instalment taxpayers pay their tax in four instalments. The first three instalments are, in broad terms, each calculated as 25% of the tax expected to be payable for the relevant year. The final instalment is worked out when a tax return is lodged and the actual tax payable for the year is assessed. It is simply the difference between the actual tax payable for the year and the sum of the earlier three instalments.

The final instalment cannot be deferred or reduced because of the way it is calculated. However, it may be possible to defer or reduce earlier instalments by shifting income or deductions between associated taxpayers. The Bill will insert a new anti-avoidance provision, i.e. new section 221AZU, to deal with such arrangements. Section 221AZU does this by imposing a penalty equal to 12% of the instalment shortfall.

There is a technical deficiency in the new section 221AZU proposed by the Bill. That new section would presently impose a penalty on the difference between the actual tax payable and the sum of all the instalments, including the final instalment. The difference between these two figures will always be zero. This is because the sum of the first three instalments and the final instalment is equal to the actual tax payable.

Under the amendment now proposed to new subsection 221AZU(4), the 12% penalty will apply to the difference between:

- the sum of the first three instalments that would have been payable by the taxpayers in the relevant avoidance arrangement if the arrangement had not been entered into; and

- the sum of the first three instalments actually paid by those taxpayers.

For example, if the sum of the first three instalments should have been $200, if not for the arrangement, but only $100 was paid, the penalty would be $12 (12% of $100).

A corresponding amendment, to reflect only the first three instalments, is also being made to paragraph 221AZU(1)(c). ***[Item 82]***