

1990-91

THE PARLIAMENT OF THE COMMONWEALTH OF  
AUSTRALIA

SENATE

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TAXATION LAWS AMENDMENT BILL (No.2) 1991

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EXPLANATORY MEMORANDUM

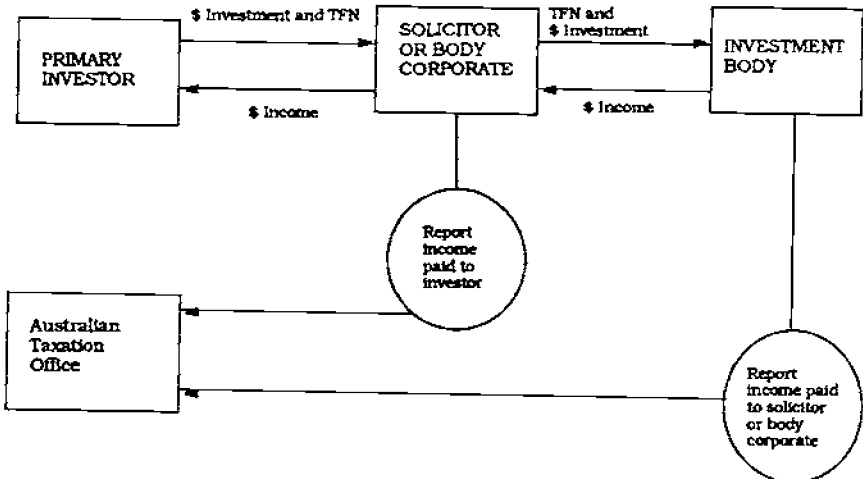
ERRATUM

The attached pages 129, 131 and 135 replace the correspondingly numbered pages of the explanatory memorandum on this Bill.

(Circulated by the authority of the Treasurer,  
the Hon. P.J. Keating, M.P.)

The following diagram shows the flow of investments and information described above:

#### THE CURRENT LAW



Outline of current provisions applying to investments made through solicitors and body corporates.

#### *Why change the law?*

As a result of the current two tiered investment arrangement, the Commissioner of Taxation receives two income reports on effectively the same income: One report from the solicitor or body corporate when income is paid or credited to the primary investor; the other from the investment body where the solicitor or body corporate reinvested the primary investor's funds. This duplication places an administrative burden on the investment bodies and does not enhance the matching of income by the Commissioner.

Furthermore, representations have also been received concerning the operation of subsection 202DB(2) of the Act. Subsection 202DB(2) allows a person acting as a trustee of a trust estate making an investment on behalf of the trust to quote his or her personal TFN where the person does not have a special TFN for the role of trustee.

Some solicitors and body corporates have indicated that they are reluctant to quote their own TFN with a reinvestment they make on behalf of other people.

### How is the investment body remitter number to be quoted?

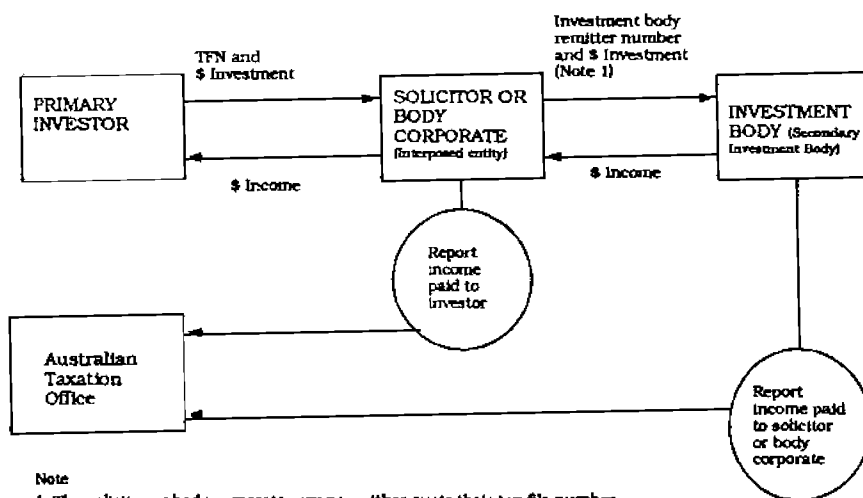
The Bill authorises the making of regulations to establish a system of issuing, cancelling, altering and quoting investment body remitter numbers. When an interposed entity satisfies one of the conditions referred to above, the interposed entity may quote its investment body remitter number to a secondary investment body in connection with the secondary investment in the manner to be prescribed in the regulations. [Clause 60 - New subsection 202DDA(1) and paragraph 202DDA(2)(b)]

### What happens when an interposed entity quotes its investment body remitter number?

When an interposed entity quotes its investment body remitter number to a secondary investment body in connection with a secondary investment, the interposed entity will be taken to have quoted its own TFN. [Clause 60 - New section 202DDA]

The following diagram shows the above relationship and process:

#### Quotation of Investment Body Remitter Number



#### Note

1. The solicitor or body corporate may now either quote their tax file number (under section 202DB) or their investment body remitter number.

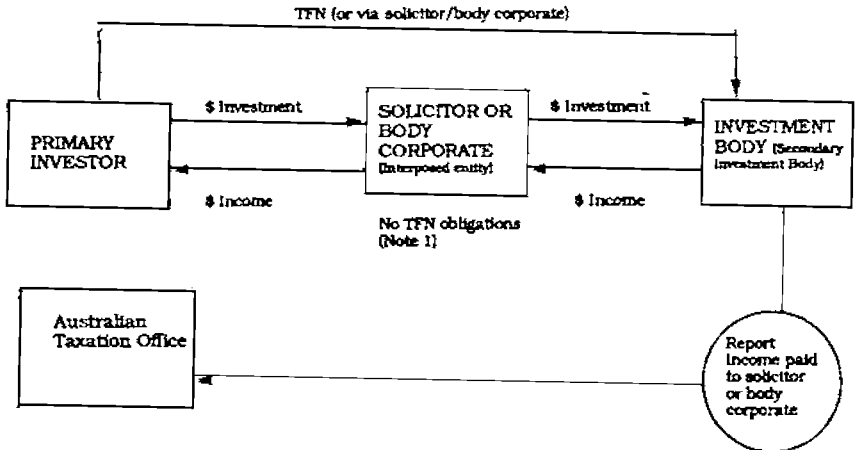
This diagram shows how this amendment will work.

### Investments made through an interposed entity

The second amendment made to the quotation provisions of the TFN system will effectively relieve solicitors and body corporates from

The following diagram shows the above relationship and process:

Investment made through an interposed entity



Note

1. The interposed entity will not be treated as an investment body in respect of the investment made by the primary investor

This diagram shows how this amendment will work.

### Deemed quotation of TFNs by non-residents

Under section 202EE of the Act, non-resident investors are taken to have quoted a TFN for Australian investment income if they are liable to pay non-resident withholding tax on that income. The exemption from quoting a TFN also applies to non-residents who are exempted from paying the withholding tax by the operation of certain provisions of subsection 128B(3) of the Act. This exemption from quoting a TFN is to apply even though the actual requirement to deduct the withholding tax may not fall on the investment body.

This exemption from quoting TFNs could be abused by channelling payments through Australian residents. To stop this, the law is to be amended so that the exemption will apply only if the investment body is actually required to deduct withholding tax under section 221YL of the Act, or would have been required to do so but for the operation of the provisions detailed in new paragraph 202EE(1)(d).

The requirement that non-residents who become residents of Australia must advise the investment body of the change of residence within one month will continue to apply unaffected by the

