1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TAXATION LAWS AMENDMENT BILL (NO. 2) 1995

SUPPLEMENTARY EXPLANATORY MEMORANDUM

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

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

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General outline and financial impact

Employee share schemes

Amends the employee share scheme (ESS) provisions set out in Schedule 2 to:

- exclude shares or rights acquired at market value from the new ESS measures. The tax treatment of these shares and rights will remain unchanged.
- exclude benefits that consist of money or other property given to a trust to obtain shares on behalf of employees from the definition of 'fringe benefit' in the *Fringe Benefits Tax Assessment Act 1986* to avoid double taxation of such benefits.
- give taxpayers the option of electing that the new measures, which will generally take effect on 28 March 1995, will apply to shares, or rights to acquire shares, acquired since the original ESS changes were first proposed on 10 May 1994.

Date of effect: 6pm in the ACT (and the equivalent time elsewhere) on 28 March 1995.

Amendment announced: Not previously announced.

Financial impact: The nature of the amendments is such that a reliable estimate cannot be made.

Compliance cost impact: There are no compliance costs for taxpayers from these amendments.

Refunds of TFN amounts

Amends in two respects the provisions of the Bill concerning the refund of TFN amounts deducted in error by investment bodies. The first amendment changes the commencement date of the refund provisions from 1 July 1995 to the date of Royal Assent to the Bill. The second amendment introduces new provisions which will limit the liability of investment

bodies to provide refunds for TFN amounts deducted in error prior to the date of Royal Assent. It will maintain the rights of investors in these cases, with existing rights to receive a direct refund now to be exercised by investors against the Commissioner of Taxation rather than against investment bodies as is currently the case.

Date of effect: Royal Assent.

Amendment announced: Not previously announced.

Financial impact: None.

Compliance cost impact: There are no compliance cost implications associated with the first amendment to change the commencement date. The second amendment to limit the liability of investment bodies to provide refunds for deductions made before Royal Assent will have the effect of reducing compliance costs for investment bodies.

Superannuation and determination of life expectation factor

Ensures that the amendment proposed in Item 31 of Schedule 3 applies to an annuity where the beginning of the period to which the first payment of the annuity relates is on or after 1 April 1995.

Date of effect: 1 July 1994.

Amendment announced: Not previously announced.

Financial impact: Insignificant.

Compliance cost impact: There are no compliance costs for taxpayers from this amendment.

Late lodgment penalty

The amendments will delay the commencement of the proposed late lodgment penalties so that they will apply to income tax returns for the 1995-96 year and later years of income.

The amendments will also enable individual taxpayers to claim a tax deduction for payments of the interest penalty.

Date of effect: The date of Royal Assent.

Proposal announced: Not previously announced.

Financial impact: It is not possible to make a reliable estimate of the revenue impact caused by delaying the introduction of the proposed late lodgment penalty amendments. However, the cost to the revenue would be minimal. The tax deductibility of interest will cause an unquantifiable but small reduction in revenue collections.

Compliance cost impact: There are no compliance costs for taxpayers from these amendments.

Chapter 1 *Amendments 1 to 3*

Employee share schemes

Overview and explanation of the amendments

1.1 ***Amendments 1 to 3*** make changes to the employee share scheme (ESS) provisions set out in ***Schedule 2*** to the Bill.

Am ndment 1: Shares or rights acquired at market value

1.2 New Division 13A generally taxes the difference between the market value of a share or right and the consideration given by the employee (i.e., the 'discount' on the share or right) at the time the share or right is acquired. Where an employee purchases shares or rights under an ESS for market value, there will generally be no amount taxed as there is no discount.

1.3 However, a discount may arise under new Division 13A where the shares or rights are purchased under an ESS for market value and the employer places a restriction on the sale of the shares or rights. The discount would be the difference between the market value of the shares or rights at the time the restrictions lift and the consideration given for the shares or rights.

1.4 Item 1 will be amended to insert ***new paragraph 139C(2A)*** to exclude from the new ESS arrangements shares or rights acquired for consideration equal to or greater than market value. The tax treatment of these shares and rights will remain unchanged.

Amendment 2: Subsection 136(1) (definition of 'fringe benefits')

1.5 Item 9 will amend the definition of 'fringe benefits' in section 136(1) of the *Fringe Benefits Tax Assessment Act 1936* so that benefits acquired by employees and their associates under an employee share scheme will not be subject to fringe benefits tax. This will ensure that there will be no double taxation of the benefits from employee share schemes (the discount on the share or right will be included in the assessable income of the employee).

1.6 ***New paragraph (hb)*** of the definition of 'fringe benefits' to be inserted by Item 9 will exclude benefits acquired by an interposed trust on behalf of employees. As currently worded, the only benefit covered by paragraph (hb) is the provision of shares or rights to acquire shares. This does

not allow for the situation where an employer gives money or other property to a trust to acquire shares for employees.

1.7 To ensure that double tax is avoided in all cases, paragraph (hb) in Item 9 will be amended to exclude from the definition of 'fringe benefit' benefits given to a trust that consist of money or other property. The term 'money or other property', which would include shares or the right to acquire shares, will be substituted for 'a share or right'.

Amendment 3: Option to elect that the new measures will apply from 10 May 1

1.8 The current ESS arrangements were announced on, and take effect from, 28 March 1995. Some employers may have acted in reliance on the original ESS proposals announced on 10 May 1994.

1.9 ***New item 13*** will give employees the option of electing to have the new ESS measures apply to shares, or rights to acquire shares, acquired after 7.30 p.m. on 10 May 1994 and before or at 6 p.m. on 28 March 1995.

1.10 ***New item 13A*** sets out how an election must be made to take advantage of the concessions provided by Part 4. An election may be made within 90 days after the commencement of the Item or when the taxpayer lodges his or her return for the 1994-95 income year.

Chapter 2 *Amendments 4 to 11*

Refunds of TFN amounts

Overview

2.1 ***Amendments 4 to 11*** apply to ***Part 1 of Schedule 3*** of the Bill.

2.2 They change in two respects the provisions of the Bill concerning the refund of TFN amounts deducted in error by investment bodies. The first change is to the commencement date of several of the provisions from 1 July 1995 to the date of Royal Assent to the Bill.

2.3 The second change introduces new provisions which will limit the liability of investment bodies to provide refunds for TFN amounts deducted in error prior to Royal Assent. It will maintain the rights of investors in these cases, with existing rights to receive a direct refund now to be exercised by investors against the Commissioner of Taxation.

Summary of the amendments

Purpose of the amendments

Application dates

2.4 It is necessary to change the commencement date of 1 July 1995 for some of the provisions contained in the Bill as that date has now passed. In addition, representations by a number of investment bodies have led to new provisions being proposed to deal with their liabilities in respect of TFN amounts incorrectly deducted in the past. The proposed new provisions will have effect, from the date of Royal Assent, on deductions made before that date.

Amounts deducted before the date of Royal Assent

2.5 Section 221YHZDA of the *Income Tax Assessment Act 1936* currently makes investment bodies liable to refund to investors TFN amounts that they have deducted in error and paid to the Commissioner of Taxation. The Bill proposes a new refund system from 1 July 1995. If that date is left as the commencement date for the new system it may remove

rights that investors currently have in respect of TFN amounts incorrectly deducted during the period 1 July 1995 to the date of Royal Assent.

2.6 It is not intended that rights that investors currently have under the law be removed. A change to the commencement date is necessary to avoid that possibility.

2.7 Since introduction of the Bill, a number of investment bodies have stated that the existence of those rights in respect of TFN amounts that may have been deducted in error before 1 July 1995 is a matter of serious concern to them. This is because of the liabilities that they still have in respect of the deductions and because of the compliance costs involved in connection with refunds. It is proposed, therefore, to relieve investment bodies of those liabilities, without disturbing existing investor rights, by making the Commissioner of Taxation liable to provide direct refunds in lieu of the particular investment body.

Explanation of the amendments

2.8 The amendments will alter the application date of the provisions of the Bill that deal with refunds to investors (currently in the Bill at 1 July 1995 - ***item 12***). Items 1 to 4 of the Bill, which provide for investment bodies to more easily recovery from the Commissioner of Taxation amounts that they have refunded to investors, remain applicable to deductions made on or after 1 July 1995. Items 6 to 11 of the Bill and ***new item 4A*** now apply from the date of Royal Assent. ***[Amendments 10 and 11]***

2.9 The current liability of investment bodies to refund amounts deducted in error prior to the date of Royal Assent is amended by ***new sections 221YHZDAB and 221YHZDAC***. These new provisions, as inserted by the amendments, apply to deductions made before 1 July 1995 and deductions made during the period 1 July 1995 to the date of Royal Assent respectively.

2.10 ***New section 221YHZDAB*** applies to deductions made before 1 July 1995. It transfers from an investment body to the Commissioner of Taxation, the liability to provide a refund in all cases except where an application for refund has already been made to the investment body or the error discovered by the investment body prior to the commencement date of the new provision. The Commissioner of Taxation will refund on the same conditions as investment bodies. Persons who are entitled to a refund are not entitled to a credit on assessment of the amount deducted in error. ***[Item 11, amendment 9]***

2.11 ***New section 221YHZDAC*** applies to deductions made in error on or after 1 July 1995 but before the date of Royal Assent. Where an application for a refund of an incorrectly deducted amount is made, or an

error discovered by the investment body, before 16 July 1996 the investment body will refund the amount. However, after 15 July 1996, the Commissioner of Taxation becomes liable to provide any refund for amounts deducted in error during the period to which the section applies (on the same basis as is to exist for deductions made before 1 July 1995) and applications for refunds must then be made to the Commissioner. Persons who are entitled to a refund are not entitled to a credit on assessment of the amount deducted in error. ***[Item 11, amendment 9]***

2.12 Other amendments to the Bill are merely consequential to the amendments described above. These other amendments are contained in ***amendments 4 to 8.***

#.13 The following chart explains the operation of the changes proposed by these amendments:

Refund arrangements where TFN amounts deducted in error and remitted to the ATO

Deductions made between 1 July 1991 and 30 June 1995	**Deductions made between 30 June 1995 and Royal Assent**	**Deductions made from Royal Assent but before 1 July 1996**	**Deductions made from 1 July 1996**
Where an application for a refund is lodged or the error discovered by an investment body **before the date of Royal Assent** the investment body will refund directly.	Where an application for a refund is lodged or an error discovered by an investment body **before or on 15 July 1996** the investment body will refund directly.		Where an application for a refund is lodged or an error discovered by an investment body **before or on 15 July following the financial year in which the deduction was made** the investment body will refund directly.
Where an application for a refund is lodged or the error discovered by an investment body **from the date of Royal Assent** the ATO will refund directly.	Where an application for a refund is lodged or the error discovered by an investment body **after 15 July 1996** the ATO will refund directly.	Where an application for a refund is lodged or an error discovered by an investment body **after 15 July 1996** the ATO will credit or refund under the new arrangements*.	Where an application for a refund is lodged or an error discovered by an investment body **after 15 July of the year following the financial year in which the deduction was made** the ATO will credit or refund under the new arrangements*.

*(*Under the new arrangements, an investor who has not applied to an investment body by the 15 July of the year after a TFN amount was incorrectly deducted will generally obtain a credit for the amount when the investor's assessment for the previous year is made. Investors will be entitled to direct refunds only where the requirements set out in proposed new section 221YHZDAA are satisfied.)*

Chapter 3 *Amendment 12*

Superannuation and determination of life expectation factor

Overview and explanation of the amendment

3.1 ***Amendment 12*** applies to ***Part 4 of Schedule 3*** of the Bill.

3.2 Item 31 of the Bill proposes that the deductible amount of a life time superannuation pension or annuity is to be calculated based on the taxpayer's life expectancy at the beginning of the period in respect of which the pension or annuity is payable.

3.3 This amendment ensures that Item 31 applies to an annuity where the first day of the period to which the first payment of the annuity relates is on or after 1 April 1995.

3.4 The purpose of the amendment is to overcome concerns regarding the retrospective nature of the application provision currently proposed in Item 32.

Chapter 4 *Amendments 13 to 16*

Late lodgment penalty

Overview and explanation of the amendments

4.1 ***Amendments 13 to 16*** apply to ***Schedule 8*** of the Bill.

4.2 ***Amendment 13*** inserts ***new item 1A*** which will enable individual taxpayers to claim a deduction for payments of the interest penalty that is being imposed under the ***new subsection 163C***. This will give a payment of interest for late lodgment the same treatment as a payment of interest for underpayment or late payment of tax.

4.3 ***Amendments 14, 15 and 16*** will delay the commencement of the proposed late lodgment regime. The new penalties will apply to income tax returns for the 1995-96 year and later years of income.

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