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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO. 3) 1993

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer
the Hon John Dawkins, M.P.)

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GENERAL OUTLINE AND FINANCIAL IMPACT

The amendments will amend the *Taxation Laws Amendment Bill (No. 3) 1993* in three respects.

Amendments to provide deductions for the cost of establishing grap vines

These proposed amendments provide a four year write-off for capital expenditure on establishing grape vines in Australia.

The amendments apply to expenditure incurred on or after 1 July 1993 on the establishment of grape vines.

Financial Cost: The cost of the amendments is estimated to be $1.5 million in 1994-95, $3 million in 1995-96 and $4.5 million in 1996-97.

Sales Tax: Application of penalties

The proposed amendment will clarify the extent to which penalties can apply to acts or omissions that happen after the introduction of amendments of the sales tax law in the Parliament but before they receive the Royal Assent.

Date of effect: 26 October 1993

Proposal announced: By Assistant Treasurer's Press Release on 21 October 1993.

Financial cost: Nil, as the amendment makes no change to the effect of the existing law.

Sal s Tax Exemption: Child Care Services

These amendments will provide sales tax exemption for goods for use by certain providers of child care services (other than employer sponsored centres). The exemption will also apply to goods for use by bodies which co-ordinate family day care.

Generally, exemption will only be available to child care bodies or family day care co-ordination units which are eligible to receive child care funding from the Commonwealth, State or Territory. Child care services which are approved by the Minister for Family Services will also be entitled to exemption.

Date of effect: These amendments will apply to dealings with goods on or after the date of Royal Assent.

Proposal announced: Prime Minister's 'Investing in the Nation Statement' of 9 February 1993.

Financial cost: The cost of the amendments is estimated to be $10 million per year.

Amendments to provide deductions for the cost of establishing grape vines

Summary of proposed amendments

The capital cost of establishing grape vines in Australia for use in a business of primary production is to be evenly deductible over four years. The deductions will be available once a vine is planted in the land *[amendment (1)]*.

The amendments will apply to expenditure incurred on or after 1 July 1993.

Explanation of the proposed amendments

Background

The *Income Tax Assessment Act 1936* provides a number of measures under which the otherwise non-deductible capital cost of property may be written-off, such as depreciation for plant and articles and the capital allowance for income-producing buildings.

Generally, there is no write-off available for the capital cost of establishing or acquiring live plants. Whether expenditure on establishing a live plant is revenue - and so deductible at the time incurred - or is capital, is generally determined by the length of the useful life of the plant. Broadly, the longer that life, the more likely is the expenditure to be capital. So the cost of planting annual crops, such as wheat and barley, is deductible at the time incurred. By comparison, expenditure on planting trees, shrubs, grape vines and similar long-lived plants is generally capital and not deductible.

This is not to say that all capital costs associated with the establishment of long-lived plants are not deductible. For instance, the capital cost of irrigating or trellising a vineyard may be written-off under the depreciation provisions for plant and articles. Rather, it is the cost of preparing the land and the cost of the plants themselves that is not deductible if those costs are capital.

There are some exceptions to this general unavailability of deductions for capital expenditure on live plants. For instance: expenditure on establishing trees for the prevention of rural land degradation can qualify for immediate deduction [section 75D]; capital expenditure on acquiring standing timber is deductible to the extent it relates to the felling of the timber for certain income-producing purposes [section 124J].

Expenditure incurred on or after 1 July 1993 on establishing grape vines in Australia for use in a business of primary production is now to be evenly deductible over four years. Deductions will be available from the time the vines are planted in the land.

The deductions will be allowable to whoever is the owner of the vines during the four year deduction period. If ownership of the vines changes within the four year deduction period, entitlement to deductions in the year of change will be pro-rated between purchaser and vendor.

The deductible cost of establishing a vine is to comprise the capital cost of preparing the land (excluding land draining and clearing), the cost of planting and the cost of the vine itself.

The provisions that will authorise these deductions for the capital cost of establishing grape vines are contained in proposed section 75AA. The following provides a more detailed explanation of these new provisions.

The amendments

Deduction for qualifying expenditure

Deductions are to be available to the owner of a grape vine if there is an amount of qualifying expenditure in respect of the establishment of the vine. The vine must be used in a business of primary production for the purpose of gaining or producing assessable income ***[new subsection 75AA(1)].***

Meaning of qualifying expenditure

"Qualifying expenditure in respect of the establishment of a grape vine" is capital expenditure incurred by a person on or after 1 July 1993 on the establishment of a grape vine in Australia for use in a business of primary production ***[new subsection 75AA(4)].***

What constitutes the capital cost of establishing a grape vine is not defined - it is something that is to be determined in each case. Broadly, the capital cost of establishing a vine is considered to comprise all the costs incurred up to the time the vine is established in the land. Generally, costs of maintaining plants once they are established are revenue in nature even though it may be some time before the plants become productive.

Costs of establishing a grape vine in the land that are capital in nature would include:

- the cost of preparing the land such as ploughing, topsoil enhancement, etc that is attributable to the vine;
- the cost of planting the vine in the land; and
- the cost of the vine.

The cost of land clearing and drainage of swamp and low-lying land will not qualify for deduction ***[new subsection 75AA(5)].*** Such improvements are not considered to "depreciate" in the sense that the benefit of clearing and drainage is considered to be permanent. As well, it is Government policy not to provide tax concessions for what could be seen to be an

environmentally inappropriate activity (this was a reason for terminating section 75A which formerly provided deductions for, among other things, the cost of clearing and draining land).

The legislation operates in relation to individual grape vines as a matter of convenience - it overcomes difficulties that might otherwise arise in identifying the relevant unit of property for which deductions are allowable. In practical terms, taxpayers will not be required to separately calculate deductions for a number of vines where the cost of each could be expected to be the same. This would commonly be the case where a taxpayer establishes a number of vines at the same time.

Calculation of deductions

Qualifying expenditure (ie. the capital cost of establishing a vine in the land) is to be evenly deductible over four years commencing at the time the vine is first used for income producing purposes ***[new subsection 75AA(2)]***. A vine is considered to be used for income-producing purposes from the time it is established (ie. planted) in the land - even though it may not become productive for some time - if it is being maintained for the purpose of harvesting the grapes for income-producing purposes, such as for sale or for use in the making of wine.

Deductions are to be pro rated, between vendor and purchaser, if vines are sold part way through a year of income before the end of the four year deduction period.

Time limit on deductions

Deductions are to be available only during the four year period commencing at the time a grape vine was established (in effect, the time it was first used for income-producing purposes). This is achieved by specifying that a grape vine is taken not to be used for assessable income-producing purposes after the end of four years from the time the vine was established ***[new subsection 75AA(3)]***.

Loss on destruction

A deduction will be available on the destruction of a grape vine to the extent that any amount of undeducted qualifying expenditure in relation to the vine is greater than any amount received or receivable in respect of the destruction ***[new subsections 75AA(6)&(7)]***.

Recoupment of expenditure

A deduction will not be allowable for so much of the qualifying expenditure on establishing a grape vine as is reimbursed to the taxpayer who incurred the expenditure if the amount of the reimbursement is not assessable income in the hands of the taxpayer ***[new subsections 75AA(8),(9)&(10)]***.

Extended meaning of owner

As mentioned earlier, entitlement to deductions for qualifying expenditure in respect of grape vines rests with the owner of the vines. It is a general legal principle that property that is affixed to land in a permanent manner becomes part of the land. Accordingly, taxpayers who establish grape vines on land that they do not own might not be considered at law to be the owners of the vines.

Taxpayers who establish grape vines on land over which they hold a "Crown lease" will be treated as the owners of the vines for the purposes of these provisions, as will subsequent holders of the leases, if the law would otherwise treat them as not the owner. "Crown lease" has the same meaning as for the plant depreciation provisions and, broadly, means a lease of land, easement over land, or other right over or in connection with land, that is granted by the Crown ***[new subsection 75AA(11)]***.

Extended meaning of person

The word "person" appears in the provisions on a number of occasions; for instance, proposed subsection 75AA(4). Under income tax law, the meaning of "person" includes a company (existing subsection 6(1) definition of "person"). This meaning is to be extended for the purposes of these provisions to include a partnership or a person in the capacity of a trustee ***[new subsection 75AA(12)]***.

Sales Tax: Application of penalties

Summary of proposed amendment

The proposed amendment will clarify the extent to which penalties can apply to acts or omissions that happen after the introduction of amendments of the sales tax law in the Parliament but before they receive the Royal Assent ***[amendment (2)]***.

Explanation of the proposed amendments

Section 129 of the *Sales Tax Assessment Act 1992* operates to relieve a person of liability for a sales tax penalty which would otherwise be incurred in the period:

- starting on the date a sales tax amending Act commences (or is taken to have commenced); and
- ending 28 days after the Act has received the Royal Assent ;

where that penalty applies as a result of the amending law.

The intended effect of the provision is that, until the 28th day after Royal Assent is given to the amending law, a person cannot be guilty of an offence or be liable to a penalty that arises from an infringement of the amending law.

For example, if an amending sales tax Act were to increase the rate of sales tax on certain goods, from 20% to 21%, with effect from the date of introduction of the Act (as a Bill) in the House of Representatives, then the result would be that:

- a taxpayer would be liable for late payment penalty under the existing law if the taxpayer failed to make a payment of tax at the 20% rate by the due date for payment;
- a taxpayer would not be liable for late payment penalty under the amended law if the taxpayer does not account for the additional 1% of tax by the due date for payment of the tax, provided that the taxpayer makes that payment within 28 days of the amending Act receiving the Royal Assent. If the taxpayer does not make that payment by that date, then late payment penalty will commence to apply from that date.

There has been some suggestion that section 129 could operate to relieve a taxpayer of any liability under the existing law for tax on an assessable dealing where that dealing is affected by the amending Act. In the example above, the argument would be that section 129 would operate to relieve a taxpayer for any late payment penalty on the payment of tax at the 20% rate.

The purpose of this amendment is to put beyond doubt the intended operation of section 129. This amendment is not considered to have any substantive effect on the operation of section 129.

The amendment will insert into section 129 an express statement that the section does not operate to relieve a person from liability to a sales tax penalty to the extent to which the liability would have existed even if the sales tax amending Act had not been enacted.

Sales Tax Exemption: Child Care Services

Summary of proposed amendments

These amendments will provide sales tax exemption for goods for use mainly by certain providers of child care services (other than employer sponsored centres). The exemption will also apply to goods for use by bodies which co-ordinate family day care.

Generally, exemption will only be available to child care bodies or family day care co-ordination units which are entitled to receive child care funding from the Commonwealth, a State or a Territory. Child care services which are approved by the Minister for Family Services will also be entitled to exemption.

Background to the legislation

Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* identifies goods which are exempt from sales tax. The Act does not currently contain a specific exemption for child care services.

Explanation of proposed amendments

These amendments of Part 8 of *Taxation Laws Amendment Bill (No. 3) 1993* will insert a new Item (Item 144A) into Schedule 1 of the *Sales Tax (Exemptions and Classifications) Act 1992* which will give effect to the proposed exemption for child care services ***[amendment (3)]***.

Exempt child care bodies

Only *"exempt child care bodies"* will be able to claim exemption. There will be two types of child care body which may be exempt:

- bodies whose principal function is to provide one or more of the following types of child care:

  long day care - this service is provided in specially adapted centres to predominantly under school age children. Care is provided on a regular full or part time basis and is generally available for 8 hours a day, 48 weeks per year.

  outside school hours care - this service is for school age children before and after school hours.

  vacation care - this service is for school age children during school holidays.

  occasional care - this service is for flexible child care. Children are not necessarily cared for on a regular basis but as the need arises.

Persons who provide family day care in their homes will not be regarded as child care bodies. Employer sponsored bodies will be excluded from the exemption.

- family day care co-ordination units. A family day care scheme is a network of individuals, organised by a central co-ordination unit, who provide care in their own homes for other people's young children. A co-ordination unit organises the provision of family day care, supports the care providers, arranges the placement of children with care givers and monitors the care.

However, these bodies will be required to meet a further condition to qualify for exemption. They will only be exempt if they are eligible to receive Commonwealth, State or Territory government funding or are approved by the Minister for Family Services ***[amendment (4) - clauses 133A and 133B: new section (3B) of the Sales Tax (Exemptions and Classifications) Act 1992].***

Commonwealth, State or Territory funding

A child care body of the kind described above, which provides long day care, outside school hours care, vacation care and/or occasional care will be able to claim sales tax exemption if it is eligible to receive funding from the Commonwealth or a State or Territory in connection with that child care. This is funding specifically to assist with, or support, the provision of the child care ***[amendment (4) - clause 133B: new section (3B)(1)(b) of the Sales Tax (Exemptions and Classifications) Act 1992].***

Similarly, a family day care co-ordination unit will be able to claim exemption if it is eligible to receive funding from the Commonwealth or a State or Territory in connection with the organising, supporting and monitoring of family day care. This is funding specifically to assist with, or support, those activities ***[amendment (4) - clause 133B: new section (3B)(3)(b) of the Sales Tax (Exemptions and Classifications) Act 1992].***

Generally, eligibility for the relevant funding will be determined in accordance with child care guidelines administered by the relevant State or Territory department or the Commonwealth Department of Health, Housing, Local Government and Community Services. Eligibility for funding is usually evidenced by the signing, and continued existence, of an agreement between the child care service and the government funding the service. The terms of the agreement are basically that the child care body will be eligible for funding if it continues to observe certain conditions.

Eligibility for Childcare Assistance (fee relief) may qualify a child care body for exemption. Other kinds of funding which may qualify a child care body for exemption are operational assistance and establishment or capital grants.

Funding which is intended to benefit a particular group in the community, but which incidentally benefits a child care body will not qualify the body for exemption. For example, receipt of funds to enable a child care body

to employ a disabled person would not, of itself, qualify it for sales tax exemption.

Approval by the Minister for Family Services

The Minister for Family Services will also have a discretion to approve exemption for child care bodies which are funded in other ways. The approval will be in accordance with guidelines agreed between the Assistant Treasurer and the Minister for Family Services and take the form of a disallowable instrument ***[amendment (4) - clause 133B: new section (3B)(1)(b), (3)(b) and (4) of the Sales Tax (Exemptions and Classifications) Act 1992].***

Employer sponsored child care centres

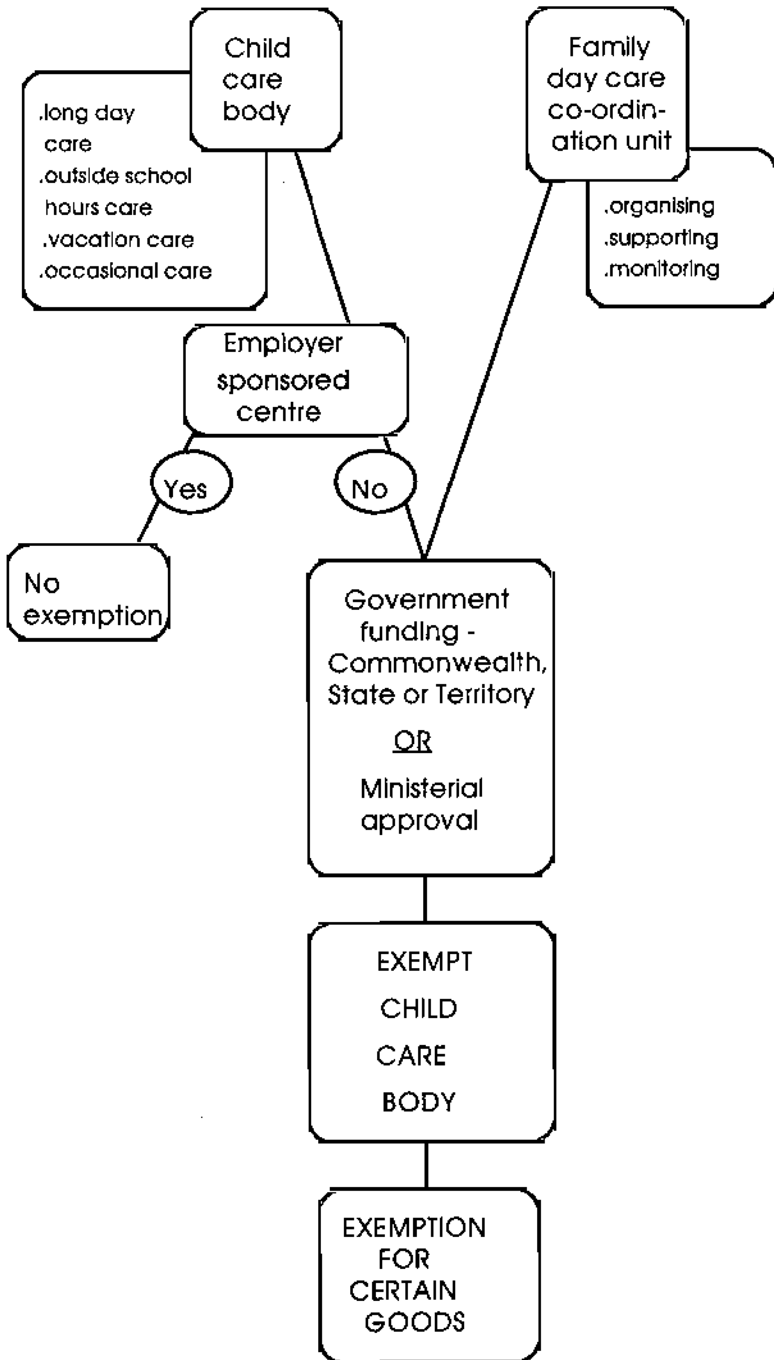
Certain employer sponsored child care bodies will be excluded from the exemption. The bodies which will be excluded will be:

- bodies established and maintained principally for the provision of long day care, outside school hours care, vacation care or occasional care;
- located on premises owned or leased by one or more employers; and
- where the provision of care is principally for children of employees or the employer ***[amendment (4) - clause 133B: new section (3B)(2) of the Sales Tax (Exemptions and Classifications) Act 1992].***

Exempt goods

Not all goods purchased by an exempt child care body will be exempt. In the case of exempt child care bodies established and maintained principally for the provision of long day care, outside school hours care, vacation care or occasional care, exemption will only be allowed for goods for use mainly in the provision of those kinds of care. For example, a body responsible for a long day care centre which also provides family support services will not be able to claim exemption for goods which will be used mainly in the provision of the family support services ***[amendments (5) and (6) - clause 134(ab): new Item 144A, Schedule 1 to the Sales Tax (Exemptions and Classifications) Act 1992].***

The goods for which family day care co-ordination units will be able to claim exemption will be goods used mainly in organising, supporting and monitoring the provision of family day care. Exemption will not extend to goods acquired by individual care givers for use in providing care in their homes ***[amendments (5) and (6) - clause 134(ab): new Item 144A, Schedule 1 to the Sales Tax (Exemptions and Classifications) Act 1992].***


Child care body
.long day care
.outside school hours care
.vacation care
.occasional care
Family day care co-ordin-ation unit
.organising
.supporting
.monitoring
Employer sponsored centre
Yes
No
No exemption
Government funding - Commonwealth, State or Territory
OR
Ministerial approval
EXEMPT CHILD CARE BODY
EXEMPTION FOR CERTAIN GOODS

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