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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO. 4) 1985

SUPPLEMENTARY EXPLANATORY MEMORANDUM

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

Introductory Note

This supplementary explanatory memorandum explains the amendments proposed to the Bill as introduced into the House of Representatives.

The amendments will amend clause 9 of the Bill - which proposes the insertion of new section 51AE in the Principal Act to disallow deductions for entertainment expenses - to insert a new paragraph 51AE(10)(a) in replacement for that originally proposed. A further sub-section - sub-section 51AE(10A) - which complements the operation of that paragraph is also to be introduced.

Under the Bill as introduced paragraph 51AE(10)(a) modifies the operation of paragraphs 51AE(5)(g) and (h) to ensure that the tax treatment of entertainment provided in association with a person's attendance at a seminar is governed by rules embodied in sub-paragraph 51AE(5)(f)(iv) and the related definitions of "seminar" and "eligible seminar".

Broadly, paragraph 51AE(5)(g) means that expenditure on entertainment that does not involve the entertainment of another person, and which would otherwise be deductible to the person benefiting from it, will continue to be deductible. Paragraph 51AE(5)(h) similarly ensures that costs borne by an employee in the course of his or her duties in connection with an entertainment-related business will continue to be deductible.

By paragraph 51AE(10)(a) of the Bill, entertainment expenses incurred in connection with a seminar that would otherwise be deductible by the effect of paragraphs 5(g) and (h) must comply with specific rules relating to seminars. Under these, entertainment expenses associated with a person's attendance at a seminar will be deductible only to the extent that they are reasonably incidental to the person's attendance at an "eligible seminar" and are not incurred in connection with the cost of recreation (e.g., a trip to a local tourist attraction).

For these purposes, an eligible seminar is, broadly, a seminar that has a continuous duration of more than 4 hours (excluding any meal, rest or recreation breaks) and is not about the operation of a particular business (i.e., ordinary business discussions). An exception to this latter aspect of the rule is that employer-organised seminars for training employees or for discussion of broad management strategies that are held in conference facilities operated by third parties will be treated as eligible seminars.

Of particular bearing on the amendments proposed is the operation of paragraph 51AE(5)(g) in circumstances where a person is travelling in the course of performing his or her duties as an employee or in the course of a business activity. As indicated, paragraph (g) is designed so that the cost of meals that are incidental to that travel (rather than to the entertainment of another person) and which are otherwise deductible will continue to qualify for deduction.

Because of the wide definition of "seminar" (i.e., any conference, convention, lecture, meeting, etc.) one interpretation of the provisions as introduced could have been that meals incidental to travel undertaken for the purposes of ordinary business discussions would have been excluded from the operation of paragraph (5)(g) by the operation of paragraph (10)(a) of the Bill and made subject instead to the specific seminar rules. As these exclude from their scope meals incidental to ordinary business discussions, the interpretation could have meant in these circumstances that even meals that are an ordinary incident of business travel, and otherwise deductible on that basis, would have been precluded from deduction.

Another consequence of paragraph (10)(a) of the Bill could have been that travel and accommodation expenses arising from attending a broadly-based seminar (i.e., an ordinary seminar not related to the operations of a particular business) would be precluded from deduction where the seminar fails the minimum 4 hours contiguous duration requirement.

The amendments proposed will remove the possibility of any such unintended consequences.

New paragraph 51AE(10)(a) will introduce modified rules for expenses incurred while undertaking business-related travel (i.e., "deductible travel" - see notes on new sub-section (10A)). These are embodied in sub-paragraph 51AE(10)(a)(i). By virtue of that sub-paragraph meals incidental to a person's attendance at ordinary business discussions (sub-sub-paragraph (B)) including at an employer-organised training session or management conference (sub-sub-paragraph (A)) while undertaking business-related travel will continue to be deductible to the extent that they fall within the exclusion provisions of paragraph 51AE(5)(g) already described.

New sub-paragraph 51AE(10) (a) (i) will also ensure that accommodation and travel costs (sub-sub-paragraph (C)) and costs of meals incidental to, but not taken as part of, an ordinary seminar - i.e., one unrelated to a particular business - (sub-sub-paragraph (D)) will continue to be deductible where the provisions of paragraph 51AE(5) (g) otherwise apply. The deductibility of the cost of meals actually forming part of a seminar will be subject to compliance with the specific seminar rules.

Sub-paragraph 51AE(10) (a) (ii) will continue unaltered the operation of paragraph (10) (a) of the Bill as introduced where seminar-related expenditure is not incurred in connection with business travel.

Paragraph 51AE(10) (b) repeats paragraph (10) (b) of the Bill, which is designed, broadly, to ensure that the rules embodied in sub-paragraphs 51AE(5) (f) (vi) and (j) have their intended operation of providing an exclusive code for the consideration of meal costs associated with overtime meal allowances.

New sub-section 51AE(10A) applies for the purposes of the operation of new sub-paragraph 51AE(10) (a) (i) to ensure that the rules being introduced by that sub-paragraph apply in relation to expenses incurred while undertaking travel in respect of which the cost of incidental meals would otherwise be deductible.