

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO.4) 1990

SUPPLEMENTARY EXPLANATORY MEMORANDUM

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

INTRODUCTORY NOTE

This supplementary explanatory memorandum explains the amendment proposed to the Taxation Laws Amendment Bill (No.4) as introduced into the Senate.

The amendment proposes relief where a taxpayer fails to comply with the substantiation requirements of Subdivision F of Division 3 of Part III of the Income Tax Assessment Act 1936.

GENERAL OUTLINE

The amendment will provide relief from the substantiation requirements in respect of a particular expense item on review of an assessment in circumstances where the requirements would otherwise operate so that a deduction for the expense is denied. The relief is to be available where the Commissioner of Taxation, having regard to certain matters, is satisfied that the expense has been incurred and it would be unreasonable for the substantiation requirements to apply.

NOTES ON AMENDMENT

The amendment proposes by the addition of a new clause 7A to the Bill, to amend the Income Tax Assessment Act 1936 (the "Principal Act") to insert a new section 82KZAA in Subdivision F of Division 3 of Part III (the "substantiation provisions").

Section 82KZAA is to apply where the Commissioner of Taxation is reviewing a claim by a taxpayer in respect of an expense item after the making of the taxpayer's assessment of taxable income.

The section provides that where the Commissioner is satisfied as to particular matters listed in new subsection 82KZAA in respect of a claim for an expense, the "substantiation sections" (as defined in subsection 82KT(1) of the Principal Act) are not to apply to the expense. That is, the substantiation sections will not operate to deny a deduction for the expense.

For section 82KZAA to have application, the Commissioner's review must be undertaken:

- (a) of the Commissioner's own motion;
- (b) in considering an objection against an assessment lodged within the required period (refer later note on subsection (3)); or

- (c) in considering a request for an amendment of an assessment made before the section commences to operate.

It follows that the section will not have application in respect of deductions disallowed before it starts to operate where the taxpayer has not acted to have the matter reviewed.

In order to be satisfied under subsection 82KZAA(1) in respect of an expense item, the Commissioner must have regard to the nature and quality of the taxpayer's evidence and to any special circumstances affecting the taxpayer which warrant consideration.

The special circumstances affecting the taxpayer allow the Commissioner to look at why the taxpayer should obtain the relief. These circumstances include the extent to which the taxpayer attempted to comply with the substantiation requirements and whether the failure to comply was inadvertent or deliberate.

The effect of the amendment is to allow the Commissioner to consider a taxpayer's circumstances and any alternative evidence when examining a claim.

Proposed new subsection 82KZAA(2) will allow the application of the section where the Commissioner is reviewing a claim made in relation to a year of income in respect of which the taxpayer has been notified there is no tax to pay.

Subsection 82KZAA(3) operates in respect of an objection referred to in subparagraph (1)(c)(ii) and new subsection (1) will not be available in the consideration of a taxpayer's claim where the 60 day period for:

- (a) lodging an objection against an assessment (or an amended assessment); or
- (b) requesting the referral of a decision on an objection to the Administrative Appeals Tribunal or to the Federal Court of Australia,

) has ended before the commencement of the new section.

) Subsection (3) achieves this result by requiring a decision maker to disregard new section 82KZAA when considering any application to extend the time for lodging an objection against an assessment, or for referral of a decision on an objection, where the relevant statutory 60 day period has expired before the commencement of the section.

Further, where such an application for an extension of time is granted:

- (a) the taxpayer's objection is to have no effect to the extent that it relates to grounds based on subsection 82KZAA(1); and
- (b) the Administrative Appeals Tribunal or the Federal Court, when making a decision must disregard the subsection.

Section 82KZAA will apply to an expense incurred whether before or after the commencement of the section (subsection 82KZAA(4)). That is, where the Commissioner's review of an assessment in respect of a year of income is authorised by paragraph (1)(c) then section 82KZAA applies in considering any relevant expense item in respect of that year.

