1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO. 4) 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)

75435 Cat. No. 95 5565 X ISBN 0644 343303

9 780644 343305

General outline and financial impact

Capital gains tax - increase in personal-use asset thresholds

Amends the Bill to ensure the proposed safeguarding provision relating to the joint ownership of listed personal-use assets applies as was intended.

Date of effect: The safeguarding measure for jointly held listed personal-use assets will apply to assets acquired after Royal Assent of the Bill.

Amendment announced: Not previously announced.

Financial impact: None.

Compliance cost impact: None.

Dividend imputation

Amends the Bill to ensure that proposed new subsection 160ASN(1) of the *Income Tax Assessment Act 1936* will achieve its intended effect. Subsection 160ASN(1) allows companies to vary a declaration in respect of a dividend where the declaration was made before the class C conversion time but the dividend to which the declaration relates has a reckoning day after conversion.

Date of effect: 1 July 1995.

Amendment announced: Not previously announced.

Financial impact: None.

Compliance cost impact: None.

Forestry plantations

Amends the proposed provision applying where taxpayers who conduct timber operations sell standing timber which they purchased as an existing forest or plantation. The proposed provision corrects an anomaly under which gross rather than net proceeds might be taxed; this amendment puts beyond doubt the matching treatment of net losses and net gains.

Date of effect: Applies to sales of standing timber after 9 May 1995.

Proposal announced: Not previously announced.

Financial impact: None.

Compliance cost impact: None.

Trust losses

Makes three corrections to the trust loss provisions set out in Schedule 7 of the Bill. These amendments:

- change the general application provision for prior year losses so it is clear that the arrangements preventing retrospectivity not only apply to the 1994-95 income year but to later income years as well;
- replace the word 'individuals' with 'persons' in the definition of 'fixed trust';
- replace the words 'would be satisfied' with the words 'would not be satisfied' in one of the anti-avoidance provisions that relate to the definition of 'widely held unit trust'.

Date of effect: 9 May 1995.

Amendment announced: Assistant Treasurer's Press Release of 17 October 1995.

Financial impact: The amendments ensure that the provisions operate as intended. Accordingly, there is no additional financial impact.

Compliance cost impact: None.

Chapter 1

Amendments 1 and 2

Capital gains tax - increase in personal-use asset thresholds

Purpose of the amendments

1.1 ***Amendments 1 and 2*** will ensure that proposed new subsection 160B(2A) operates as intended in relation to jointly owned listed personal-use assets.

Background to the legislation

1.2 The capital gains tax (CGT) provisions apply to both listed and non-listed personal-use assets which exceed a certain threshold.

1.3 A personal-use asset is defined in subsection 160B(1) of the *Income Tax Assessment Act 1936* as an asset which is kept primarily for the personal use and enjoyment of the taxpayer or associates of the taxpayer. A 'listed' personal-use asset is defined as an asset which costs more than $100 and which is listed in subsection 160B(2). Examples include a stamp, coin and an antique. The amendment proposed by ***item 19*** of Taxation Laws Amendment Bill (No.4) 1995 (the Bill) will increase the threshold to $500.

1.4 Subparagraph 160B(2)(a)(vii) provides that an interest in a listed asset is itself a listed personal-use asset. Therefore, where a listed personal-use asset is jointly owned, the full threshold is currently available to each part owner of the asset. As a result, an asset could fall outside the CGT provisions even though its total cost exceeds the proposed $500 threshold.

1.5 A safeguarding provision is therefore proposed to ensure that, where a taxpayer owns an interest in a jointly held listed personal-use asset and the market value of the underlying asset at the time of acquisition is more than $500, the interest will also be a listed personal-use asset whether or not it exceeds the $500 threshold.

1.6 This safeguarding provision was introduced as proposed new subsection 160B(2A) of the Bill ***[item 20]***. However, the new provision does not properly give effect to the policy outlined in paragraph 1.5. Thus, new subsection 160B(2A) will be amended to ensure that it achieves the desired effect.

Explanation of the amendments

1.7 ***New subsection 160B(1A) [item 18A]*** provides that subsection 160B(2) and proposed ***new subsection 160B(2A)*** define what are listed personal-use assets for the purposes of the CGT provisions. ***[Amendment 1]***

1.8 New subsection 160B(2A) is amended to provide that an interest in a listed personal-use asset will also be a listed personal-use asset if the market value of the underlying asset at the time the interest was acquired exceeded $500 ***[new item 20; amended subsection 160B(2A)]***. Where this is the case, the $500 threshold will not apply to the interest. ***[Amendment 2]***

1.9 The following example illustrates how these provisions will operate.

Example

1.10 An antique worth $800, being a listed personal-use asset, is purchased jointly by two taxpayers for $400 each. Each taxpayer has acquired a listed personal-use asset for $400 as represented by his or her interest in the antique. Without a safeguard provision, each interest would not be caught by the CGT provisions as the cost of the interest ($400) is below the proposed $500 threshold

1.11 Under the amendment proposed by ***new subsection 160B(2A)***, each $40 interest will be subject to the CGT provisions, as the total value of the underlying asset when the interest was acquired exceeded $500.

Chapter 2

Amendments 3 and 4

Dividend imputation

Overview

2.1 ***Amendments 3 and 4*** will ensure that proposed new subsection 160ASN(1) of the *Income Tax Assessment Act 1936* will achieve its intended effect.

Background to the amendments

2.2 Section 160AQF of the Act specifies the circumstances in which a dividend may be franked and how it is franked. Broadly, a frankable dividend is franked if a resident company makes a declaration before the reckoning day that the current dividend is a franked dividend to the extent of a certain percentage (not exceeding 100 per cent).

2.3 Ordinarily, section 160AQF declarations cannot be varied (subsection 160AQF(2)). However, subsection 160ASN(1) will allow companies to vary a declaration in respect of a dividend where the declaration was made before the class C conversion time but the dividend to which the declaration relates has a reckoning day after conversion.

Explanation of the amendments

2.4 The words 'the conversion time or time declaration made or beginning of reckoning day' in proposed subsection 160ASN(1) are superfluous. Therefore the amendments will omit them and substitute 'that time' instead. ***[Amendment 3; amended proposed subsection 160ASN(1)]***

2.5 The amendments also insert 'the' before 'reckoning day'. This will make the proposed subsection easier to understand. ***[Amendment 4; amended proposed subsection 160ASN(1)]***

Chapter 3

Amendment 5 to 13

Forestry plantations

Overview

3.1 The amendments presently contained in ***Part 2 of Schedule 4*** of the bill amend the *Income Tax Assessment Act 1936* (the Act) so that where those taxpayers who conduct timber operations sell standing timber which they purchased as an existing forest or plantation they are taxed on the net proceeds from the sale. The Act currently operates to tax the gross proceeds. ***Amendment*** *7* operates to put beyond doubt the deductibility of net losses as well as the assessability only of net profits.

Explanation of the amendment

3.2 ***Amendment*** *7* changes the proposed tax treatment of taxpayers who are engaged in timber operations and who sell an immature forest or plantation.

3.3 The treatment in the Bill currently provides for a netting off of the costs of acquiring trees in an established but immature forest or plantation, and associated capital costs, against the proceeds from the sale of the standing trees, where those costs were not previously deductible. ***[Item 2 of Part 2 of Schedule 4]***

3.4 ***Amendment*** *7* provides that those costs will be deductible at the time the taxpayer disposes of those trees. The deduction is available provided the taxpayer satisfies certain criteria set out in the Bill.

3.5 ***Amendment 5*** relocates the amendments presently contained in ***Part 2 of Schedule 4*** of the Bill from following subsection 36(1) to following subsection 36(7).

3.6 ***Amendments 6 and 9 to 13*** are consequential on amendment 5. They change subsections and paragraph references to reflect the relocation of the proposed provisions. A comparative table showing the differing references is below. ***Amendment 8*** is consequential upon amendment 7.

R ference differences

Was	Becomes
36(2)	36(7A)
36(2A)	36(7B)
36(2B)	36(7C)
36(2C)	36(7D)

Trust losses

Overview

4.1 *Amendments 14 to 16* make three technical corrections to the trust loss measures set out in Schedule 7 of the Bill.

Explanation of the amendments

Amendment 16: Application provision for certain trusts with fixed entitlements (prior year losses)

4.2 Under the trust loss measures a trust will not be able to deduct prior year losses where certain events, such as a change in beneficial ownership of the trust, have occurred during the 'test period'. The 'test period' is made up of the income year in which the tax loss was incurred, the income year being examined and all intervening years.

4.3 Under the general application arrangement for fixed trusts and non-fixed trusts, the trust loss provisions apply for the 1994-95 income year as if the 'test period' for the trust commenced just before the 1995-96 Budget time. The arrangement is intended to ensure that the provisions apply only where certain events occur after the 1995-96 Budget time. For example, if a certain event occurs during the period from the time immediately before the Budget time to the end of the 1994-95 income year the trust may not be able to deduct its prior year losses in that year.

4.4 The application provision makes reference only to the 1994-95 year of income and not to later income years. This is a deficiency in the provision as it is not clear whether these arrangements also apply to later income years as was intended.

4.5 Subitem 6(2) of Schedule 7 will be amended so it will be clear that the provision applies not only to the 1994-95 year of income but to later years as well. Consistent with the Government's Budget announcement, this will ensure that the Bill will not operate retrospectively.

Amendment 14: Definition of 'fixed trust'

4.6 In the Bill a 'fixed trust' is defined as a trust in which individuals have fixed entitlements to all of the income and capital of the trust.

4.7 The definition contains an error in that 'individuals' should read 'persons'. The word 'individuals' is incorrect as it includes only natural persons and not other persons such as companies. It was intended that a trust be a fixed trust where persons have fixed entitlements to all of the income and capital of the trust. A person means, for example, a natural person, a company, a trustee or the partners in a partnership.

4.8 The definition of 'fixed trust' set out in section 271-35 will be amended to replace the word 'individuals' with 'persons'.

Amendment 15: Definition of 'widely held unit trust' - anti-avoidance provision

4.9 One of the requirements for a trust to be a widely held unit trust is that more than 20 individuals hold, directly or indirectly, 75 per cent or more of the fixed entitlements to income and capital of the trust (20-75 rule).

4.10 This rule is affected by anti-avoidance provisions. One of these rules looks to any rights attached to the units of the trust and at any arrangement, contract, etc that would affect those rights in a way that would circumvent the 20-75 rule. The provision was intended to operate so that a trust would not be a widely held unit trust if it is reasonable to conclude that rights attached to the units can be varied in such a way that the rule 'would not be satisfied'.

4.11 The word 'not' has erroneously been omitted from the phrase 'would not be satisfied'.

4.12 Subsection 271-55(3) will be amended to replace the words 'would be satisfied' with 'would not be satisfied'.

Printed by Authority by the Commonwealth Government Printer