

1988

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT (TAX FILE NUMBERS) BILL 1988

SUPPLEMENTARY EXPLANATORY MEMORANDUM

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

(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 Taxation Laws Amendment (Tax File Numbers) Bill 1988 (referred to in this memorandum as the "Bill") as introduced into the House of Representatives. The amendments ensure that taxpayers retain the option of choosing not to quote their tax file number (TFN). However failure to do so in the circumstances provided for in the Bill will result in an amount being withheld from any payments of relevant investment income or salary and wages at the maximum marginal rate plus Medicare Levy (currently 50.25%). (Any excess tax withheld would be refunded on assessment of the taxpayer's annual income tax return.) In addition, the amendments will give effect to the proposal, announced by the Treasurer when introducing the Bill, to ensure that people receiving any part of a qualifying pension will be exempt from the need to quote a TFN. Other amendments are, in the main, drafting measures to ensure the original intention of the Bill.

GENERAL OUTLINE

The amendments will amend the Bill to -

- . enable the commencement day for the first phase of the tax file number system to be set by Proclamation;
- . make it clear that taxpayers have the option not to quote their TFN;
- . ensure that pensioners in receipt of any part of a qualifying pension or benefit will be exempt from the need to quote a TFN to financial institutions and other investment bodies;
- . ensure that pensioners in receipt of any part of a qualifying pension or benefit are, correspondingly, exempt from the need to quote a TFN in connection with any non-pension employment income;
- . ensure that the TFN reporting requirements do not extend to loans (e.g., mortgages) made to their customers by financial institutions;
- . ensure that existing dividend and interest reports will continue to be required until the commencement of the new reporting requirements;

- . make it clear that annual investment income reports under the new tax file number arrangements will be first required in respect of investment income derived in the financial year ending 30 June 1992; and
- . bring the sanctions for failing to meet reporting requirements into line with those generally applicable under taxation law for equivalent offences.

FINANCIAL IMPACT

The amendments will have no material effect on the revenue gain previously announced for the tax file number system.

NOTES ON AMENDMENTS

Amendment 1

Amendment 1 is a technical amendment required to ensure that proposed subregulation 54ZED(1A) - to be inserted by Schedule 2 to clause 30 of the Bill - will come into operation at the same time as the related amendments of paragraph 221YHD(5)(b) of the Income Tax Assessment Act 1936 and subregulations 54ZED(1) and (2) of the Income Tax Regulations (the Regulations).

Amendment 2

Amendment 2 is a technical amendment to ensure that an application for the issue of a tax file number is made in a form approved by the Commissioner.

Amendments 3, 7 and 8

Under proposed subsection 202C(1) all employees who start in new employment on or after 1 November 1988 may (refer to notes on amendments 4, 5 and 6) make an employment declaration to that employer, whilst subsection 202C(4) defines the phasing-in period for the purposes of Division 3 of new Part VA as commencing on 1 November 1988 and ending on 31 March 1989 (or such later date fixed by the Minister by notice published in the Gazette).

Amendments 3 and 7 will amend subsections 202C(1) and (4) respectively to provide for a commencement date to be set by Proclamation.

For consistency, amendment 8 will amend paragraph 202C(4)(b) to ensure that any later day than 31 March 1989 for the last day of the phasing-in period for new Division 3 must also be set by Proclamation.

Amendments 4, 5 and 6

These amendments remove the express obligation on employees to make an employment declaration to their employer. Where an employee chooses not to quote his or her TFN on an employment declaration, tax instalments will be made from any payments of salary or wages at the top marginal rate plus Medicare levy (currently 50.25%). (Any excess tax withheld would be refunded on assessment of the taxpayer's annual income tax return.)

Amendment 9

Section 202D contains, in tabular form, details of the investments, investors and investment bodies to which Division 4 of new Part VA of the Act will apply.

As they apply to financial institutions (i.e., a bank, building society or credit union), the broad purpose of the TFN proposals is to obtain details of payments made by the institution. As presently worded, however, the proposals would also apply to cases where a financial institution makes a loan (e.g., a mortgage or overdraft) to a corporate or government customer. In these cases the reporting obligations would apply to the customer.

Amendment 9 will amend Item 3 of the table in proposed section 202D to exclude these loans from the operation of the TFN proposals.

Amendments 10 and 11

Amendment 10 will omit proposed sections 202DB and 202DC and insert new section 202DB. New section 202DB will make it clear that a person has the option of quoting their TFN to an investment body in relation to the specified types of investments. Consistent with TFN quotation for employment purposes, an amount will be deducted at the top marginal rate plus Medicare levy (presently 50.25%) from any income earned from the investment where a TFN has not been quoted. (Any excess tax withheld would be refunded on assessment of the taxpayer's annual income tax return.)

Amendment 11 is consequential upon the removal from proposed section 202DB of the express obligation to quote a TFN.

Amendments 12 and 13

Amendment 12 will insert a revised paragraph 202E(1)(a). The effect of the redrafted paragraph is to remove any reference to a child becoming obliged to quote his or her tax file number to an investment body. Amendment 13 proposes a consequential amendment to proposed paragraph 202E(1)(d).

Amendments 14, 15 and 16

Proposed section 202EA provides that nothing in new Part VA is to be taken to provide for a person who is an employee for the purposes of the Income Tax Assessment Act 1936 by reason of being paid a qualifying pension or benefit to make an employment declaration or to quote his or her TFN in connection with the payment of the pension or benefit to the Department from which the pension or benefit is received. Thus, such qualifying pensions or benefits will never be subject to deduction of tax instalments at the top marginal rate by virtue of the provisions contained in new Part VA.

The pensions and benefits to which the exemption applies are:

- . an age pension under Division 2 of Part IV of the Social Security Act 1947;
- . an invalid pension under Division 3 of Part IV of that Act;
- . a wife's pension under Division 5 of Part IV of that Act;
- . a carer's pension under Division 6 of Part IV of that Act;
- . a widow's pension under Part V of that Act;
- . a supporting parent's benefit under Part VI of that Act;
- . a special benefit under Division 6 of Part XIII of that Act;
- . a pension under Part III of the Veterans' Entitlements Act 1986;

Amendment 14 is a drafting measure consequential on the removal of an express obligation to quote a TFN in respect of relevant investments.

Amendment 15 will insert three new subsections into section 202EA to extend the exemption provision in respect of pensioners to also include any non-pension (or benefit) employment income derived by the pensioner.

By subsection (1A) people in receipt of any part of a qualifying pension or benefit will be taken to have quoted a TFN on an employment declaration in connection with any non-pension (or benefit) employment income. In these cases, pensioners will be required to indicate on an employment declaration lodged with their employer that they are in receipt of a qualifying pension or benefit.

Consistent with the proposals incorporated in the Bill in relation to investment income, a pensioner who is taken to have quoted a TFN to an employer on an employment declaration will continue to be so taken until the Commissioner advises in writing that the person is no longer entitled to the exemption under section 202EA (proposed new subsection (1B)).

Only where the person ceases to be paid any part of any of the eligible pension or benefit, may the Commissioner give a notice under subsection (1B) (proposed new subsection (1C)).

Amendment 16 is a drafting measure consequential on the proposed insertion of new subsections (1A), (1B) and (1C) by clause 15.

Amendments 17, 18, 19 and 20

These amendments ensure that recipients of partial pensions and benefits are to be taken to have quoted their TFN under Division 4 of new Part VA in respect of investment income, in the same way as is proposed in the Bill for recipients of full pensions and benefits.

Proposed section 202EB provides that where a person in receipt of any of the following pensions or benefits payable at the maximum rate becomes obliged to quote a TFN in relation to an investment, the person will be taken to have quoted a TFN if he or she gives a declaration to the investment body. Under the proposed new subsection, a person in receipt of any of the specified pensions or benefits will be taken to have quoted his or her tax file under Division 4 of new Part VA in respect of investment income where a written declaration is given to the investment body.

The applicable pensions and benefits are -

- . an age pension under Division 2 of Part IV of the Social Security Act 1947;
- . an invalid pension under Division 3 of Part IV of that Act;
- . a wife's pension under Division 5 of Part IV of that Act;
- . a carer's pension under Division 6 of Part IV of that Act;
- . a widow's pension under Part V of that Act;
- . a supporting parent's benefit under Part VI of that Act;

- . a special benefit under Division 6 of Part XIII of that Act;
- . a pension under Part III of the Veterans' Entitlements Act 1986;
- . a rehabilitation allowance under Part XVI of the Social Security Act 1947 which is payable in substitution of an age, invalid, wife's, carer's, widow's or supporting parent's pension.

Amendment 17 will omit subsection (1) of proposed section 202EB and insert a new subsection 202EB(1) consequential on the removal of an express obligation to quote a TFN.

Amendments 18, 19 and 20 will modify the exemption provision further to allow persons in receipt of any part of a pension or benefit as detailed above to be taken to have quoted a TFN by giving a signed declaration to an investment body stating the person's full name and address and the nature of the pension or benefit paid to the person.

Amendments 21, 22 and 24 to 29

These are further consequential amendments following the removal of the express obligation to quote a TFN in respect of relevant investments.

Amendment 23

Amendment 23 will correct a drafting error by removing the reference in proposed section 202EC to an entity that is a partnership. The reference can have no application as the definition of entity in proposed section 202A specifically excludes a partnership.

Amendment 30

Subsection 8WA(1) of the Taxation Administration Act 1953 creates an offence, punishable on conviction by a fine of \$10,000 or imprisonment for 2 years or both, for a person to require or request the quotation of another person's tax file number for the purpose of establishing that person's identity or for any other purpose under unauthorised circumstances.

Amendment 30 will omit proposed paragraph 8WA(1)(a) - which applied in the context of provisions which made it an obligation to quote a TFN in respect of relevant investments, etc - and replace it with a new paragraph 8WA(1)(a). The new paragraph ensures that the prohibition in proposed section 8WA does not apply in circumstances where a taxation law makes provision for such quotation in specified circumstances. This would include employers in respect of employment declarations, investment

bodies in respect of investments held with the investment body on and after 1 July 1991 and eligible paying authorities under the Prescribed Payments System (Division 3A of Part VI of the Income Tax Assessment Act 1936).

Amendment 31

Amendment 31 will insert a new subsection - subsection (4) - into proposed section 8WA of the Taxation Administration Act 1953. New subsection 8WA(4) makes clear that section 8WA cannot operate to oblige any person to require or request another person's tax file number.

Amendment 32

Subsection 8WB(2) - to be inserted into the Taxation Administration Act 1953 by amendment 32 - applies in a similar manner to new subsection 8WA(4) in making clear that section 8WB cannot operate to oblige a person to record, use or divulge another person's TFN. As amended, the section will continue to facilitate the recording, etc of a TFN for authorised purposes, e.g., for the purpose of making required income reports to the Commissioner of Taxation where the investor, etc, chooses to quote a TFN rather than have tax withheld on the relevant income.

Amendment 33

Under amendments incorporated in Schedule 2 to clause 30 of the Bill, existing subregulation 11(2), which requires every company that lodges income tax returns and which pays interest or dividends to provide statements in relation to those payments, is to be omitted. This is because the operation of this subregulation is to be replaced by the new tax file number reporting requirements embodied in proposed new regulation 43C.

Amendment 33 will omit the proposed amendment to regulation 11 and substitute it with a new subregulation 11(3) which will ensure that subregulation 11(2) will not apply in relation to a period where a company is required to prepare and give the Commissioner a report under new regulation 43C. The effect of this amendment will be to ensure that the existing requirements continue until the commencement of the new financial institution reporting requirements. In the absence of Amendment 33, the existing reporting requirements would cease from the date of commencement of the amending Act.

Amendments 34, 36 and 41

Proposed subregulations 43B(7) and 43C(9), to be included in the Regulations by Schedule 2 to clause 30 of the Bill, impose penalties of \$2000 for noncompliance with the reporting obligations imposed by proposed regulations 43B and 43C in respect of file number reports and annual investment income reports respectively.

The effect of amendments 34, 36 and 41 will be to bring the sanctions for a failure to comply with the reporting requirements within the scope of existing sections 8C and 8E of the Taxation Administration Act 1953.

Those sections, which apply generally in relation to circumstances where a person fails to comply with requirements of a taxaton law, incorporate increased penalties for repeat offences. Broadly, the penalty for a first offence is a penalty not exceeding \$2000. For second or subsequent offences the maximum penalty increases to \$4000. In the most serious cases there is the option under existing sections 8C and 8E for a third or subsequent offence to attract a penalty not exceeding \$5000 and/or 12 months imprisonment.

Amendment 35

Amendment 35 will make it clear that, as expressed to be the intention in the explanatory memorandum accompanying the Bill, annual reports in respect of investment income are first required in respect of investment income derived in the year ending 30 June 1992.

Amendments 37 to 40

These amendments are drafting measures that are consequential on the removal of the express obligation to quote a TFN in respect of employment and specified investments.





