

TAX LAW AMENDMENT (PERSONAL INCOME TAX REDUCTION) BILL 2005

You asked for a note on questions arising from this bill and its relationship with PAYG deductions.

The bill specifies the new rates of income tax proposed by the government to have effect commencing on 1 July 2005. If the bill is not passed, income tax rates will remain unchanged, in the absence of any other legislative change.

The PAYG deductions are prescribed by the Taxation Commissioner by means of withholding schedules made under section 15-25 of Schedule 1 of the Taxation Administration Act. In making the withholding schedules, the Commissioner must “have regard to” the rates of income tax specified in the Income Tax Rates Act, but the withholding schedules do not have to reflect those rates.

Therefore, the Taxation Commissioner could prescribe PAYG deductions reflecting the proposed new tax rates, with effect from 1 July, in anticipation of the bill passing, even if the bill is not passed before 1 July.

If the bill is passed after 1 July, it still could have effect from 1 July, and the new PAYG deductions, having taken effect from 1 July, could remain in place.

Since the Legislative Instruments Act came into effect on 1 January 2005, withholding schedules are subject to tabling and disallowance (they were not disallowable before then).

The disallowance of the withholding schedules reflecting the government’s new tax rates could be avoided simply by making them on 30 June to come into effect on 1 July.

If the withholding schedules were to be disallowed before 1 July, schedules the same in substance could not be made for another six months without the Senate’s approval. This problem could be avoided by making the withholding schedules different in some way (and, given their nature, virtually any difference would be a substantial difference). Alternatively, the Senate could be summoned to meet on or after 1 July to approve the remaking of the schedules with effect from 1 July.

The rejection or deferral of the bill by the Senate, however, would not prevent the re-presentation of the bill at any time on or after 1 July with a clause making it effective from 1 July.