TAXATION ADMINISTRATION AMENDMENT (RECOVERY OF TAX DEBTS) BILL 1986

Date introduced: 24 September 1986
House: House of Representatives
Presented by: Hon. Chris Hurford, M.P., Minister Assisting the Treasurer

DIGEST OF BILL

Purpose

To prevent the further application of a decision of the Queensland Supreme Court.

Background

On 3 September 1986 the Full Court of the Queensland Supreme Court delivered its decision in the case Deputy Commissioner of Taxation v Moorebank Pty Ltd, a decision that is contrary to previous NSW and Western Australian decisions on the same area. The area is governed by three pieces of legislation, the relevant provisions being:

Income Tax Assessment Act 1936

section 207 which provides for penalty tax

section 208 which provides that unpaid income tax is a debt due to the Commonwealth

Judiciary Act 1903

section 64 which requires that in an action between the Crown in right of the Commonwealth and another, the rights of the Crown shall be 'as nearly as possible... the same... as in a suit between subject and subject'.
State Limitation Acts

which provide that

(i) the Act does not apply to an action by the Crown for recovery of a fee, tax, duty or other sum of money or interest on a fee, tax, duty or other sum of money.

(ii) that an action shall not be bought after six years 'to recover a sum recoverable by virtue of any enactment...'.

(iii) that an action to recover a penalty shall not be bought after two years.

These provisions are contained in different sections of the relevant Acts but are identical in their effect.

In Deputy Commissioner of Taxation v DTR Securities Pty Ltd [1985] 1 NSWLR 653 Justice Lee considered these provisions and decided that s.64 of the Judiciary Act 1903 does not apply the Limitations Act to the Commonwealth as it would interfere with the 'fiscal right' of the Commonwealth to recover tax. In addition, he held that the phrase 'as nearly as possible' in s.64 recognised such rights and allowed the Commonwealth to recover tax unimpeded by State law (page 669). This view has also been applied in Western Australia.

The same provisions were considered by the Full Court of the Queensland Supreme Court in the case of Deputy Commissioner of Taxation v Moorebank Pty Ltd (case number 1345 of 1986, judgement delivered on 3 September 1986). By a two to one majority, the Court rejected the 'fiscal right' argument and held that as the action was for the recovery of a debt, section 64 of the Judiciary Act applies the Limitation Act to the recovery of tax.

In the Second Reading Speech the Minister announced that the Commissioner was seeking leave to appeal to the High Court to review the Queensland decision. The Minister also estimated that if the Queensland decision was applied Australia-wide revenue of $200 million would be lost in 1986-87 and $700 would be at risk in later years.
Main Provisions

A new section 14ZKA will be inserted into the Taxation Administration Act 1953 by clause 3. Under the proposed section, where a limitation law applies to an action for the recovery of a tax debt and the taxpayer has objected against the assessment that gave rise to the debt, the limitation period will be deemed to have commenced on the day the objection ceased to be pending as defined in proposed sub-section 14ZKA(5) (i.e., generally the day on which appeals have been decided) (proposed paragraph 14ZKA(2)(a)).

Under proposed paragraph 14ZKA(2)(b) tax debts incurred under a number of Acts will be deemed not to be penalties (and therefore attract the longer limitation period).

Except where a court has given a judgement based on a limitation law before 25 September 1986, the amendments contained in this Bill will apply to all actions whether commenced before or after this Bill comes into operation (proposed sub-sections 14ZKA(3) and (4)).

For further information, if required, contact the Law and Government Group.

20 October 1986

Bills Digest Service
LEGISLATIVE RESEARCH SERVICE

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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