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Bills Digest

No. 148 2000–01

Taxation Laws Amendment Bill (No. 3) 2001

ISSN 1328-8091

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Published by the Department of the Parliamentary Library, 2001

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 148 2000-01

Taxation Laws Amendment Bill (No. 3) 2001

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6 June 2001

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Taxation Laws Amendment Bill (No. 3) 2001

Date Introduced: 5 April 2001

House: House of Representatives

Portfolio: Treasury

Commencement: Royal Assent, although transitional provisions commence on 1 April 2001. Also refer to the Main Provisions section for the application dates of various measures.

Purpose

To allow most entities required to lodge quarterly business activity statements to have the amount of payment calculated on their record of previous payments adjusted for changes in gross domestic product; extend the deadline for quarterly reporting and payment by a week; and to extend the range of people who may make pay as you go payments on amounts notified by the Australian Taxation Office.

Background

The current reporting requirements for business activity statements (BAS), which is an essential element of the payment of the goods and services tax (GST) by an entity and the income activity statement (IAS), an essential part of the pay as you go (PAYG) system have been subject to some controversy. In particular, the BAS (a copy of a BAS is attached for information) was criticised for requiring more information than is necessary for the calculation of GST liability, taking too long to complete and having lodgement dates that either did not allow sufficient time for completion or, in respect to the BAS for the December quarter, required taxpayers to complete the BAS before being able to take annual holidays.

Much of the information regarding difficulties with the BAS and IAS is of an antidotal nature and what aggregate information is available is in conflict. The major sector arguing against the current BAS regime is small business and their representative body, the Council of Small Business Organisations of Australia (COSOBA), which has argued that the time spent having to complete the BAS has made its members 'unpaid tax collectors'

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for the Government. COSOBA has suggested that small businesses be compensated for the time spent completing the BAS by retaining 10 per cent of the GST payable.¹

The Australian Taxation Office (ATO) has been supportive of the current BAS regime, arguing that difficulties are to be expected with the introduction of a new system and that with greater experience many of the current perceived difficulties will no longer arise.² The transitional nature of the period since the introduction of the GST is also indicated by the extensive information and education campaigns conducted by the ATO, including the provision of advice at an enterprise level. The ATO is reported as stating that as of January 2001 approximately 75 per cent of businesses completed their BAS in less than 3 hours, with 48 per cent completing it in less than one hour.³ A survey by Australian Business Limited in February 2001 found that it was taking considerably longer to complete the BAS. The survey related to the February BAS and found that it took an average of 9 hours to complete the BAS, with firms employing 5-24 employees taking an average of 11 hours.⁴

There have been calls from individuals, industry lobby groups and others to simplify the BAS, principally by removing the requirement to complete details not directly related to the collection of the GST and providing for an annual return⁵, even if payments remain quarterly. The concept of an annual return in the first year after the introduction of A New Tax System has some problems from the point of the integrity of the system. As noted by the Treasurer in reply to a question without notice on 6 February 2001⁶, during the first year after the introduction of A New Tax System there is insufficient information to average an entity's returns over a year and then to determine the quarterly amount to be paid. To base payments of GST to government on a period shorter than a year means that seasonal fluctuations cannot be taken into account, although any under or over payments can be balanced at the end of the year. On the issue of monthly or quarterly information provided on the BAS, ATO officials have argued that this information is necessary to properly target compliance programs. In an Estimates Committee hearing on 24 November 2000 an official stated:

Monthly and quarterly information rather than annual BAS information is therefore essential to the early identification of otherwise compounding compliance problems. With this kind of tax, any problem that is there that is not addressed is going to be compounding and building up over time to maybe a significant issue. So the earlier we get on to those, the better. The information from those forms is already being used to help ensure individuals are getting their GST right. Overseas advice confirms that compliance programs are relatively ineffectual in the absence of BAS type information, with consequential negative effects on revenue and on the integrity of the tax system as a whole. I believe it is the integrity of the tax system of the whole which is at issue here.⁷

However, dissatisfaction with the BAS and the time taken to provide all the requested information had already prompted suggestions that there could be a change in the BAS. In an interview on Radio 4BC on 21 November 2000 the Prime Minister stated:

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Can I say in relation to the Business Activity Statement, we'll be looking to see whether it can be simplified. This is the first sort of big return people have had to put in under the new system and if there is a way of simplifying it and meeting the requirements for the new system we will simplify it there is no merit at all. [sic] But it is a new system and I do understand that it involves fine adjustment. And I make it very plain to people that where fine tuning and adjustments and simplification can occur both in relation to this form and indeed in any other aspect of the new system we won't be reluctant to do that.⁸

The ALP announced its proposal for an annual return on 6 February 2001, with the proposal restricted to small business (ie current quarterly rather than monthly payers) and that:

...small business will only have to do one simple calculation each quarter based on previous experience without the current burden of drawing up quarterly business accounts. Instead, there will only be an annual reconciliation, removing the current complicated quarterly BAS procedures.⁹

And that:

Labor is also looking at ways to extend similar relief to self-funded retirees and others buried under a mountain of red tape by the IAS ¹⁰[income activity statement].

The Governments proposals for an annual return and simplified BAS, which will be implemented by this Bill, were announced on 22 February 2001. The major changes announced were:

- for all quarterly payers of GST the information which will have to be provided quarterly will be reduced to 3 boxes, with the remaining information to be provided in an annual return
- for payers with annual turnover of less than \$2 million they will have the option of basing their payments on an amount calculated by the ATO which will calculate the amount on the previous year's payments adjusted for movements in gross domestic product (GDP)
- lodgement dates will be extended by one week, and
- for the remainder of 2000-2001 payers may choose to have the amount due calculated on their second quarter payment adjusted for changes in GDP.¹¹

Neither the Government nor the Opposition proposals explained how the integrity difficulties raised by the ATO would be addressed with an annual return.

Changes to the income activity statement (IAS), which deals with the calculation of payments under the PAYG system were also announced by the Treasurer on 22 February 2001. Businesses registered for GST purposes and with an annual turnover of less than \$1 million would be able to choose to have their quarterly liability calculated by the ATO on

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a GDP adjusted basis and people with a last assessment of less than \$250 will be removed from the system so that their income will be calculated on an annual basis.

Main Provisions

Extension of Time for Quarterly Reporters

Generally, entities registered for the purposes of the GST are required to report quarterly unless they chose monthly reporting or have a turnover of \$20 million or more per year and are therefore required to report monthly. The quarters end on 31 March, 30 June, 30 September and 31 December and returns are due 21 days after the end of the period, although the Commissioner has power to extend this period, which has occurred in respect of all lodgment dates since the GST began.

Proposed section 31-8, which will be inserted into the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act), by **item 1** of **Schedule 1** will extend the lodgment date for the March June and September quarters by 7 days, while the lodgment date for the December quarter will be 28 February. The Commissioner will retain power to extend this period.

Similar changes will be made to the date by which payment is due, which will continue to be the date by which the return is due (**proposed section 33-3** which will be inserted into the GST Act by **item 6**).

Section 31-15 of the GST Act deals with the contents of GST returns (ie the BAS) and will be amended by **item 4** to remove the requirement that the form show the amount payable. This will enable the simplified form to be introduced.

Application: To returns for period ending on or after 22 February 2001 (**item 22**).

Payment of GST by Instalments

Item 29 will insert a **new Division 162** into the GST Act which will allow certain taxpayers to calculate their GST liability on their own assessment or the Commissioner's estimate of their liability.

Entities will be eligible to elect to use the instalment system if:

- their annual turnover is less than \$2 million or a higher amount specified by regulation
- they are not required, or have elected, to report on a monthly basis
- they have complied with return lodgment requirements for at least 4 months (ie two lodgements), and

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- they are not in a ‘net refund position’. This term is defined according to the period for which the entity has been lodging returns and whether they have been eligible for a refund calculated over a specified period (ie a net refund over the period). The periods are:
 - If there has been lodgement of returns for less than 7 months (the period of lodgment is to be calculated by reference to the time preceding the quarter under consideration), whether there is a net refund in the preceding 3 months,
 - Lodgements between 7 and less than 10 months, there has been a net refund in the preceding 6 months,
 - Lodgements between 10 and less than 13 months, there has been a net refund in the preceding 9 months, and
 - For lodgements over 13 months, there has been a net refund in the preceding year (**proposed section 162-5**).

Entities may elect to pay by instalment, although the Commissioner may disallow the election if the taxpayer has ‘a history of failing to comply’ with tax law (**proposed section 162-15**). Such an election must generally be made by 28 October in the year to which it relates (ie the first lodgement) and will apply for the whole of that year. Special rules will allow an election to be made after 28 October where an entity becomes eligible to choose to pay by instalments after that date and has a lodgement history of 6 months or less (**proposed sections 162-15 to 162-30**).

Entities paying by instalment will only be required to lodge one return for the year, or part of the year, during which they are instalment payers (**proposed section 162-60**), although instalments of tax will have to be paid quarterly on the same date as quarterly returns are due (see above) (**proposed section 162-70**). The Commissioner has power to alter the due dates.

Primary producers and ‘special professionals’ – ie. authors, inventors, performing artists, production associates and sportspersons – will have two instalments per year. Such taxpayers are subject to income averaging due to the fluctuating nature of their income and it is considered that twice yearly GST instalments would enable some of the fluctuations in GST accounting to be smoothed out. To be eligible for two instalments such people must have had a profit from the relevant activity in their last tax year (**proposed section 162-80**).

Where an entity which pays by instalment ceases to trade, loses its registration, becomes bankrupt or goes into liquidation, or there is a change in the membership of a GST group amongst other things, a return must be provided after the end of the quarter during which the event occurred (**proposed sections 162-85, 162-90 and 162-95**).

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If an instalment is not paid on time, the general interest charge will apply to the outstanding amount (**proposed section 162-100**)

Where an annual return and quarterly instalments are used, the difference, if any, between the amount paid by instalment and the liability calculated in the annual return will be payable at the time the annual return is lodged (**proposed sections 162-105 and 162-110**).

Calculation of Instalment Payments

For the first quarterly instalment payment, an entity may elect either their notified instalment amount (the amount notified by the Commissioner) or their varied instalment amount (for this purpose the varied instalment amount will be the amount notified by the entity. The amount must be greater than zero and an estimate of the net GST payable for the year must be included). The same choices also apply for subsequent quarters with the additional option of using 25 per cent of the estimated annual GST payable or a varied instalment amount where the entity does not have a notified instalment amount (the Commissioner is not to determine a notified instalment amount for an entity if it had a varied instalment amount for a previous quarter of the instalment year) (**proposed Subdivision 162-C**).

Penalties may apply where a varied estimate is too low. The instances where a penalty will apply are:

- the total instalments for a financial year are less than 85 per cent of the actual amount due or where instalment periods are used, the instalments are less than 85 per cent of those due for the period. The amount of the penalty will be determined by applying the general interest charge to the GST instalment shortfall (which will be calculated by reference to the annual GST liability adjusted to reflect the quarter under consideration less the amount of any GST instalments paid and the varied instalment amount for the quarter). Shortfalls subject to a previous penalty are not to be included in determining if a penalty is payable for a later period (**proposed section 162-175**)
- the estimated liability for a year used in calculating the instalments is less than 85 per cent of the actual liability. Where an entity has a varied instalment amount and this is calculated for a quarter using an estimate which is less than 85 per cent of actual liability (or 75 per cent where the quarter ends on 30 September 2001, reflecting the introduction of the proposed instalment system) and the amount payable in the varied, quarterly, instalment is less than 25 per cent of the actual annual liability. The penalty will be based on the general interest charge being applied to the difference between the actual annual GST liability and the estimated liability for the relevant quarter, both adjusted to reflect the period to which the penalty applies (**proposed section 162-180**).
- the instalment amount is less than the quarterly pro-rata rate of the estimated annual GST liability. Basically, this penalty will apply where an entity has estimated their annual GST liability but their varied instalment amount for a quarter is less than the pro-rata rate of the annual estimate. In calculating whether there is a deficit for a

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specific quarter previous payments are to be taken into account and the amount of the penalty will be calculated by applying the general interest charge to the shortfall for the relevant quarter (**proposed section 162-185**).

The penalty applicable if either of the first two of the above points apply can be reduced under **proposed section 162-195**. This will apply where the actual or nominal notified instalment amount for a quarter is less than the actual amount payable for the quarter. Where there is no specified notional instalment amount, the nominal amount will depend on whether the Commissioner is satisfied that for the quarter the amount would be less than 25 per cent of the annual liability (eg due to seasonal fluctuations). Where the proposed section applies, the instalment shortfall amount is to be reduced by the amount, if any, that the instalment for the quarter exceeds the actual or nominal notifiable amount (this provision takes account of situations where the instalment paid for a quarter while less than that specified under the preceding sections is more than that anticipated by the Commissioner).

If a subsequent instalment payment exceeds the amount due for the relevant period the excess can be used to offset any previous shortfall (**proposed section 162-200**).

Application: The above amendments will be taken to have applied from 1 July 2000

Pay as you go (PAYG)

PAYG was introduced from 1 July 2000 and replaced the provisional tax and company tax instalment systems. Under the existing system taxpayers may fall into three categories regarding how they pay the tax, annual payers, quarterly payers who largely self-assess and quarterly payers who rely on a notified amount to determine their liability.

Most taxpayers are required to pay quarterly instalments based on their relevant income for the quarter multiplied by the rate notified by the Commissioner. If the Commissioner does not notify a taxpayer of their instalment rate they are not required to pay in quarterly instalments. As a result, who is required to pay by quarterly instalments can depend on the Commissioner's discretion rather than the provisions of the *Taxation Administration Act 1953* (TAA). Where quarterly payment is required, instalments are due within 21 days after the end of the quarter (section 45-60 of the TAA).

Annual payments apply where a taxpayer:

- is not registered, or required to be registered, for purposes of the GST
- is not a member of a partnership or a company which is a member of a GST joint venture
- has a notified tax liability of less than \$8000 (the Commissioner determines this liability), and

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- has chosen to be an annual payer (section 45-140 of the TAA).

While these quarterly or annual payments are based on the instalment rate and relevant income for the period, the PAYG system also provides for quarterly payments based on a 'GDP adjusted basis' for certain taxpayers. The main difference for such taxpayers is that they will not be required to assess their own liability but will be notified by the Commissioner of their liability. They have the option of altering the Commissioner's assessment (section 45-112 of the TAA). To be eligible for assessment on a GDP adjusted basis a taxpayer must:

- not be registered or required to be registered for the GST
- not in a partnership that is registered or required to be registered for the GST, and
- have a notional tax liability of \$8000 or more (section 45-125 of the TAA).

Proposed section 45-61 provides that while PAYG instalments are normally due by the end of 21 days after the relevant quarter, if an entity is required to lodge a BAS they will have until the end of the new periods for BAS lodgement (see above) to lodge their PAYG return.

Item 14 of Schedule 2 will repeal current sections 45-125 and 45-130 and substitute **new sections 45-125 to 45-134** into the TAA. The proposed sections deal with the new categories of quarterly instalment payers. An entity will pay on the basis of instalment income if they are not an annual payer, don't pay on the basis of GDP-adjusted notional tax, or would be eligible to pay on a GDP-adjusted basis but choose to pay on instalment income. The entity must also have been notified of their instalment rate by the Commissioner. If an entity has chosen to pay on the basis of instalment income this will continue to apply until the start of the next financial year when the entity either becomes an annual payer or, if eligible to pay on a GDP-adjusted basis, notifies the Commissioner that they wish to pay on a GDP-adjusted basis (**proposed section 45-125**).

Payment on a GDP-adjusted basis will be available for an entity which:

- is not an annual payer and does not make payments based on instalment income
- is a 'full self-assessment taxpayer' (ie is a company or the trustee of a commercial trust, such as public trading trust or a superannuation fund, but not an individual) who is not an annual or quarterly instalment payer and has income of \$1 million or less in their last assessment, or
- is a full assessment taxpayer with assessable income of more than \$1 million in their last assessment, is qualified to be an annual payer but has chosen not to be so (as one of the requirements to be eligible to be an annual payer is notified tax of less than \$8000 this will presumably be a very small group).

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As with instalment income based payers, the option to pay on a GDP-adjusted basis will continue to apply until the start of the next financial year for the entity (**proposed section 45-130**).

Quarterly instalment payers will generally be required to remit amounts every three months, although for primary producers and those receiving special professional income who pay on a GDP-adjusted basis and who had a positive income in their last assessment will only be required to pay two instalments per year (**proposed section 45-134**) (this is similar to the BAS concessions for such entities – see above).

If an entity is eligible to pay only 2 instalments these are to be made at the end of the third quarter, when 75 per cent of GDP-adjusted notional tax is to be paid, and at the end of the fourth quarter when 100 per cent of GDP-adjusted notional tax is to be paid. The Commissioner is to determine the amount payable. Special provisions apply where the entity becomes eligible to pay only two instalments during a year to ensure that previous payments during the year. (The later provisions refer to the Commissioner notifying the taxpayer during the year of their instalment rate, which would assume that they are paying on an instalment income basis and not on a GDP-adjusted basis. The two instalment provisions only apply to GDP-adjusted payers.) (**proposed section 45-402**).

Subdivision 45M of the TAA currently allows entities which pay quarterly GDP-adjusted instalments to vary their payments based on their estimated ‘benchmark tax’, which is generally calculated by reference to the tax rate, including Medicare levy, applicable to their assessable income for the year excluding capital gains. Quarterly instalments are payable on the estimated benchmark tax, and only one estimate can be made in a year. Penalties apply where the estimate is too low. **Proposed section 45-412**, which will be inserted into the TAA by **item 34 of Schedule 2**, will extend the option of using the ‘benchmark tax’ to those who pay only two quarterly instalments.

Application: To the 2001-02 and later taxation years (**item 40**) (however, also refer to the transitional provisions below).

Transitional Provisions

Item 49 of Schedule 2 will allow most instalment taxpayers to choose to be quarterly payers based on GDP – adjusted notional tax for the March and later quarters of 2001. The option will be available for:

- individuals and multi-rate trustees (ie. trustees who are notified of more than one instalment rate in respect of beneficiaries on whose behalf the trustee pays tax) who are not annual payers
- a full self-assessment taxpayer who is not an annual payer and had instalment income of \$1 million or less in their last assessment, or

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- a full self-assessment taxpayer with instalment income of more than \$1 million in their last assessment and, although not an annual payer, is eligible to be an annual payer.

If such a choice is made, the taxpayer will continue to be a quarterly payer on the basis of GDP-adjusted notional tax unless the Commissioner withdraws their instalment rate.

Schedule 3 of the Bill deals with amendments consequential on the change of the lodgement date for quarterly payers to reflect the change to 28 February and 28 days for other quarters as discussed above in relation to changes to the due dates for BAS lodgement and GST payments. The amendments ensure that other tax liabilities, such as fringe benefits tax and PAYG instalments, are payable at the same time as the deferred GST lodgement and also address the situation where the due date falls on a weekend or public holiday. In such cases, payment on the next business day will be allowed without triggering and penalty.

Endnotes

- 1 This issue was addressed by the chief executive officer of COSBOA at the National Press Club address on 28 March 2001.
- 2 For example, see comments to the Senate Economics Legislation Committee, acting as an Estimates Committee, 24 November 2000.
- 3 *The Age*, 16 January 2001.
- 4 Australian Business Limited, 11 February 2001.
- 5 For example, the Australian Business Limited survey referred to above proposed 10 points in its proposed changes and the National Tax and Accountants' Association has also been critical of the BAS and its implementation, see Press Release dated 11 January 2001.
- 6 House of Representatives, *Hansard*, 6 February 2001, p. 23879.
- 7 Economics Legislation Committee, *Hansard*, 24 November 2000, p. 191.
- 8 Transcript of the Prime Minister, Radio Interview with John Miller Radio 4BC, 21 November 2000.
- 9 Kim Beasley and Simon Crean, *Joint Media Statement*, 6 February 2001.
- 10 *ibid.*
- 11 Treasurer, *Press Release*, 22 February 2001.

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