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New Business Tax System (Venture Capital Deficit Tax) Bill 2002

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New Business Tax System (Venture Capital Deficit Tax) Bill 2002

Date Introduced: 12 December 2002

House: House of Representatives

Portfolio: Treasury

Commencement: Schedule 27 to the New Business Tax System (Consolidation and Other Measures) Act (No. 2) 2002 inserts Subdivision 210-A containing the venture capital franking rules. The New Business Tax System (Venture Capital Deficit Tax) Bill 2002 (the Venture Capital Deficit Tax Bill) when enacted will commence at the same time as Schedule 27 and apply to events arising on or after 1 July 2002.

Purpose

The purpose of the Venture Capital Tax Deficit Bill is to impose the venture capital deficit tax.

Background

The *Taxation Laws Amendment (Venture Capital) Act 2002* (the TLA(VC) Act) amends the *Income Tax Assessment Act 1936* (ITAA 1936) and the *Income Tax Assessment Act 1997* (ITAA 1997) to extend the scope of the existing tax exemption for venture capital investment to registered Venture Capital Limited Partnerships (VCLPs) and Australian Venture Capital Funds of Funds (AFOFs). The measures also propose to tax the venture capital manager's share of gains made by a VCLP or an AFOF on the sale of eligible venture capital investments (the carried interest) as a capital gain instead of as income.

The *Venture Capital Act 2002* (the VC Act) provides the administrative measures for the registration and revocation of registration of VCLPs and AFOFs.

Bills Digest No 77 2002-03 [1]dealt with Taxation Laws Amendment (Venture Capital) Bill 2002 and the Venture Capital Bill 2002 which were passed unamended in the House of Representatives and the Senate.

The New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002 (the Consolidation Bill No 2 2002) proposes by Schedule 27 to insert Division 210 to the *Income Tax Assessment Act 1997* (ITAA 1997) to provide for Venture Capital Franking. The purpose of these rules is to encourage venture capital investment in Australia by superannuation funds and other entities that deal with superannuation. This is achieved by giving tax benefits to those entities when they invest in pooled development funds (PDFs), which are vehicles for venture capital investment. The provisions allow resident complying superannuation funds (and like entities) a special tax offset for capital gains tax (CGT) paid by PDFs which enable them to receive venture capital gains free of tax through PDFs.

To trace the CGT paid by PDFs through to their shareholders, the concept of franked dividends applies. The dividends received by eligible superannuation funds (and like entities) will be exempt income. The shareholder will also receive a tax offset for the venture capital credits attached to the dividends which has the effect of exempting from tax the underlying venture capital gain.

The reader is referred to the Explanatory Memorandum [2]on the New Business Tax System (Consolidation and Other Measures) Act (No. 2) 2002 for further details on Schedule 27 to 30 which amends Part 3-6 of the ITAA 97 to insert rules for various aspects of the simplified imputation system including venture capital franking.

Main Provisions

Subdivision 210G of the ITAA 1997 to be inserted by Schedule 27 of the Consolidation Bill No 2 2002 requires that each PDF has a venture capital sub-account in its franking account. In addition this subdivision:

- identifies when venture capital credits and debits arise in the sub-account and the amount of those credits and debits,
- identifies when there is a venture capital surplus or deficit in the sub-account, and
- creates a liability to pay venture capital deficit tax if the account is in deficit at certain times.

Proposed section 4 of the Venture Capital Deficit Tax Bill imposes the venture capital deficit tax.

Proposed section 5 provides that the amount of the tax is equal to:

(a) the amount of the entity's venture capital deficit at the end of the income year, and

(b) where the entity has a venture capital deficit immediately before it ceases to be a PDF the amount of that deficit.

Endnotes

1 Bills Digest No 77 2002-03 on the Venture Capital Bill 2002.

2 Explanatory Memorandum on the New Business Tax System (Consolidation and Other Measures Bill (N0. 2) 2002; Chapter 13.