

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 26 July 1988

TAXATION REFORM BILL (NO. 4)

Proposed Amendments

Hon. T. A. DE CLEENE, in Committee, to move the following amendments:

Clause 3: To insert after line 18 on page 3 the following lines:

(1A) The definition of the term "extra emolument" in section 2 of the principal Act is hereby further amended by inserting, after paragraph (b), the following paragraph:

"(ba) By way of a redundancy payment as defined in section 68 of this Act to the extent that that payment is deemed by section 68 (2A) of this Act to be assessable income."

Clause 6: To omit lines 11 to 17 on page 6, and substitute the following lines:

(a) By omitting from the definitions of the terms "season", "specified sum", and "year of service" in subsection (1) the words "or service" wherever they appear:

(b) By omitting from paragraph (a) of the definition of the term "employment or service" in subsection (1) the word "retired", and substituting the words "received a redundancy payment":

(c) By omitting from paragraph (d) of the definition of the term "employment or service" in subsection (1) the word "retired", and substituting the words "received a redundancy payment":

To insert, after line 25 on page 6, the following lines:

(ea) By repealing subsection (4):

(eb) By inserting in subsection (5), after the word "gratuity", the words "redundancy payment":

(ec) By repealing paragraph (a) of subsection (5):

(ed) By inserting in paragraph (d) of subsection (5), after the word "retirement", the words "or redundancy":

To omit line 28 on page 6.

To insert after line 28 on page 6 the following lines:

(1A) Section 68 of the principal Act (as so amended) is hereby further amended by inserting in subsection (1), after the definition of the term "employment or service", the following definition:

"'Redundancy payment' means a payment, other than a retiring allowance on the occasion of the termination of employment, where—

"(a) In the case of a taxpayer who is an employee and who is not a seasonal worker, the employment is

terminated by the employer, the termination being attributable, wholly or mainly, to the fact that the position filled by that taxpayer is, or will become, superfluous to the needs of the employer; or

“(b) In the case of a taxpayer who is an employee and a seasonal worker, that taxpayer’s usual seasonal employment is made unavailable by the employer, the unavailability being attributable, wholly or mainly, to the fact that the taxpayer’s position or usual position is, or will become, superfluous to the needs of the employer; but does not include—

“(c) Any payment relating to a situation solely involving a seasonal lay-off; or

“(d) Any payment contingent on the completion of either a fixed-term engagement or an engagement to complete work specified in a contract; or

“(e) Any payment in lieu of notice terminating the employment of the taxpayer; or

“(f) Any payment which, if it had not been made upon termination of employment, would, in the opinion of the Commissioner, have been paid so as to constitute monetary remuneration of the employee; or

“(g) Any payment made by a company pursuant to its articles of association to any of its directors.”.

(1AA SECTION 68 1 OF THE PRINCIPAL ACT IS HEREBY AMENDED BY REPEALING PARAGRAPH A OF THE DEFINITION OF THE TERM “SPECIFIED SUM”, AND SUBSTITUTING THE FOLLOWING PARAGRAPHS:

“(a) In any case where the taxpayer has completed 10 years or more of service, an amount equal to the lesser of—

“(i) One-third of the total remuneration of the taxpayer from that employment in respect of the services in that employment in the period of 3 years immediately preceding the date of the redundancy; or

“(ii) \$20,000.

(1AB) Section 68 (1) of the principal Act is hereby further amended by repealing item b in paragraph (b) of the definition of the term “specified sum”, and substituting the following item b:

“b is an amount equal to the lesser of—

“(i) One-third of the total remuneration of the taxpayer from that employment in respect of the services in that employment in the period of 3 years immediately preceding the date of the redundancy; or

“(ii) \$20,000.”.

(1B) Section 68 of the principal Act (as so amended) is hereby further amended by inserting in subsection (1), after the definition of the term “specified sum”, the following definition:

“‘Total remuneration’ means all source deduction payments made by the employer to the taxpayer.”.

(1c) Section 68 of the principal Act (as so amended) is hereby further amended by repealing subsection (2), and substituting the following subsections:

“(2) Subject to this section, where any payment is made in lump sum by way of a bonus, gratuity, or retiring allowance, other than a redundancy payment, in respect of the employment or service of a taxpayer on the termination of that employment or service, that termination being the occasion of the taxpayer’s retirement, the payment shall, notwithstanding section 65 (2) (b) of this Act, be deemed not to be assessable income.

“(2A) Any lump sum redundancy payment shall, notwithstanding section 65 (2) (b) of this Act, be deemed to be assessable income of the taxpayer only to the extent of 5 percent of the specified sum.

(1D) Section 68 of the principal Act (as so amended) is hereby further amended by inserting, after subsection (3), the following subsection:

“(3A) In any case where—

“(a) A taxpayer has retired, or any employment or service has been terminated, and on the occasion of that retirement or termination, a payment of the kind referred to in subsections (2) or (2A) of this section has been made; and

“(b) After that retirement, or the termination of that employment or service, the taxpayer engages in any other employment or service; and

“(c) On the occasion of the termination of that employment a redundancy payment is made,—

for the purposes of subsection (2A) of this section every period of employment that preceded the employment referred to in paragraph (b) of this subsection, and all remuneration in respect of every such period, shall be disregarded in calculating the specified sum, in relation to the termination of the employment referred to in the said paragraph (b).

(1E) Section 12 (2) of the Income Tax Amendment Act (No. 3) 1983 and section 13 (2) (a) of the Income Tax Amendment Act (No. 2) 1985 are hereby consequentially repealed.

Clause 13: To omit from line 2 on page 54 the word “paragraph”, and substitute the words “paragraphs”.

To insert, after line 6 on page 54, the following paragraph:

(dd) Any lump sum redundancy payment to the extent to which it exceeds the specified sum as defined in section 68 of this Act:”.

To omit from line 14 on page 54 the expression “section 68” and substitute the expression “section 68 (2)”.

To insert in line 15 on page 54 after the words “assessable income” the words “or a lump sum redundancy payment as defined in section 68 of this Act, to the extent to which it exceeds the specified sum as defined in section 68 of this Act”.

To omit paragraph (b) in lines 16 to 20 on page 54.

To omit lines 21 and 22 on page 54, and substitute the following lines:

(c) By inserting in paragraph (k), after the expression “section 68”, the words “other than a lump sum retiring allowance which is deemed not to be assessable income in terms of subsection (2) of that section, or a

lump sum redundancy payment as defined in section 68 of this Act, to the extent that it exceeds the amount of the specified sum” as defined in that section.

To insert, after line 22 on page 54, the following lines:

(2A) The definition of the term “fringe benefit” in section 336N(1) of the principal Act is hereby further amended by repealing paragraph (f), and substituting the following paragraph:

“(f) Any benefit provided or granted by a private company to a person who in relation to that private company, is a major shareholder, other than a benefit that is—

“(i) In a lump sum by way of a bonus, gratuity, or retiring allowance which is deemed not to be assessable income in terms of section 68 (2) of this Act; or

“(ii) A lump sum redundancy payment as defined in section 68 of this Act, to the extent to which it exceeds the specified sum as defined in section 68 of this Act”.

To omit from line 29 on page 54 the expression “section 68”, and substitute the expression “section 68 (2)”.

To insert, after line 30 on page 54, the following paragraph:

“(AB) Income that consists of a lump sum redundancy payment to the extent that it exceeds the specified sum as defined in section 68 of this Act; or”

Clause 14: To omit from line 41 on page 54 the expression “section 68”, and substitute the expression “section 68 (2)”.

To insert after line 42 on page 54 the following lines:

“(3D) For the purposes of this Part of this Act, the value of any fringe benefit, being a benefit, that consists of a lump sum redundancy payment, which is deemed not to be assessable income in terms of section 68 (2A) of this Act, paid in any quarter by an employer, shall be the amount by which that payment exceeds the specified sum as defined in section 68.”

Clause 15: To insert in line 6 on page 55, after the expression “paragraph (dc)”, the expression “or paragraph (dd)”.

EXPLANATORY NOTE

These amendments to *clauses 3, 6, 13, 14, and 15* ensure that redundancy payments (as now defined) are treated as assessable income to the extent of 5 percent of the specified sum (with a limit of \$20,000) and other redundancy and all retirement allowances are still liable to fringe benefit tax.