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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAW IMPROVEMENT (SUBSTANTIATION) BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Assistant Treasurer,
the Hon. George Gear, M.P.)

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General Outline and Financial Impact

The Bill will replace the substantiation provisions of the *Income Tax Assessment Act 1936*.

The new provisions will make improvements that may be considered in 3 parts:

- a clear, helpful structure and layout
- plain language in a personable style
- changes to administrative requirements that are unnecessarily complex or out of touch with current commercial reality or normal behaviour.

Changes to structure

The Bill will significantly change the structure and order in which the substantiation law is presented, so that the important requirements of the law are more easily found.

One of the innovations of the Bill is its use of highlighted key principles at the start of each major segment of the Bill. These will give readers a simple entry point.

As well the Bill will make extensive use of navigational aids to identify, and guide readers to, those provisions relevant to them.

Changes to language

The existing law has been completely rewritten in clear, everyday language that tries to anticipate the needs of its readers.

To make readers more comfortable in following the law, the Bill introduces another innovation by addressing the reader personally throughout as 'you'. This will set a tone that is essentially friendly and not bureaucratic.

Greater use is made within the text of examples and notes to provisions.

The Bill is shorter, clearer, simpler and more readable than the present law. Overall, the legislation has been reduced by about half.

Changes to administrative requirements

The main changes proposed by this Bill to make the procedural rules less cumbersome are as follows:

Car expenses: Log book rules

Change: Taxpayers using the log book method to calculate car expense deductions can base their business use percentage on a reasonable estimate in all cases.

Existing law: Taxpayers must use one of 3 different percentages, depending on the circumstances.

Revenue impact: Nil.

Compliance cost impact: The change proposed should reduce compliance costs.

Change: Taxpayers must keep a new log book every 5 years.

Existing law: A new log book must be kept in numerous circumstances, including if the difference between the business use percentage shown by the log book exceeds, by more than 10 percentage points, a reasonable estimate of the business use.

Revenue impact: Nil.

Compliance cost impact: The change will reduce the number of situations in which a new log book must be kept.

Car expenses: Cents per kilometre method

Change: Widen the application of the cents per kilometre method of calculating car expense deductions, so that the maximum deduction (based on 5,000 business kilometres travelled) may be claimed by taxpayers who have travelled more than 5,000 business kilometres.

Existing law: Taxpayers who travel more than 5,000 business kilometres in the year are not entitled to use this method of calculating car expenses deductions.

Revenue impact: Negligible gain or loss.

Compliance cost impact: Compliance costs would be reduced as taxpayers will be able to make a cost benefit decision between:

- maintaining fewer records and claiming a lower deduction; and
- maintaining more records to prove a higher claim.

Car expenses: $300 substantiation threshold exemption

Change: Allow greater access to the $300 substantiation-free threshold by excluding car expenses from the scope of the concession.

Existing law: Work expenses and some car expenses are included within the $300 concession. As car expenses are usually significant, when aggregated with other expenses they often exceed the $300 limit so that both work and car expenses have to be substantiated.

Revenue impact: Up to $10m cost to the revenue, but the real figure is likely to be much less.

Compliance cost impact: A reduction in compliance costs as more expenses should be exempted from the need to be substantiated.

Travel expenses

Change: Standardise the substantiation requirements for travel expenses by:

- removing the need for taxpayers to keep a travel diary for short-term overseas travel;

- requiring business taxpayers to get written evidence of expenses incurred during short-term domestic travel.

Existing law: The need to keep written evidence or travel diaries (or both) varies depending on:

- whether the taxpayer is a salary or wage earner or a business person;

- whether the taxpayer receives an allowance to cover the expenses;

- whether the travel is domestic or international; and

- the duration of the travel.

Revenue impact: Negligible.

Compliance cost impact: Compliance costs for all short-term overseas travel and for those who receive allowances for short-term domestic travel will be reduced. There will be an increase in compliance costs for short-term domestic travel for individuals who carry on businesses.

Work expenses: Laundry expenses

Change: Allow taxpayers to claim up to $150 of deductible laundry expenses without providing receipts.

Existing law: Calculating the deduction requires numerous details to be kept, such as the cost of washing powder, water and electricity per wash, and the number of washes per week.

Revenue impact: A small but unquantifiable cost to the revenue.

Compliance cost impact: Compliance will be significantly easier for the majority of the 3.5m taxpayers (or 45% of those claiming work related deductions) who claim a deduction for laundry expenses.

Written evidence: annotating receipts

Change: Taxpayers will be able to annotate receipts from suppliers if they don't contain sufficient information to identify the nature of the goods or services supplied.

Existing law: Taxpayers are not entitled to annotate receipts which lack any of the detail required by the law. This may result in a loss of a deduction for the expense.

Revenue impact: Unquantifiable, but expected to be a negligible cost to revenue.

Compliance cost impact: Compliance costs will be reduced because legitimate deductions won't be disallowed simply because of the form of the receipt.

Written evidence: independent evidence of payment

Change: Allow a taxpayer to rely on reasonable, independent evidence of payment of an expense if the evidence provided by a supplier does not show when the expense was incurred.

Existing law: The supplier's written evidence must show when the expense is incurred. If it does not, a deduction for the expense may not be allowed.

Revenue impact: Nil.

Compliance cost impact: It will be easier to comply.

Signing

Change: Remove the need to sign log books, expense diaries and other records.

Existing law: Taxpayers must sign each entry in a log book, odometer records and each record of an expense in a diary.

Revenue impact: Nil.

Compliance cost impact: Compliance will be easier.

Record retention

Change: Adopt a standard record retention period, for all taxpayers, of five years.

Existing law: Individual business persons must keep records of car and travel expenses for seven years. Salary or wage earners must keep records of work expenses for three and a half years. The general record keeping requirement imposed on a business is five years.

Revenue impact: Nil.

Compliance cost impact: Business taxpayers will have a two year reduction in the period they need to keep their records. Wage or salary earners will have to keep them for an additional eighteen months.

Date of effect

So that the benefits of the improvements will be available to taxpayers in the 1994-95 income year, all of the changes in the Bill will apply to expenses incurred on or after 1 July 1994. However, a special saving provision will apply for the 1994-5 income year to ensure that any taxpayer who would be better off under the existing law can continue to get the benefit of that law.

Proposal announced

These changes have not been formally announced by the Government, but the majority of the changes were discussed in the Tax Law Improvement Project paper *Substantiation - Exposure Draft No. 1 August 1994.*

Financial impact

None of the proposed changes should have any measurable revenue impact, except for the proposal which effectively widens the scope of the $300 substantiation exception. This could result in a cost to the revenue of up to $10m per annum, but the real figure is likely to be significantly less.

Compliance cost impact

Compliance with the legislation should improve as the legislation is now simpler, clearer and more certain. Compliance costs should be reduced.

Chapter 1

About the Tax Law Improvement Project

- Background to the project
- Changes to be made by the new law
- Substantiation
- Key Principles Statements
- New numbering system

About the Tax Law Improvement Project

Background to the project

The reasons for the project

For many years, the income tax law has been criticised for being too difficult to read and understand.

The structure of the *Income Tax Assessment Act 1936* (the ITAA), which contains most of the basic rights and obligations of Australia's income tax system, has become overgrown and obscured by the addition of new material over the years.

A very formal and detailed style of language used in the law also makes its true meaning hard to find.

Setting up the Tax Law Improvement Project

In November 1993, the Joint Committee of Public Accounts published a report recommending the setting up of a broadly based Task Force to rewrite the income tax law. In the following month, the Government announced the Tax Law Improvement Project.

Scope of the project

This project will completely rewrite the income tax legislation. In the process, it will develop a better structure and arrangement for the law as well as re-expressing it in language that can be more easily understood by its readers.

The project will reduce excessive compliance costs to taxpayers brought about because of the present state of expression and presentation. It will focus on legislative or administrative rules that are overly complex, unnecessary or out of step with today's reality. The project is not about reforming the tax system or reviewing tax policy.

Composition of the project team

The project team includes personnel from the Australian Taxation Office, the Treasury, the Office of Parliamentary Counsel and 2 private sector representatives. A 14 person Consultative Committee from the private sector advises on the project.

Timing

The project runs for three years from 1 July 1994.

Changes to be made by the new law

The changes of substance proposed by this Bill are discussed in Chapter 3. In addition the substantiation provisions are being completely re-expressed.

The firm intention is that, once new law is enacted, taxpayers will not need to revisit the existing law.

When introducing new law, every effort will be made to identify in advance all significant changes proposed to the existing law.

It will be inevitable, in moving from the complex expression of the existing law, that its new form and expression may give rise to interpretations arguably different to those that would have been placed on the existing law. While such differences may be open, the new law is to be given effect according to its terms. The replaced law will be relevant to that interpretation only to the extent that judicial pronouncements (and Commissioner rulings) have been made on expressions carried forward into new law.

Similarly, the old law must also be interpreted according to its terms for periods to which it applies. If the new law were to produce a result that differs from the existing law, that would not be a ground for re-interpreting the existing law.

Location of changes

The redrafted substantiation provisions have been developed as something of a legislative model for how new income tax law should be drafted. They will be inserted into the existing *Income Tax Assessment Act 1936* and will remain there until they can be transferred to the new income tax law framework currently being developed by the project and which is expected to replace that Act.

As the rewritten substantiation provisions are very different in their expression, structure and numbering, they are being inserted as new Schedules to the *Income Tax Assessment Act 1936.* This is designed to prevent any potential confusion.

The existing substantiation provisions will not be repealed. They will remain on the statute books but will cease to have application after the new provisions commence to apply.

Key Principles Statements

Effective communication by using plain English is critically important to help readers more easily understand and follow the law. The Tax Law Improvement Project is also proposing a suite of supportive design techniques to lead readers through the legislative text to readily locate and absorb what they need to know.

One new design feature is to state up-front the 'key principles' of an area of the law. Use of key principles statements is adopted in the rewrite of the substantiation rules.

Even where clearly expressed, tax law can be difficult to grasp - not least because of its subject matter. The use of key principles at introductory points in the text allows the reader to get an early foothold towards understanding - a kind of navigational touchstone.

Key principles give a broad picture of the area of law they deal with and set a framework from which to understand and identify the detailed rules.

A well constructed set of linked key principles statements can also provide an easy path for a reader who needs to reach a broad overview of connected areas of law. The reader can then work into the detail with an overall feel for the subject.

At this early stage in rewriting the law flexibility is needed about how key principles should be constructed. This will allow their design to be tailored best to readers' needs within the particular contexts of the law to which they relate.

In an important sense they establish the general themes. In many cases key principles statements may be something of a broad summary of the detailed rules, but this will not always be so. Even when it does serve as a summary, a key principle cannot purport to be exhaustive. It cannot hold all the detail, but that does not lessen its usefulness. Nor is it some kind of golden rule that transcends everything that follows in the detailed provisions. It sets the scene and for that reason comes first, but does not have prime order of importance.

Key principles statements are not in any sense to replace or transcend the detailed provisions, which retain fully the legislative task assigned to them. The two are complementary, and have equal status as part of the law.

New numbering system

The rewritten substantiation provisions contained in this Bill employ an entirely new numbering system. The system has been developed as a more robust response to the pressures on the existing numbering system. Frequent amendments of the existing law have led to the insertion of sections with numbers such as 159ZZZZB.

The new system adopts the approach of citing:

- *first,* the number of the Division of the Act in which the section is located; and

- *second,* the number of the section within that Division. Under the new law, it is proposed that each Division will be numbered separately.

Thus, the first section of a new Division 23 of the Act would be cited as section 23-1. Similarly, the fifth section of a new Division 49 would be cited as section 49-5.

Chapter 2

Summary of new substantiation rules

- Meaning of terms used in the summary
- New rules for deducting car expenses
- New substantiation rules

This chapter shows how the substantiation law, as proposed to be amended by this Bill, would apply.

Meaning of some terms used in the summary

Award transport payment is an amount your employer pays you, for travel in the course of your work, as an allowance for transport expenses (other than food, drink, accommodation or incidental expenses) or a reimbursement of car expenses. Payment must be made under an industrial instrument that was in force on 29 October 1986.

Business kilometres are the kilometres a car travelled in the course of producing your assessable income. You calculate them by making a reasonable estimate.

Business travel expenses are expenses you incur on travel away from your ordinary residence for more than 1 night, in the course of producing your assessable income.

Car is a short hand expression for a motor vehicle (including a four-wheel drive vehicle) that is:

- a motor car, station wagon, panel van, utility truck or similar vehicle (but not a panel van or utility truck designed to carry a load of 1 tonne or more); or
- any road vehicle designed to carry less than 1 tonne or fewer than nine passengers.

The term excludes:

- a motor cycle or similar vehicle;
- a taxi taken on hire; and
- a motor vehicle hired under an agreement of a kind ordinarily entered into by people who take motor vehicles on hire on a short-term basis. However, such a vehicle will be included if there has been, or it is reasonable to expect there will be, successive agreements resulting in substantial continuity of hiring.

Car expenses are expenses to do with a car. They specifically include operating expenses and depreciation.

They do not include:

- an expense on travel outside Australia; or
- a taxi fare or similar expense.

Laundry expenses are work expenses to do with washing, drying or ironing clothes (but not dry cleaning).

Overtime meal allowance expenses are expenses you incur for food or drink that is covered by an allowance your employer pays you for overtime that you work.

Travel allowance expenses are expenses you incur for travel away from your ordinary residence in the course of producing your salary or wages. The travel must be covered by a travel allowance paid by your employer for accommodation, food, drink or incidental travel expenses.

Work expenses are expenses you incur in producing your salary or wages. They include travel allowance and meal allowance expenses, depreciation and election expenses of candidates for Parliament or local government. Work expenses do not include expenses to do with a motor vehicle (including a 4-wheel drive), unless the expenses were for travel outside Australia or taxi fares (or similar expenses).

Summary of new rules for deducting car expenses

The general rule is ☞

You must use one of 4 methods to calculate deductions for car expenses, unless an exception applies.

The methods are:

1. cents per kilometre
2. 12% of original value
3. one-third of actual expenses
4. log book.

The rule applies to ☞

Taxpayers who own or lease a car and who are:

- individual taxpayers (but not trustees); or
- any partnership that includes an individual taxpayer.

Method 1: Cents per kilometre

How is the deduction calculated?

Multiply:
- the car's business kilometres (but only up to 5,000);

by
- the number of cents allowed for your car's engine capacity.

When can you use Method 1?

Anytime.

Do you have to substantiate?

No.

Method 2: 12% of original value

How is the deduction calculated?

- Deduct 12% of your car's value. But you must reduce it proportionately for every day in the income year that you don't own or lease the car.
- The value is the cost of the car when you acquired it, if you own it, or its market value when you began to lease it.
- You can't deduct more than the motor vehicle depreciation limit for the year when you first used the car (if you own it) or began to lease it.

When can you use Method 2?

If the car's business kilometres exceed 5,000 or would have if you had used the car throughout the income year.

Do you have to substantiate?

No.

Method 3: One-third of actual expenses

How is the deduction calculated?	Deduct one-third of any expense on the car that qualifies as a deduction, or would qualify if you had used the car only to produce assessable income throughout the income year.
When can you use Method 3?	If the car's business kilometres exceed 5,000, or would have if you had used the car throughout the income year.
Do you have to substantiate?	Yes.

Method 4: Log Book

How is the deduction calculated?	Multiply: • any car expenses that qualify as deductions (or would if you used the car only to produce assessable income while you held it). by • a reasonable estimate of business kilometres the car travelled in a year, expressed as a percentage of total kilometres (the *business use percentage*). The reasonable estimate must take into account your log book, odometer records, changes in the number of cars you use or their pattern of use and anything else that is relevant.
When can you use Method 4?	If you have kept: • a log book for the car, and it is still operative; and • odometer records for the period you held the car in the year.
Do you have to substantiate?	Yes.
What is a log book?	It is a written record of your business use of a car over a period of at least 12 continuous weeks. But, if you own or lease a car for less than 12 weeks, you only need to keep the log book for that shorter period.
When must you keep a log book?	• In the first year you claim a deduction for your car using this method (although the 12 week log book period can overlap into the next year). • In any year you get an additional car for which you also want to use the log book method. • If the Commissioner gives you a written direction to keep a log book, in the year after you receive the direction. • In every fifth year after the last log book was kept.
Why must you keep a log book?	To establish a proper basis for calculating a reasonable estimate of business use.

What do you need to record in a log book?

You should record, in English:

1. when the log book period began and ended;
2. the car's odometer recordings at those times;
3. how many kilometres the car travelled in the period;
4. if you make a journey in the course of producing your assessable income, the day it began and the day it ended;
5. the odometer recordings at the start and end of a journey;
6. how many kilometres the car travelled on the journey;
7. why the journey was made.
8. how many kilometres the car travelled during the period on all journeys in 4, and also expressed as a percentage of the kilometres in 3.

What do you need to include in odometer records?

These details of the car:

- the make, model and registration number of the car;
- if it has an internal combustion engine, its engine capacity expressed in cubic centimetres;
- if you have nominated another car to replace the car, the same details are required of the replacement car.

These details of the period you held the car in the income year:

- the odometer readings at the start and end of the period;
- if you have nominated another car to replace the car from a specified day, the odometer readings for both cars at the end of that day.

How long must you retain your log book?

For 5 years, from the due date for lodging your return (or the date you lodge it, if that is later) for the last year you rely on the log book in calculating the business use percentage.

However, if you have a dispute with the Commissioner that is:

- an objection (or a review or appeal arising from one); or
- a request for amendment of an assessment;

then you must keep it until the dispute is resolved.

How long must you retain your odometer records?

If you keep a log book for the income year, you must retain them for the same period as for the log book.

If you don't keep a log book for the year, you must retain them for the same period required for written evidence under the substantiation rules.

What if you replace your car?

You can treat a replacement car as if it were the original (and not keep a new log book) provided you record in writing:

- the date of replacement;
- the make, model and any registration number of each car.

Exceptions

What is the rule?

If you are covered by an exception to the car expenses rules, you can calculate your deductions under normal principles, for example sections 51 (General deductions) and 54 (Depreciation), or use one of the 4 methods.

To qualify for exception, your car must be of the type described in column 1 and satisfy the circumstances in column 2 at the time in column 3.

1. Type of car	2. Details of exempt circumstances	3. When circumstances must be satisfied
Any type	You provide the car for the exclusive use of your employees or relatives and any of them was entitled to use it for private purposes.	Whenever the car is used in the income year.
Any type	You hire or lease the car in the course of carrying on a business of hiring or leasing cars.	Whenever the car is used in the income year.
Any type	During the period when you owned or leased a car for use in producing your assessable income: • you used it principally for that purpose; and • it was unregistered.	Whenever the car is used in the income year.
Any type	The car was part of the trading stock of a business you carried on, and you used it in the course of that business.	Whenever the car is used in the income year.
• Panel van • Utility truck • Taxi • Any road vehicle designed to carry less than 1 tonne, but not a vehicle designed to carry passengers	You use the car only: (a) for travel in the course of producing your assessable income; and/or (b) for travel that is incidental to (a); and/or (c) for travel between your residence and where you use the car for the purpose in (a); and/or (d) by giving it to someone else for travel by them between their residence and where the car is used for the purpose in (a); and/or (e) for private travel by you or someone else that was minor, infrequent and irregular.	Whenever the car is used in the income year.
Any type	The car is unregistered and you use it principally in producing your assessable income.	Whenever the car is used in the period you held it.
Any type	(a) the car is trading stock of your business of selling cars; and (b) you didn't use the car.	(a) at some time in the income year. (b) at any time in the year.
Any type	The expense is to do with repairs or other work on the car and you incurred it in your business of doing repairs or other work on cars.	Any time

Summary of the new substantiation rules

Substantiation affects ☞

- Individual taxpayers (but not trustees).
- Any partnership that includes an individual taxpayer.

The general rules are ☞

Written evidence

You must get written evidence of:

- work expenses
- business travel expenses
- car expenses (other than fuel and oil expenses), if they are calculated using the 'one-third of actual expenses' method or the 'log book' method.

Odometer records

You must keep odometer records for car expenses if you use the 'one-third of actual expenses' method, the expense is for fuel and oil and you don't get written evidence of it.

Travel Diaries

You must keep a travel diary if you are away from your ordinary residence for 6 or more nights in a row.

Substantiation is not needed for ☞

- Work expenses that total $300 or less (you count laundry expenses but not travel or meal allowance expenses or expenses covered by an award transport payment).
- Laundry expenses, if they total $150 or less.
- An expense on a motor vehicle that is not a car (eg. a motor cycle) or is not owned or leased (eg. a borrowed car), unless it is a taxi fare or similar expense or an expense incurred in travel outside Australia.
- Expenses covered by an award transport payment, if you don't claim more than the amount payable on 29 October 1986.
- Overtime meal allowance expenses covered by an allowance payable under an Australian law, if the Commissioner considers the amount you claim is reasonable.
- Expenses covered by a travel allowance, if the Commissioner considers the amount you claim is reasonable having regard to expenses it would be reasonable to incur for travel:

    in Australia: on accommodation, food, drink or incidental travel expenses;

    overseas: on food, drink or incidental travel expenses (but you must still keep travel records).

Travel records are not needed for ☞

- Travel allowance expenses covered by, and not more than, a travel allowance for travel principally overseas, if the expenses are incurred by an aircraft crew member.

You must get this written evidence ☞

Depreciation expenses

A document from the supplier of the property setting out:

- the name (or business name) of the supplier;
- the cost of the property to you;
- the nature of the property;
- the day you acquired the property;
- the date of the document.

Expenses other than depreciation

A document from the supplier of goods or services setting out:

- the name (or business name) of the supplier;
- the amount of the expense, in the currency incurred;
- the nature of the goods or services;
- the day the expense was incurred;
- the date of the document.

Adding additional information later

If a document from your supplier does not show the nature of the property, goods or services, then you can add that information yourself.

Independent evidence of date of expense

If your supplier's document does not show the day the expense was incurred, then you can use a bank statement or other reasonable, independent evidence to show when it was paid.

Keeping your own record of small expenses or expenses too hard to substantiate

You can make your own record of expenses, and not get written evidence from a supplier, if:

- each expense you want to deduct is $10 or less and all of them total $200 or less; or
- the Commissioner considers it unreasonable to expect you to get a document from the supplier.

Group Certificates

You can use your group certificate as written evidence of a work expense if it shows the nature and amount of the expense (or the total of expenses of the same nature).

You need to keep these travel records ☞

You should record, in a diary or similar document, details of your activities during travel in the course of producing your assessable income. If you don't, the activities can't be taken into account in apportioning your travel expenses.

The details you must record are:

- the nature of the travel activity;
- the day and approximate time it began;
- how long it lasted;
- where you engaged in it.

When must you get your evidence?

Written evidence

You must have all your written evidence when lodging your tax return. If not, you can't claim a deduction. But you can amend that return (or your assessment) if you get the evidence later.

Exception 1: If you expect to get evidence within a reasonable time.

If you don't have written evidence when you lodge your return, but have good reason to expect to get it within a reasonable time, you can still claim the deduction. However, the deduction may be disallowed if you don't get the evidence.

Exception 2: Evidence of small expenses or expenses too hard to substantiate.

If you keep your own record of small expenses, or expenses that are too hard to substantiate, you must enter details of an expense as soon as possible after you incur it. However, for a depreciation expense, you must enter it as soon as possible after the end of the income year.

Odometer records

You must enter details of *any period* covered by odometer records as soon as possible after the start or end of a period or after the end of the specified day for a replacement car.

You must enter details of *any car* covered by the odometer records before you lodge your tax return. However, the Commissioner may allow you to make the entry later.

Travel records

You must enter details of a travel activity as soon as possible after it ends.

Documents must be in English

As a general rule, documents must be in English. There are 2 exceptions for written evidence from a supplier:

- evidence of a depreciation expense can be in a language of the country from which the property was exported;
- evidence of any other expense can be in a language of the country where the expense was incurred.

Documents must be retained for at least 5 years

You must keep a document for 5 years, from the due date for lodgment of your return (or when you lodge it, if that is later). However, if you have a dispute with the Commissioner that is:

- an objection (or a review or appeal arising from one); or
- a request for amendment of an assessment;

then you must keep it until the dispute is resolved.

Commissioner may require you to produce documents

The Commissioner may give you written notice telling you to produce, within 28 days (or more), any record you must keep. If so, you must also produce a summary that, for each expense for which you are required to keep written evidence:

- notes the expense, cross references it to the evidence and summarises its particulars; and
- shows the amount of every expense in Australian currency (even if the expense was in a foreign currency).

Relief if you fail to substantiate

You can still deduct an expense if:

- the Commissioner is satisfied that you incurred it and that you are entitled to deduct the amount you claim; or
- you failed to substantiate only because you had a reasonable expectation that it would not be necessary.

What if your documents are lost or destroyed?

A complete copy can substitute for the original document.

Otherwise, if the Commissioner is satisfied you took reasonable precautions to prevent the loss or destruction:

- your deduction is not affected if the document was not *written evidence* (eg. it was a travel diary or log book);
- if the document was written evidence, you must try to get a substitute document with the same information. If it is not reasonably possible to do that, then your deduction is not affected.

Chapter 3

Detailed discussion of changes

- How this Bill is structured
- New rules for calculating car expense deductions
- New rules for substantiation
- Consequential amendments
- Impact of changes
- Date of effect of the new laws

This chapter discusses the changes proposed by the Bill on a section-by-section basis.

Only those sections which include a substantive change are discussed.

How this Bill is structured

The Bill has only five clauses

Clause 1 Short title

The Bill, when enacted, will be known as the *Tax Law Improvement (Substantiation) Act 1994*.

Clause 2 Commencement

The new Act will come into operation on the day it receives the Royal Assent.

Clause 3 Amendments of the *Income Tax Assessment Act 1936*

Schedule 1 to the Bill will insert two new Schedules in the Income Tax Assessment Act. They will contain the main provisions of the new law.

New ***Schedule 2A*** to the Act has rules for calculating how much you can deduct for car expenses.	New ***Schedule 2B*** to the Act has rules about how you substantiate certain expenses.

Schedule 2 to the Bill will:

- make consequential amendments of the Act that are necessary because of the changes in Schedule 1; and
- tell you when the new law will replace the old law.

Clause 4 Amendments of the Income Tax Regulations

Schedule 3 to the Bill will make minor consequential amendments of the Regulations that are necessary because of the changes in Schedule 1.

Clause 5 Amendments of the *Fringe Benefits Tax Assessment Act 1986*

Schedule 4 to the Bill will make minor consequential amendments of the Act that are necessary because of the changes in Schedule 1.

New rules for calculating car expense deductions

Schedule 2A Calculating car expense deductions

This Schedule tells you how to calculate a deduction for car expenses.

Change

The Bill will separate the car expenses provisions from the substantiation provisions and place each of them in a schedule of their own.

Explanation

The substantiation provisions of the existing law serve 2 functions:

- first, they tell you the records you need to keep to claim a deduction for your expenses;
- second, for car expenses, they tell you the methods you must use to calculate how much you can claim as a deduction.

Substantiation is really only about the first function. The provisions dealing with car expenses cover matters unrelated to that.

Moreover, if you use the 'cents per kilometre' or '12% of original value' method, no substantiation of car expenses is required.

The differences outlined above made it impractical to rewrite the substantiation provisions as one subject matter. On balance, separating the provisions seemed preferable.

Section 1-2 Application

This section tells you to which taxpayers the car expenses Schedule applies.

Change

The section will clarify that partnerships which include natural persons must substantiate car expenses.

Explanation

Under the existing law, the car expenses provisions specifically apply to taxpayers other than companies and trustees. However, there is some confusion about whether a partnership must substantiate its car expenses, particularly if the partnership includes a company or trustee.

The view of the Commissioner has been that partnerships are subject to the substantiation provisions (including the car expenses provisions). However, if all of the partners were companies, the partnership would not incur private car expenses - and would not be subject to substantiation.

Section 2-1 Choosing among the 4 methods

This section tells you how, and when, you can choose to use one of the methods for calculating car expense deductions.

Change

The section will allow you to change your choice of method at any time.

Explanation

The existing law, which predates the introduction of the self-assessment system, requires you to make a formal election if you chose not to use the 'log book' method. If the Commissioner disallows any part of a deduction claimed using the 'log book' method, then you will be allowed the highest deduction you could otherwise have claimed using one of the other 3 methods.

To reflect the change to a self-assessment system, the provisions will allow you to change the method of deduction you have used for the income year. This can be done regardless of:

- whether the Commissioner has disallowed any car expense; and
- the method of deduction used to calculate the car expense.

Division 3 The 'cents per kilometre' method

This Division tells you how to use the 'cents per kilometre' method of calculating car deductions.

1. Change

The Division will widen access to the 'cents per kilometre' method by removing the requirement that, if you lease a car, you must hold the car under a lease whose term is for at least 12 months.

Explanation

Under the existing law, the car expenses rules apply only if you own or lease the car.

In order to use:

- the 'cents per kilometre' method;
- the '12% of original value' method; or
- the 'one-third of actual expenses' method;

you must, if you are leasing the car, also hold it under a lease whose term is for at least 12 months. If you don't, you must use the 'log book' method to calculate your deduction for car expenses. The 'log book' method has more onerous record keeping requirements than the other 3 methods.

There is no reason to retain this restriction. It will be removed from all of the methods in which it currently applies. Note, however, that if your expense is incurred on a car which you hire on a short-term lease, then the car expenses cannot be calculated under the car expenses Schedule.

2. Change

The Bill will widen access to the 'cents per kilometre' method by omitting the requirement that you must have incurred all of the expenses yourself.

Explanation

The existing law contains an anti-avoidance provision designed to limit the circumstances in which the 'cents per kilometre' method and the '12% of original value' method can be used where two or more people claim deductions for expenses on the same car. However, as drafted, the provision has a potential application in commonly encountered and genuine situations.

It would be extremely difficult to redraft the provision so that it applied only to avoidance arrangements.

The provision has been omitted.

Section 3-2 How to calculate your deduction

This section tells you how to calculate a deduction for car expenses using the 'cents per kilometre' method.

1. Change

This section will widen access to the 'cents per kilometre' method so that you can use it even if you have travelled more than 5,000 business kilometres. However, you will not be able to claim for more than 5,000 business kilometres of travel.

Explanation

Under the current law, the 'cents per kilometre' method is available only if you have travelled 5,000 kilometres or less in earning your assessable income. If you use this method you don't have to substantiate your expenses.

The 'cents per kilometre' method is the most frequently used of the 4 car expense deduction methods. It is proposed to extend the method so that it will be available to taxpayers who have travelled more than 5,000 business kilometres but who are prepared only to claim a maximum of 5,000 kilometres. Some taxpayers wish to make a cost benefit decision, claiming a lower deduction as a trade-off for reduced record keeping requirements.

2. Change

The section will clarify that a taxpayer must determine the number of business kilometres travelled by making a reasonable estimate of them.

Explanation

When using the 'cents per kilometre' method, you need to know the number of kilometres you travelled in the car in the course of producing your assessable income (known as *business kilometres*). The existing law does not tell you how to calculate the number of business kilometres you travelled, although the Explanatory Memorandum accompanying the original legislation indicated that a detailed and reasonable estimate was required.

The proposed change will state that a reasonable estimate must be made.

A similar change is proposed in sections 4-3 (which will tell you how to use the '12% of original value' method) and section 5-3 (which will tell you how to use the 'one-third of actual expenses' method).

Division 4 The '12% of original value' method

This Division tells you how to use the '12% of original value' method of calculating car deductions.

1. Change

The section will widen access to the '12% of original value' method by removing the requirement that, if you lease a car, you must hold it under a lease whose term is for at least 12 months.

2. Change

The section will widen access to the '12% of original value' method by removing the requirement that you must have incurred all of the expenses yourself.

Explanation

These changes are explained in the notes on Division 3.

Section 4-2 How to calculate your deduction

This section tells you how to calculate a deduction for car expenses using the '12% of original value' method.

Change

The section will clarify that a taxpayer must determine the number of business kilometres travelled by making a reasonable estimate of them.

Explanation

These changes are explained in the notes on section 3-2.

Division 5 The 'one-third of actual expenses' method

This Division tells you how to use the 'one-third of actual expenses' method of calculating car deductions.

Change

The section will widen access to the 'one-third of actual expenses' method by removing the requirement that, if you lease a car, you must hold it under a lease whose term is for at least 12 months.

Explanation

These changes are explained in the notes on Division 3.

Section 5-2 How to calculate your deduction

This section tells you how to calculate a deduction for car expenses using the 'one-third of actual expenses' method.

Change

The section will clarify that you must determine the number of business kilometres travelled by making a reasonable estimate of them.

Explanation

These changes are explained in the notes on section 3-2.

Division 6 The 'log book' method

This Division tells you how to use the 'log book' method of calculating car deductions.

Change

The Division will reduce the complexity of the 'log book' method by allowing you, in all cases, to base your business use percentage on a reasonable estimate of the number of kilometres the car travelled during the year in the course of producing your assessable income.

Explanation

Under the existing law, to calculate a deduction for car expenses using the 'log book' method you multiply your car expenses by a percentage which approximates the extent to which the car is used to produce assessable income.

The percentage which must be used varies, depending on a number of circumstances. The rules are so complicated that few taxpayers can follow them.

The proposed new rules are simple, but flexible enough to cater for changing circumstances of use. A key aim has been to isolate a single percentage applicable in all cases rather than, as under the existing law, to identify several from which the taxpayer must make the correct selection.

Under the new rules, the keeping of the log book is still a precondition to using the method. However, as a log book generally only covers a 12 week period, its significance is as a guide for estimating business use over the whole period throughout the income year that you held the car.

The approach proposed by this Bill differs from that contained in the *Substantiation - Exposure Draft No. 1 of August 1994*. In that draft, the log book percentage was to be used in all cases. However, during consultation it became apparent the approach would cause uncertainty about when to keep a new log book as well as requiring a new log book to be kept more frequently than is necessary.

Section 7-2 Income years for which you need to keep a log book

This section tells you when you need to keep a log book.

Change

The section will omit a number of the situations when you must keep a new log book. It will replace them with a single requirement that you must keep a new log book every five years.

Explanation

Broadly, the existing law requires you to keep a new log book if:

- a reasonable estimate of the business percentage is 10 percentage points or more lower than the log book percentage; or
- you used a different method for claiming your car deductions in the previous year; or
- you began to use the car to produce assessable income less than 12 weeks before the end of the previous year; or
- your car expenses claim was reduced by the Commissioner in the previous year.

The new law will replace these requirements with a single requirement that you must keep a new log book every 5 years.

The only other circumstances in which you will need to keep a new log book will be if the Commissioner directs you to or if you increase the number of cars using the 'log book' method. These 2 requirements are in the existing law.

Section 7-3 Choosing the 12 week period for a log book

This section will tell you when a log book period must start (if appropriate) and how long you must keep it.

Change

The Bill will omit the restriction on keeping a log book which overlaps two income years.

Explanation

Under the existing law a log book period must begin and end in the same income year. However, taxpayers often acquire new business cars at the end of an income year and immediately start to keep a log book that overlaps into the next income year - with the result that they cannot use that log book.

This is an unnecessary restriction and should be removed.

Section 7-4 How to keep a log book

This section tells you the details you need to enter in a log book.

1. Change

The section will omit the requirements that you:

- sign every entry in a log book of a business journey;
- record the name of the driver for each journey;
- record the name of the person who made the entry; and
- record the day when the entry was made.

Explanation

These unnecessary requirements will be removed. Similar requirements will be removed from subsection 7-4(4) and from odometer records in section 8-2.

2. Change

The section will omit the Commissioner's discretion to allow a person to use the log book method without keeping a log book.

Explanation

In practice, this discretion is rarely, if ever, exercised.

3. Change

The section will omit a specific anti-avoidance provision applying to taxpayers who re-acquire cars which they had previously owned or leased.

Explanation

Under the existing law, section 82KTK prevents a taxpayer from relying on log book records kept in an earlier period as the basis for entitlement to car expense deductions where a car previously owned or leased by the taxpayer has been re-acquired.

With the adoption of the new log book rules proposed by this Bill, the provision is no longer necessary.

Section 10-2 Exception for particular cars used in particular ways
Section 10-3 Further miscellaneous exceptions

These sections identify the circumstances in which certain cars will be exempt from the requirements of the car expenses Schedule.

1. Change

The Bill will clarify that expenses for cars that are exempted from the requirements of the car expenses Schedule may still be calculated using one of the 4 methods in the Schedule or, instead, under the normal rules governing deductions.

Explanation

The existing law is unclear about the consequences of owning or leasing a car that is exempt from the requirements of the car expenses Schedule.

The normal deduction rules governing deductions are sections such as sections 51, 54 etc.

2. Change

The Bill will extend the exemption of certain commercial vehicles used only in work-related travel, to ignore private travel that is minor, infrequent *and* irregular.

Explanation

The existing law exempts car expenses to do with taxis, panel vans, utilities and other commercial vehicles, provided that any private use of the car consists solely of work-related travel. This essentially means travel to and from work.

The benefit of this exemption would be lost in situations of very minor and infrequent use of a motor vehicle for other private purposes. An example would be the occasional use of a vehicle to remove the owner's domestic rubbish.

Section 11-1 Definition of 'car'

This section tells you the meaning of the term 'car' in the car expenses Schedule.

Change

The section will amend the definition of 'car' to exclude a panel van or utility truck designed to carry loads of 1 tonne or more.

Explanation

A Board of Review decision has the effect of including, in the definition of 'car' in this Schedule, a panel van or utility truck that is designed to carry loads of 1 tonne or more. Vehicles of this kind are more likely to be used primarily for commercial purposes and should not be subject to the provisions of the car expenses Schedule.

The amendment will ensure that, if your expense relates to a panel van or utility truck of this kind:

- the expense will not be subject to the substantiation rules in new Schedule 2B of the Bill; and
- you cannot calculate your deduction using a method in this Schedule.

Section 11-4 Definition of 'owning a car'

The section tells you the meaning of the term 'owning a car', when it is used in the car expenses Schedule.

Change

The section will treat you as owning a car if you hire the car under a hire-purchase agreement.

Explanation

In a recent decision of the Administrative Appeals Tribunal, *Case 49/94 ATC 429, (1994) 29 ATR*, a person who hired a car under a hire-purchase arrangement was treated as being neither the owner nor the lessee of the car. It had been the Commissioner's practice throughout the Income Tax Assessment Act to treat the hirer under such an agreement as the owner.

New rules for substantiation

Schedule 2B Substantiation rules

Section 1-2 Application

This section tells you to which taxpayers the substantiation rules Schedule applies.

Change

The section will clarify that partnerships which include natural persons must substantiate travel expenses.

Explanation

This change has been explained in the note to section 1-2 in proposed new Schedule 2A.

Section 2-2 Meaning of 'work expense'

This section tells you the meaning of 'work expenses', which must be substantiated under this Schedule.

Change

The section will omit the requirement to substantiate expenses on a motor vehicle which are not subject to the requirements of Schedule 2A.

Explanation

Under the existing law, some motor vehicle expenses don't qualify as *car expenses* (and, consequently, deductions cannot be calculated using one of the 4 statutory methods described in the notes to Schedule 2A of this Memorandum). However, they may fall within the definition of work expenses and must then be substantiated.

These expenses are usually on motor cycles or cars taken on short-term hire.

Some taxpayers may not realise that an expense which falls outside the car expenses schedule may still need to be substantiated. Alternatively, a taxpayer who incorrectly uses the 'cents per kilometre' or '12% of original value' method for what are really work expenses will be under a misapprehension that substantiation is not required. This could lead to the loss of all deductions for the expenses.

In order to avoid this confusion, the Bill will not require expenses on motor vehicles to be substantiated unless they are car expenses covered by Schedule 2A.

The only exceptions to this change will be:

- expenses incurred on motor vehicles used in producing your salary or wages outside Australia; and
- a taxi fare or similar expense.

Section 2-3 Getting written evidence

This section tells you that to deduct a work expense you need to get written evidence and, if your expense is for certain travel, to keep travel records.

Change

The section will remove the requirement that you must keep a travel diary:

- for short-term overseas travel; and
- for all short-term domestic travel covered by a travel allowance.

Explanation

The change will make the rules about keeping travel records the same for all short-term travel.

Section 2-5 Exception for small total of expenses

This section tells you about an exception to the requirement to substantiate that is available if the work expenses you want to deduct total $300 or less.

Change

The section will effectively widen access to the exception by excluding car expenses from the expenses that must be aggregated to determine if they exceed the $300 limit.

Explanation

The existing law frees you from the requirement to substantiate if the work expenses, and some car expenses you want to claim don't total more than $300.

The Bill will exclude car expenses from the exception, for 2 reasons:

- first, taxpayers often cannot take advantage of this exception because their car expenses, when added to their work expenses, take them over the limit.

By excluding car expenses, it should allow more taxpayers to take advantage of the $300 limit.

- second, to remove the inconsistency of the existing law which excludes from the $300 limit car expenses where you use the 'cents per kilometre' method and the '12% of original value' method, but not where you use the 'log book' or 'one-third of actual expenses' method.

Section 2-6 Exception for laundry expenses below a certain limit

This section tells you about an exception to the requirement to substantiate work expenses for certain of your laundry expenses.

Change

The section will allow you to deduct up to $150 of your laundry expenses without getting written evidence of them.

Explanation

The existing law requires you to substantiate all of your domestic laundry expenses. This means:

- you must keep receipts for your electricity, water, washing powder and other costs; and
- you must calculate how much each wash costs and how many washes per year involve the washing of deductible clothing.

These requirements are onerous for the 3.5 million taxpayers who claim laundry expenses for deductible clothing. By allowing an exemption for claims of $150 or less, most taxpayers should be freed from the requirement to substantiate laundry expenses.

If you wish to claim more than $150 of laundry expenses, then the full amount of the expenses must be substantiated.

It is important to note that laundry expenses are included in the work expenses that must be taken into account when determining if the exemption for work expense claims of $300 or less applies (see notes to section 2-5). Therefore, if you have $250 of work expenses and $140 of laundry expenses:

- you must substantiate the $250 of work expenses, because your total work expenses (including laundry expenses) total $390;
- you do not have to substantiate your laundry expenses, because they total less than $150.

Additionally, the change is not intended to give to all taxpayers a deduction of $150 for laundering their clothes. It applies only to those taxpayers who are entitled to deduct expenses for washing their work clothing.

Section 2-8 Exception for domestic travel allowance expenses
Section 2-9 Exception for overseas travel allowance expenses
Section 2-10 Exception for reasonable overtime meal allowance

These sections set out the circumstances in which you may be exempt from some of the substantiation requirements for expenses covered by a travel or overtime meal allowance.

Change

The section will widen the existing exemptions by removing the conditions that:

- you have not incurred expenses above the amount of your allowance;
- you have not received an allowance that is more than the Commissioner considers reasonable.

Explanation

Broadly, under the current law you are exempted from certain substantiation requirements if:

(a) you receive a travel or overtime meal allowance; and

(b) the Commissioner considers the amount of the allowance is reasonable; and

(c) the amounts of the expenses you incur, and claim, do not exceed the amount of the allowance.

If you receive more than a reasonable allowance, or spend more, then you are precluded from relying on the exceptions - even if you limit your claim to the amount of a reasonable allowance. This restriction is unnecessary, provided that you do not claim more than a reasonable amount.

The restriction will be removed.

If you claim more than a reasonable amount, you will need to substantiate all of the expenses.

Division 4 Substantiating business travel expenses

This Division tells you what you need to do to substantiate a business travel expense.

Change

The Division will omit the requirement that travel records (i.e. a travel diary) must be kept for short-term overseas travel.

Change

The Bill will standardise the record keeping requirements for both business and non-business travel by requiring written evidence (e.g. receipts) to be kept for domestic short-term travel.

Explanation

These changes are designed to standardise the differing requirements for substantiating travel expenses.

Under the existing law, written evidence or a travel diary (or both) may be required, depending on:

- whether you are a wage or salary earner or a business person;
- whether your travel is in Australia or overseas;
- whether you receive a travel allowance;
- the duration of the travel.

Table 1 summarises the rules of the existing law.

Table 1. Substantiation under existing law

Nature of travel	Salary/wage earner	Business person
Domestic 1-5 nights	Written evidence	Nothing
International 1-5 nights	Written evidence and travel diary	Written evidence and travel diary
Domestic 6 nights or more	Written evidence and travel diary	Written evidence and travel diary
International 6 nights or more	Written evidence and travel diary	Written evidence and travel diary

Additionally, you must keep a travel diary if you receive a travel allowance. The differing requirements between domestic and overseas travel have been criticised. The changes will standardise them, as shown in Table 2.

Table 2: Substantiation under proposed new law

Nature of travel (domestic and international)	Requirements for all travellers
1-5 nights	Written evidence
6 nights or more	Written evidence and travel diary

One minor difference remains. If the travel is for less than 1 night, the salary and wage earner must keep written evidence, but the business person need not.

Section 5-3 Time limits

This section tells you when you need to get written evidence of an expense.

Change

The section will extend the time allowed for you to obtain written evidence of an expense.

Explanation

The existing law requires written evidence to be obtained as soon as possible after the expense has been incurred. In practical terms, it should be enough that you have your evidence at the time that you claim a deduction.

However, there will also be situations (usually towards the end of a financial year) where you have just incurred an expense but haven't received the written evidence. In situations like this, if you have good reason to expect that you will get the written evidence within a reasonable time, you can claim the expense beforehand.

Section 5-4 Written evidence from supplier
Section 5-5 Written evidence of depreciation expense

These sections set out the written evidence you must get from the supplier of property or services.

1. Change

These sections will relax the rules about the form of the written evidence the supplier must give you.

Explanation

Under the existing law you need, in most cases, to get your written evidence in the form of a receipt, invoice or similar document. In limited situations, you may obtain the evidence from the supplier in another form. For example, if the supplier doesn't usually provide detailed receipts, the supplier may provide the details required in the form of a written statement.

The limitations on the form of the supplier's documentation are unnecessary and confusing.

Under the new law, provided the documentation contains the details required by the law, it can be in any form.

2. Change

Section 5-4 will extend the range of written evidence that can be relied on to show when an expense was paid.

Explanation

Written evidence, under both the existing law and the proposed new law, must specify the date on which an expense was incurred.

Sometimes the only document you receive from a supplier is an invoice - which provides all the required details except when the expense was incurred or paid. There is nothing in the law which allows you to produce other evidence of payment if the supplier does not.

These sections will allow you to rely on a bank statement or other reasonable, independent evidence to show when an expense was paid.

3. Change

These sections will allow you to annotate a document (e.g. a receipt) from a supplier that does not identify the nature of the property or services supplied.

Explanation

The existing law requires the supplier to identify the nature of goods or services supplied. If the supplier does not, you can't add the details yourself but must ask the supplier to do so.

This is an unnecessary restriction.

Section 5-6 Evidence of small expenses
Section 5-7 Evidence of expenses considered otherwise too hard to substantiate

These sections tell you when you can use your own records to substantiate an expense rather than getting written evidence from a supplier.

Change

These sections will omit the requirement that you must sign each entry for an expense covered by these sections.

Explanation

The requirement in the existing law is unnecessary.

Section 5-8 Evidence on a group certificate

This section allows you to use your group certificate as written evidence of the nature and amount of a work expense (if that information is shown on it).

Change

The section will widen the range of written evidence you can rely on to substantiate a work expense.

Explanation

The change arises from situations where union dues (and similar payments) are paid by a deduction from your salary or wages. If your employer makes a note on your group certificate of the amount deducted, it has been the practice of the Commissioner to accept that as sufficient evidence of the expense.

This practice will now be formalised in the law.

Section 6-2 Recording activities in travel records

This section tells you the details you must record in a travel record.

Change

The section will omit the requirement that you must record the date on which each entry is made

Explanation

The requirement is unnecessary.

Division 7 Retaining and producing records

This Division tells you how long you need to keep the written evidence and other records required to substantiate expenses.

Change

The Division will adopt a uniform period of five years during which substantiation documents need to be retained.

Explanation

Under the existing law, documents must be kept for:

- three and a half years, for expenses incurred in earning wages or salary;
- seven years, for other expenses.

This can be contrasted with the five year retention period for business generally.

As a return may be amended by a taxpayer or the Commissioner any time up to four years after the tax is due and payable, adopting a five year standard period is appropriate.

Section 8-1 Commissioner's discretion to review failure to substantiate

This section allows the Commissioner to grant relief from the substantiation requirements in certain circumstances.

Change

The section will widen the circumstances in which the Commissioner can exercise the discretion to grant relief from a failure to substantiate.

Explanation

The existing law authorises the Commissioner to allow a deduction even though the substantiation rules haven't been followed, if the Commissioner is satisfied:

- that you incurred the expense; and
- that it would be unreasonable to deny you the claim.

The Commissioner must consider the extent to which you attempted to follow the rules and whether any failure to do so was deliberate.

The new law will simply require the Commissioner to be satisfied that the expense was incurred based on the nature and quality of your evidence.

Section 8-2 Reasonable expectation that substantiation would not be required

This section provides relief from the substantiation rules if you had a reasonable expectation that you wouldn't need to substantiate your expenses.

Change

The section will remove the restrictions on when this provision can apply.

Explanation

The existing law contains a number of restrictions on when the section can apply. For example:

- you must have expected to be covered by the $300 exception in Schedule 2B; and
- the Commissioner must be satisfied that an unforeseen, special circumstance arose to prevent you taking advantage of that exception.

These restrictions are unnecessary.

Consequential amendments

The consequential amendments of the Income Tax Assessment Act and other Commonwealth legislation make the changes necessary to reflect the restructuring, rewriting and renumbering of the substantiation provisions. They do not make substantive changes to the Acts they amend.

The Bill also proposes the repeal of section 223A of the Income Tax Assessment Act. That section imposes additional tax if you overestimate the business use percentage of a motor vehicle for the purposes of the 'log book' method for calculating car expenses deductions.

This section is no longer required. Under the new self-assessment penalty regime introduced by the *Taxation Laws Amendment (Self Assessment) Act 1992*, a specific penalty applies if there is a tax shortfall and the shortfall is caused by a failure to take reasonable care, recklessness, or an intentional disregard of the law.

These provisions adequately deal with cases currently covered by section 223A.

Impact of Changes

This table outlines the impact, if any, that the changes in the Bill will have on reported cases on the existing substantiation provisions.

Case[1]	***Subject***	***Impact***
Case W124 89 ATC 975 *AAT Case 5501* (1989) 21 ATR 3037	Known as 'The Evangelist's case'. Keeping documentary evidence of expenses, signing expense diaries and log book records.	The terms of s.82KZAA, inserted after this case, have been altered. The Commissioner need only be satisfied that you incurred an expense and that you are entitled to deduct the amount claimed. Note also, the signing requirements have been reduced.
Case Y43 91 ATC 412 *AAT Case 7273* (1991) 22 ATR 3402	No deduction for car expenses of a car provided for exclusive use of an employee - s.51AF.	So far as this case considered the meaning of *car expense* as defined in subs.82KT(1), it remains relevant to the definition of *car expense* in s.11-2 of Schedule 2A.
Case Z12 92 ATC 163 *AAT Case 7784* (1992) 23 ATR 1090	Overseas travel expenses - lack of documentary evidence.	None.
Case Z42 92 ATC 381 *AAT Case 8419* (1992) 24 ATR 1183	Journalist - failure to keep diary re travel expenses, standard of documentary evidence for certain employment-related expenses.	None.
Case 1/93 93 ATC 101 *AAT Case 8387* (1993) 24 ATR 1183	Truck driver - meal and travel expenses limited to allowance.	The changes to the reasonable travel allowance exemption would alter the outcome of a case of this kind. The truck driver will be able to claim up to the amount of the reasonable amount without evidence of the expense.
FCT v. Edwards 93 ATC 5162 (1993) 27 ATR 293	Deductibility of certain expenses on purchasing and maintaining conventional clothing.	None.
Case 49/94 94 ATC 429 to be published in (1994) 29 ATR	Hire-purchaser of a car was not treated as the owner of a car for the purposes of substantiation.	The extended definition of "owning a car" will include hire-purchase. A hire-purchaser will now be able to use the four methods of deducting car expenses.

[1]With the exception of *FCTvEdwards* all of the above cases are decisions of the AAT. *Edwards' case* was decided by the Federal Court.

Date of effect of the new laws

The benefits of the new law are to be available in the 1994-95 income year.

To achieve this, the new rules will apply to expenses incurred on or after 1 July 1994. The old law will apply only to expenses incurred before that date, but with one exception.

As the new law will be partly backdated, special provisions will apply so that taxpayers are not disadvantaged during the period the law is backdated.

Special transitional provisions - general

If, in the 1994-95 income year, the new law would:

- deny a deduction allowable under the old law; or
- allow a lesser deduction than would be allowable under the old law;

then you can deduct the amount allowable under the old law.

Special transitional provisions - calculating car expense deductions

Log books properly kept under the old law will be treated as kept under the new law. For example, if you kept a log book in 1992-3, then under the new law's 5 year cycle for keeping log books, you shouldn't have to keep a new one until 1997-8.

If you would be required by the new law to keep a new log book in 1994-5 by the 5 year rule, that obligation will be deferred until 1995-6.

However, if you received a notice from the Commissioner under the old law directing you to keep a log book in 1994-5, you will still be required to keep that log book in 1994-5.

Chapter 4

Finding Tables

The purpose of these tables is to provide a quick check for locating where provisions in the *new law* are dealt with in the *old law* and vice versa.

The tables match provisions in the new law with their equivalent provision in the old law.

Finding Tables

Finding Table 1 - New Law to Old Law

New provision	Old provision	Notes
Schedule 2A		
1-1		Reader help
1-2	82KT(1) definition *taxpayer*	
1-3		Reader help
2-1	82KY(1), (2), (3)	
3-1		Reader help
3-2(1)	82KX(1)(a)	82KX(1)(b) Not reproduced
3-2(2)		Rule change
3-2(3)	82KX(1)	Rule change
3-3 (59AAA)	82KY(6) and (7)	
3-4		Reader help
4-1		Reader help
4-2(1)	82KW(3)(a)	
4-2(2)	82KW(4)	
4-2(3)	82KW(3)(b)	
4-3(1)	82KW(1)	
4-3(2)	82KW(1)	Rule change
4-4 (59AAA)	82KY(6) and (7)	
4-5		Reader help
5-1		Reader help
5-2	82KW(2)(a)	
5-3(1)	82KW(1)	
5-3(2)	82KW(1)	Rule change
5-4	82KW(2)(b), (ba)	
6-1		Reader help
6-2(1)	cf. 82KUD	Rule change
6-2(2)	*82KT(6) and definition of exclusive business use*	
6-2(3)	cf 82KT(1) definition of *nominated business percentage* and *related definitions*	Rule change
6-2(4), (5)	cf 82KT(1) definition of nominated business percentage	Rule change
6-3	82KUA	
6-4(1)	82KUA	
6-4(2)	82KUB, 82KUC	Rule change
6-4(3)	82KUB, 82KUC	Rule change
6-4(4)	82KUB, 82KUC, 82KTBA, 82KTC, 82KTD	Rule change
6-4(5)	82KZA(1)(b)	
7-1		Reader help

New provision	Old provision	Notes
7-2(1)	82KTG(a)	
7-2(2)		Rule change
7-2(3)	82KTG(h)	
7-2(4)	82KTG(d)	
7-2(5)	82KTJ	
7-2(6)	82KTG(b)	
7-3(1)	82KT(1) definition of *applicable log book period*	
7-3(2)	cf. 82KT(1) definition of *applicable log book period*	Rule change
7-3(3)	82KT(1) definition of *applicable log book period*	
7-4(1)	cf 82KTE	Reader help
7-4(2)	82KT(1) definition of *log book records*	Rule change (signing)
7-4(3)	82KT(2)	
7-4(4)	82KUB & 82KT(1) definition of *odometer records*	Rule change
7-4(5)	82KT(1) definition of *log book records* and *odometer records*	
7-5	82KTJ	
8-1		Reader help
8-2	82KT(1) definition of *odometer records*, 82KTD, 82KTJ	
9-1		Reader help
9-2	82KZA, 82KT(1) definition of *retention period*	Rule change
9-3	82KZA, 82KT(1) definition of *retention period*	Rule change (subsection(2))
10-1		Reader help
10-2(1), (2)		No equivalent - inserted for clarity
10-2(3)		
Item 1	82KV(4)	Rule change (column 3, para. (e))
Item 2	82KV(5)(a)	
Item 3	82KV(5)(b)	
Item 4	82KV(5)(c)	
10-3(1) and (2)		No equivalent - inserted for clarity
10-3(3)(a)	82KV(3)(aa)	
10-3(3)(b)	82KV(3)(b)	
10-3(3)(c)	82KV(3)(c)	
10-4	82KZBA	
11-1	82KT(1) definition of *car*	Rule change
11-2	82KT(1) definition of *car expenses*	
11-3	82KTA(1)	
11-4		Rule change

New provision	Old provision	Notes
Schedule 2B		
1-1	82KT(1) definition of *taxpayer*	
1-2		No equivalent - Reader help
2-1		No equivalent - Reader help
2-2(1)	82KT(1) definition of *employment related expense*	
2-2(2)	82KT(1) definition of *eligible expense*	
2-2(3)	82KT(1) definition of *travel allowance*	
2-2(4)	82KT(1) definition of *eligible expense*	
2-2(5)	82KT(1) definition of *meal allowance*	
2-2(6)	cf. 82KT(1) definition of *employment related expense* and *car expense*	Rule change
2-2(7)	82KT(1) definition of *employment related expense*	
2-2(8)	82KT(6)	
2-2(9)	82KT(1) definition of *salary or wages, employer, employee*	
2-3(1)	82KZ(1)	
2-3(2)	82KZ(2) and 82KT(1) definition of *travel expense*	Rule change incorporated
2-3(3)	82KZ(6)	
2-3(4)	82KZ(1)	
2-4	82KT(1) definition of *retention period*, 82KZA(1)	Rule change
2-5	82KZB	Rule change
2-6		Rule change
2-7	82KZBA	
2-8	82KZ(4)	Rule change
2-9	82KZ(5)	Rule change
2-10	82KZ(4)	Rule change
2-11	82KZ(6)	
3-1		Reader help
3-2(1)	82KUA, 82KW(2)(b), (ba)	
3-2(2)	82KW(2)(b)	
3-2(3)	82KUA(a)	
3-3	82KT(1) definition of *retention period*, 82KZA(1)	
4-1		Reader help
4-2(1)		New definition
4-2(2)	82KT(1) definition of *travel expense*	Rule change
4-2(3)		No equivalent
4-2(4)		No equivalent

New provision	Old provision	Notes
4-2(5)	82KT(1) definition of *travel expense* and *car expense*	Rule change
4-2(6)	82KT(6)	
4-2(7)	82KT(1) definition of *salary or wages*	
4-3(1)	82KZ(1)	
4-3(2)	82KZ(2)	Rule change
4-3(3)	82KZ(1)	
4-4	82KT(1) definition of *retention period*, 82KZA(1)	
5-1		Reader help
5-2		Reader help
5-3		Rule change
5-4(1), (2)	82KU(1), (3), (4) and (5)	Rule change incorporated
5-4(3)		Rule changes
5-4(4)	82KU(1)	
5-5(1), (2)	82KU(2) and (9)	
5-5(3)		Rule change
5-5(4)		Signpost
5-5(5)	82KU(2)	
5-6(1)	82KU(6)	Partly Reader help
5-6(2)	82KU(7)	
5-6(3)	82KU(6)(a)(i), (b)	Rule change
5-6(4)	82KU(6)(a)(ii), (b)	Rule change
5-6(5)	82KU(6)(a)	
5-7	82KU(8)	
5-8		Rule change
6-1		Reader help
6-2	82KZ(2)	Rule changes
6-3	82KZ(3)	
7-1		Reader help
7-2	82KT(1) definition of *retention period* - para (b)(ii)	
7-3	82KZA(2)	
7-4	82KZA(3)	
7-5(1)	82KZA(3)	
7-5(2)	82KZA(4)	
8-1	82KZAA, 82KU(10)	
8-2	82KZBB	
8-3(1)	82KZA(5)	
8-3(2)	e.g. 82KZA(5)(d)	Reader help
8-3(3)	82KZA(6A), (7)	
8-3(4)-(7)	82KZA(6)	
9-1		Reader help
9-2	82KZBA	
9-3(1)	82KT(1) definition of *eligible transport payment*	
9-3(2)	82KT(1) definition of transport allowance payment	

New provision	**Old provision**	**Notes**
9-3(3)	82KT(1) definition of *industrial instrument*	
9-3(4)	82KT(1) definition of *transport expense*	
9-4	82KT(1A)	
9-5	82KT(1A)	
9-6	82KT(1) definition of *eligible transport payment*	
9-7	82KZBA(2) and (3)	
9-8	82KZBA(1)(d)	
9-9	82KZBA(1)(e)	

Finding Table 2 - Old Law to New Law

Old Provisions	New Provisions	Rule/ Drafting Change	Explanation
82KT(1) -			
applicable log book period	7-3 (2A)	Rule & drafting	Log book may now overlap two income years.
car	11-3 (2A)	Rule	Panel vans and utilities over 1 tonne excluded
car expense	11-4 (2A)	Drafting	
car expense reimbursement payment	No equivalent	Drafting	This term is no longer defined but the relevant reference to reimbursement of car expenses still appears in par. 9-3(2)(b)
car records	No equivalent	Drafting	This term, which was used to describe all the records that were required to be kept for the log book method, is no longer used.
depreciation	No equivalent	Drafting	
elect	No equivalent	Drafting	The definition of *elect* was a formal drafting mechanism which is no longer required.
eligible expense	cf. 2-2(4), 2-2(2) and incorporated into 9-2 (2B)	Drafting	This term is no longer used, but its effect is retained in definitions of meal allowance expense, travel allowance expense and deducting an expense related to an award transport payment.
eligible transport payment	9-3 (2B)		
employee	2-2(9) (2B)		
employer	2-2(9) (2B)		
employment related expense	2-2 (2B)	Drafting	
exclusive business use deduction	6-2(2) (2A)		

Old Provisions	New Provisions	Rule/ Drafting Change	Explanation
expense	No equivalent	Drafting	The definition was a formal drafting mechanism which is no longer required.
industrial instrument	9-3 & cf. 2-10(b) (2B)	Drafting	
log book car	No equivalent.	Drafting	The definition was a formal drafting mechanism which is no longer required.
log book records	No equivalent.	Drafting	The records covered by the definition are still required, but the formal drafting mechanism is no longer required.
long term log book car	No equivalent.	Rule	This term was required in relation to establishing which percentage should be used in the log book method. Because the method has been simplified, the term is no longer necessary.
low business kilometre car	No equivalent.	Rule	This term was required in relation to establishing which percentage should be used in the log book method. Because the method has been simplified, the term is no longer necessary.
meal allowance	2-2(5) (2B)		
motor vehicle	No equivalent	Drafting	Although no longer specifically defined, the effect is retained by incorporating the relevant words into the definition of "car" in 11-1 (2A) and also in 2-2 (2B).
nominated business percentage	No equivalent	Rule	Function performed by this term is now done by "business use percentage". The mechanism for achieving the percentage is different.
odometer records	Division 8, Schedule 2A	Drafting	Rule change in that they are now required in every year you use the log book method, including the log book year.
outgoing	No equivalent	Drafting	The definition was a formal drafting mechanism which is no longer required.

Old Provisions	New Provisions	Rule/ Drafting Change	Explanation
overtime meal allowance	2-10 (2B)		
person	No equivalent	Drafting	The term was defined to ensure that a partnership which supplied goods or services came within the documentary evidence rules. The equivalent provision now refers to suppliers.
retention period	Division 9 of Schedule 2A, 2-4, 3-5, 4-4 and Division 7 of Schedule 2B	Drafting	Record retention period has been placed in the record keeping provisions.
salary or wages	2-2(9) (2B)		
substantiation sections	No equivalent	Drafting	The definition was a formal drafting mechanism which is no longer required.
taxpayer	No equivalent	Drafting & rule	The function served by this definition is now covered by the application sections - 1-2 (2A), 1-1 (2B).
transport allowance payment	No equivalent	Drafting	The effect of the definition is now incorporated in subsections 9-3(1) & (2).
transport expense	9-3 (2B)		
travel allowance	2-2(3) (2B)		
travel diary	No equivalent	Drafting	This definition merely gave the record required by subs.82KZ(2) the name travel diary. The redraft refers to travel records which are defined in Division 6 of Schedule 2B.
travel expense	cf. 2-2(2) & 4-2(2) (2B)	Drafting & rule	The definition is different for business individuals.
underlying business percentage	cf. definition of business use percentage in 6-2(3) (2A)	Rule	The many steps that a taxpayer had to go through to reach the deductible percentage have been omitted. As such this definition is no longer required.

Old Provisions	New Provisions	Rule/ Drafting Change	Explanation
82KT(1A) eligible transport payment	9-4, 9-5 (2B)	Drafting	
82KT(2) 2/more journeys per day	7-4(3) (2A)		
82KT(3) timing of depreciation expense	No equivalent	Drafting	The subsection was a formal drafting mechanism which is no longer required.
82KT(4) producing assessable income defined	No equivalent	Drafting	The subsection was a formal drafting mechanism which is no longer required.
82KT(5) business of a particular kind	No equivalent	Drafting	The subsection was a formal drafting mechanism which is no longer required.
82KT(5A) application of s 82KUD	No equivalent	Drafting	The subsection was a formal drafting mechanism which is no longer required.
82KT(6) deductibility of expenses	1-2 Overall key principle, and key principles 4 & 5 (2A), 2-1, 4-1, 9-1 (2B)	Drafting	References are to key principles. The deductibility point is also restated in main provisions such as 5-2, 6-2 of Schedule 2A, and 2-2(8), 4-2(6) of Schedule 2B.
82KTAA eligible expenses - transport expenses	No equivalent	Drafting	The effect of this provision is incorporated in 9-2(1)(b).
82KTA held	11-4(2A)		
82KTB holding period of motor vehicle	No equivalent	Drafting	The subsection was a formal drafting mechanism which is no longer required.
82KTBA, 82KTC timing for completion of car records	6-4(4) (2A)	Drafting	
82KTC omission of detail from car records	6-4(4) (2A)	Drafting	
82KTD omission of detail from odometer records	6-4(4) (2A)	Drafting	

Old Provisions	New Provisions	Rule/ Drafting Change	Explanation
82KTE unsigned or false entries in car log books	No equivalent cf 7-4(4)(d) (2A)	Rule & drafting	Signing requirements have been dropped, so that aspect of provision is unnecessary.
82KTF reasonable estimate of underlying business percentage	No equivalent cf 6-2 (2A)	Rule	Compare with the business use percentage used under the new log book method.
82KTG log book year of income	7-2 (2A)	Rule	
82KTH business percentage established during applicable log book period	No equivalent cf 7-4(4)(d) (2A)	Rule	Compare with the business use percentage used under the new log book method.
82KTJ replacement cars	7-5 (2A)	Drafting	
82KTK reacquisition of cars	No equivalent	Rule	This provision is essentially an anti-avoidance provision which has been omitted.
82KU(1) documentary evidence - non-depreciation expense	5-4 (2B)		
82KU(2) documentary evidence - depreciation expense	5-5 (2B)		
82KU(3) statement or certificate	5-4, 5-5 (2B)	Rule	
82KU(4) statement or certificate	5-4, 5-5 (2B)	Rule	
82KU(5) statement or certificate	5-4 (2B)	Rule	
82KU(6) undocumentable expenses	5-6, 5-7 (2B)		
82KU(7) $10/$200 rule	5-6, 5-7 (2B)		
82KU(8) deemed undocumentable expense	5-6, 5-7 (2B)		
82KU(9) & (10) documentary evidence of depreciation expenses	5-5, 8-1 (2B)	Drafting	

Old Provisions	New Provisions	Rule/ Drafting Change	Explanation
82KUA no deductions for car expenses unless documentary evidence	6-3, 6-4 (2A) 3-2 (2B)		
82KUB, 82KUC no deductions for logbook method unless records kept	cf. Division 6 of Schedule 2A	Rule	
82KUD deduction using log book method	cf. Division 6 of Schedule 2A	Rule	
82KUE percentage reduced if exceeds log book or reasonable estimate	cf. Division 6 of Schedule 2A	Rule	
82KV exemptions from log book method	10-2, 10-3 (2A)		
82KW 12% and 1/3 methods	Divisions 4 & 5 of Schedule 2A	Drafting & rule	
82KX cents per km method	Division 3 of Schedule 2A	Drafting & rule	
82KY elections	2-1 (2A)	Drafting & rule	Rule change relates mainly to the need to update the provisions to reflect self-assessment.
82KY(4),(5) expenses incurred by taxpayer	Omitted	Rule	Essentially avoidance provisions which are no longer appropriate.
82KY(6) depreciation	3-3, 4-4 of Schedule 2A & 59AAA		
82KZ(1) no deduction for non-car expenses unless documentary evidence	2-3, 4-3 (2B)		
82KZ(2) and (3) travel diaries	2-3, 4-3, 6-2, 6-3 (2B)		
82KZ(4) reasonable allowances	2-8, 2-10 (2B)	Rule	
82KZ(5) reasonable overseas travel allowance	2-9 (2B)	Rule	

Old Provisions	New Provisions	Rule/ Drafting Change	Explanation
82KZ(6) international flight crew	2-11 (2B)		
82KZA(1) retention of records	6-4(5) & Division 9 of Schedule 2A 2 4, 3-3, 4-4, Division 7 of Schedule 2B		
82KZA(2) notice to produce	7-3 (2B)		
82KZA(3) non-compliance with notice	7-4, 7-5 (2B)		
82KZA(4) not an offence	7-5 (2B)		
82KZA(5)-(7) lost or destroyed	8-3 (2B)		
82KZA(7A)-(7B) records for current year		Drafting	
82KZAA discretion	8-1 (2B)	Rule	
82KZB $300 exemption	2-5 (2B)	Rule	
82KZBA eligible transport payments	Division 9 of Schedule 2B		
82KZBB reasonable failure to meet requirements	8-2 (2B)	Rule	

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