



16 April 2021

FOI ref: 2912

Ms Julie Middleton

By email: foi+request-7185-93ec1b7b@righttoknow.org.au

Dear Ms Middleton

Freedom of Information Request – Consultation

I refer to your request of 26 March 2021 to the Treasury seeking access to documents under the *Freedom of Information Act 1982* (the **FOI Act**).

Your request was as follows:

I am seeking copies of all the Explanatory Memorandum Bills to amend the Income Tax Assessment Act 1997 relating to expenses incurred in gaining or producing assessable income from residential premises.

The general rule about deductibility is currently contained in section 8-1 of the Income Tax Assessment Act 1997.

For example; 2016-2017 the Treasury Laws Amendment (Housing Tax Integrity) Bill 2017 Foreign Acquisitions and Takeover Fees Imposition Amendment (Vacancy Fees) Bill 2017.

The heading of your email was 'Freedom of Information request - Explanatory Memorandum Bills from 2008 amending the Income Tax Assessment Act 1997' so I have taken your request to be confined to explanatory memoranda for Bills from 2008 onwards.

I am an authorised decision maker under section 23 of the FOI Act.

I am writing to tell you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations due to its size and complexity. This is called a 'practical refusal reason' under section 24AA of the FOI Act.

On this basis, I intend to refuse access to the documents you have requested. However, you have an opportunity to revise your request before I make a final decision. This is called a 'request consultation process' in section 24AB of the FOI Act.

You have **14 days** to respond to this notice in one of the ways set out below.

Why I intend to refuse your request

I have decided that a practical refusal reason exists due to the large number of documents that would have to be analysed to determine which of them are in scope of your request. There have been approximately 400 Acts which have amended the *Income Tax Assessment Act 1997* from 2008 until 26 March 2021, some of which contained multiple measures. Each amending law and explanatory memorandum would require careful reading to consider whether the measures in the law relate to '*expenses incurred in gaining or producing assessable income from residential premises.*' Estimating this task at 15 minutes per amending law (a conservative estimate), it would take over 100 hours to carry out.

I am satisfied that processing that number of documents would place an unreasonable burden on a limited number of Treasury staff. As such, this in my view would be a substantial and unreasonable diversion of the Treasury's resources from its other operations.

Request consultation process

You have an opportunity to revise your request. This might mean narrowing the scope of the request to make it more manageable. Further narrowing the subject matter of the request while leaving the number of amending laws to be considered unchanged is unlikely to reduce the effort required to process your request, as it is analysis of the relevant laws that is so time consuming in processing your request.

If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.

You will be aware that the explanatory memorandums for Bills that have amended the *Income Tax Assessment Act 1997* are publicly available at the Parliament House website: www.aph.gov.au. Further, I can advise you that in addition to the *Treasury Laws Amendment (Housing Tax Integrity) Bill 2017*, the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019* also made changes to deductions claimable for some kinds of residential land. We will not be able to identify more laws in the scope of your request without conducting the extensive analysis of the amending laws referred to above.

What you need to do

You must contact us within 14 days from day after you receive this notice to:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

Questions?

The Treasury FOI team is available to help you during the consultation period by phone on (02) 6263 2800 or by email to FOI@treasury.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read "S. Writer".

Simon Writer
First Assistant Secretary and Chief Counsel
Law Division