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Rankine Tucker
LAWYERS

21 April, 2010

John Hawkins
Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir

Submissions on Tax Laws Amendment (2010 Measures No. 2) Bill 2010 - Schedule 1

This submission is made after the publicised deadline however it is submitted on the basis that it addresses a matter not directly covered by other submissions.¹

Proposed sub-sections 109CA(6) and (7) indicate a policy intention to exclude from Division 7A the use of dwellings in the circumstances set out in those subsections.

The drafting to achieve this exclusion is to provide that subsection 109CA(1), which specifies acts (in addition to those set out in section 109C(3)) that are to constitute *payments* for the purpose of section 109C, does not apply to sub-sections 109CA(6) and (7).

However Treasury takes the view² that a lease represents a transfer of property, and so a payment for the purpose of section 109C. Thus a lease that falls within sub-sections 109CA(6) and (7) will not be a *payment* pursuant to section 109CA(1) but would (on Treasury's view) be a *payment* as a result of section 109(3)(c).

To correct this, the phrase "*Subsection (1) does not apply to the provision of a dwelling if*" in sub-sections 109CA(6) and (7) would need to be replaced with words to the effect of: "*The provision, use or lease of a dwelling is not a payment for the purpose of this Division if*"³

This submission reflects the views of the writer and is not made on behalf of the firm of Rankine Tucker.

Yours faithfully,

CHRISTOPHER KNOTT

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¹ I share the views of the others submitters as to the problems identified by them in the Bill;

² see the comments in the submission from Mr de Haan of Thomson Playford Cutler;

³ the reference to "provision" in s. 109CA(6)(c) would have to be amended to incorporate "provision, use and lease"