
The Parliament of the Commonwealth of Australia

Advisory Report on the

Tax Laws Amendment (2012 Measures No. 2) Bill 2012

Pay As You Go Withholding Non-compliance Tax Bill 2012

Income Tax (Managed Investment Trust Withholding Tax)
Amendment Bill 2012

Passenger Movement Charge Amendment Bill 2012

House of Representatives
Standing Committee on Economics

June 2012
Canberra

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Chair's foreword

The Bills make a number of significant improvements to the tax laws across five issues, each of which the committee examined during the inquiry.

Schedule 1 of the Tax Laws Amendment (2012 Measures No. 2) Bill 2012 and the Pay As You Go Withholding Non-compliance Tax Bill 2012 seek to make directors personally liable for their company's unpaid superannuation guarantee amounts. This will prevent unscrupulous directors from phoenixing their businesses to avoid their super responsibilities. This practice has cost Australian employees hundreds of millions of dollars in lost superannuation and the committee commends both the intent and the operation of the Bills in this regard.

Last year, the committee inquired into a package of Bills in similar terms. The committee recommended that the Government should investigate whether additional defences for directors should be inserted in the Bills. This has occurred. If passed, the legislation will give new directors 30 days, up from the current 14 days, to conduct due diligence before adopting a company's pre-existing obligations. Directors will also not be liable for a director penalty where they took reasonable care in a matter and applied the super legislation in a reasonable way.

The committee also recommended that the Government should investigate whether the provisions should only apply if an individual has been engaged in phoenixing. The Bills do not have this feature and industry argued that they should be amended along these lines. Ultimately, the committee has come to the view that such a change is not warranted because the provisions will only apply when a company has not only failed to pay a super amount, but that it has failed to notify the Australian Taxation Office (ATO) of this two months after the event. The provisions are only triggered by a consistent, high level of non-compliance.

Schedule 2 of the main Bill is designed to ensure that the tax treatment of financial arrangements is consistent with the taxation of financial arrangements (TOFA) tax

timing rules. The provisions are to be retrospective from the commencement of other TOFA amendments on 1 July 2010 and this retrospectivity was the key issue in the inquiry. Stakeholders expressed concern that taxpayers who had chosen to adopt the new TOFA rules (rather than elect to keep prior arrangements) would be disadvantaged. However, the committee accepts that the measures restore the original policy intent and the Government had previously flagged that retrospectivity will be necessary with TOFA to restore the policy intent from time to time.

Schedule 3 aims to protect a \$6 billion revenue risk that has arisen as a result of retrospective amendments in 2010 in relation to consolidation rules. These changes allowed consolidated groups to claim deductions back to 2002 in relation to the residual tax cost setting rule and the rights to future income rule. In 2011, revenue problems with the 2010 changes became apparent and the Board of Taxation conducted an inquiry into the matter. The Bill largely reflects the Board's report. Groups that have already received a refund or have an ATO ruling will generally be protected from the retrospective changes. Given the transparency of the process and the amount of revenue at stake, the committee again accepts that retrospective legislation is appropriate.

The Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012 and Schedule 4 of the main Bill increase the tax rate on managed investment trusts for foreign investors from 7.5 per cent to 15 per cent. This is a partial reversal of the recent decreases on this tax rate from 30 per cent a few years ago. The committee is mindful that, as equity investments, the correct comparative rate is the company tax rate, currently set at 30 per cent. Although the industry sector was concerned about how the change would affect it, the committee accepts the Government's argument of the wider macroeconomic importance of Australia having a sound fiscal strategy, an important driver for the whole economy.

The Passenger Movement Charge Amendment Bill 2012 increases the charge from \$47 to \$55 from 1 July 2012 and indexes it to the consumer price index. Similar to the managed investment trust provisions, the issues revolved around an industry sector being concerned about how it would be affected by a revenue increase. Once again, however, the committee supports the provisions on a national basis because of the Government's overall fiscal strategy. The committee notes that the Government remains committed to the Tourism 2020 initiative and continues to support the industry through programs such as T-QUAL, infrastructure upgrades and maintaining and expanding tourism attractions.

The Bills represent a responsible package aimed at securing a sustainable revenue base for Australia, as well as protecting the superannuation entitlements of Australian workers. The Bills should pass.

On behalf of the committee I thank the organisations that assisted the committee during the inquiry through submissions or participating in the hearing in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP
Chair



Contents

Chair's foreword	iii
Membership of the Committee	x
Terms of reference	xi
List of abbreviations	xii
Recommendation	xiv

THE REPORT

1 Introduction	1
Referral of the Bill	1
Pay as You Go withholding non-compliance tax	2
Contrived corporate insolvency	2
Reports and reviews	3
The Government's 2009 proposals paper	5
The Government's 2011 Bills	7
The committee's report on the 2011 Bills	8
The current Bills	9
Revenue impact	11
Consolidation and TOFA	11
Background	11
Schedule 2—Consolidation and TOFA	14
Consolidation	15

Background	15
Schedule 3	17
Managed investment trusts	19
Introduction	19
Background to the managed investment final withholding tax	20
Industry reaction	21
Passenger Movement Charge	22
Introduction	22
Background to the Passenger Movement Charge	23
Key features of the Passenger Movement Charge Bill	26
Objectives and scope of the inquiry	26
Conduct of the inquiry	27
2 Issues in the Bills	29
Company directors and the superannuation guarantee	29
Restricting scope to phoenixing	29
New directors	32
Not-for-profit organisations	34
Disputing an estimate	36
Consolidation and TOFA	39
Retrospectivity	40
Consolidation	43
Retrospectivity	43
Managed investment trust final withholding tax	49
Grandfathering	49
Investor confidence	50
Revenue forward estimates	52
Effective tax rate	53
Passenger Movement Charge Amendment Bill 2012	54
Overall conclusion	58

DISSENTING REPORT

Dissenting Report	61
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Company directors	61
Introduction	61
Indiscriminate liability	62
Significant regulatory compliance cost	64
Retrospective Taxation Legislation	65
No justification for retrospectivity	66
Increase in the Managed Investment Trust Withholding Tax	67
Risk to Existing Investments and Government Revenue	67
Perceptions of sovereign risk	68
International competitiveness & forecasts	69
Passenger Movement Charge	69
Overall position of the industry	70
Lack of proper scrutiny	70
Hypothecation	71
Indexation	72
Disproportionate impact on short-haul routes	73
International Competitiveness	73
Conclusion	74

APPENDICES

Appendix A – Submissions	77
Appendix B – Hearing and witnesses	79
Appendix C – List of advisory reports	81



Membership of the Committee

Chair	Ms Julie Owens MP
Deputy Chair	Mr Steven Ciobo MP
Members	Mr Scott Buchholz MP Mr Stephen Jones MP Dr Andrew Leigh MP Ms Kelly O'Dwyer MP Mr Craig Thomson MP

Committee Secretariat

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Administrative Officer	Ms Natasha Petrović



Terms of reference

On 24 May 2012 the Selection Committee requested the Committee to inquire into and report on:

- Tax Laws Amendment (2012 Measures No. 2) Bill 2012;
- Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012;
- Pay As You Go Withholding Non-compliance Tax Bill 2012; and
- Passenger Movement Charge Amendment Bill 2012.

Under Standing Order 222(e), reports of the Selection Committee are treated as having been adopted by the House when they are presented.



List of abbreviations

AAA	Australian Airports Association
AICD	Australian Institute of Company Directors
ASIC	Australian Securities and Investment Commission
ATEC	Australian Tourism Export Council
ATO	Australian Taxation Office
CPI	Consumer Price Index
GAAR	General anti-avoidance rule
IGT	Inspector General of Taxation
ITAA	<i>Income Tax Assessment Act</i>
MIT	Managed investment trust
OECD	Organisation for Economic Cooperation and Development
PAYG	Pay As You Go
PAYG (W)	Pay As You Go Withholding
PMC	Passenger movement charge
SG	Superannuation guarantee
SGC	Superannuation guarantee charge
STCRC	Sustainable Tourism Cooperative Research Centre
TAA	Taxation Administration Act

TOFA Taxation of financial arrangements

TTF Transport and Tourism Forum



Recommendation

1

Introduction

2

Issues in the Bills

Recommendation 1

That the House of Representatives pass the Tax Laws Amendment (2012 Measures No. 2) Bill 2012, Pay As You Go Withholding Non-compliance Tax Bill 2012, Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, and the Passenger Movement Charge Amendment Bill 2012, as proposed.

Dissenting Report

Appendix A – Submissions

Appendix B – Hearing and witnesses

Appendix C – List of advisory reports

