Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

23 – 24 February 2011

Question No: AET 37

Topic: TR 2010/3

Hansard Page: Written

Senator Ryan asked:

1. Does Practice Statement LA 2010/4 alter TR 2010/3 in any way?

2. Does Practice Statement LA 2010/4 only provide clarifying information regarding TR 2010/3?

3. What sort of compliance costs does the ATO expect small business to bear in order to comply with TR 2010/3?

4. How much additional revenue does the ATO expect to generate from TR 2010/3?

5. How many businesses does the ATO expect to be affected by TR 2010/3?

6. Given that a company can make an interest only loan to the trust for seven or ten years, or else buy a trust asset, what happens after the seven of ten year periods respectively?

Answers:

1. Taxation Ruling *TR 2010/3 Income Tax: Division 7A Trust Entitlements* contains the Commissioner's view on when a private company with an unpaid present entitlement makes a loan to the trust estate which generated the entitlement. These loans fall under the provisions of Division 7A of the *Income Tax Assessment Act 1936*. Practice Statement *PS LA 2010/4 Division 7A: Trust Entitlements* does not alter this view of how the law operates.

2. Practice Statement PS LA 2010/4 provides practical ways on how to follow Taxation Ruling TR 2010/3. These practical solutions clarify what the Commissioner will accept, from an administrative perspective, as satisfying the position contained within the ruling.

3. Taxation Ruling TR 2010/3 reflects what the Commissioner considers the law requires of small businesses. It is not anticipated that it will cause small business operators to incur significant additional compliance costs, but this will depend on the circumstances of the business and the arrangements they have entered into.

PS LA 2010/4 provides small businesses with a number of investment options for unpaid present entitlements that allow small businesses to continue to retain their current structures, have access to the funds of the private company and not affect how they conduct their business activities. However, going forward, they will need to charge a commercial interest for the financial accommodation that is being provided.

4. Taxation Ruling TR 2010/3 represents the Commissioner's considered view of the law. The Australian Taxation Office (ATO) has not undertaken any analysis to determine how much (if any) additional tax revenue will be collected from taxpayers impacted by this ruling.

That being said, there are two important factors that support the proposition that the revenue impacts arising from this ruling will not be significant. They are that:

- where funds are used as working capital of a business, they will generally be entitled to claim a deduction for their interest expense. This deduction will largely offset any additional interest income that is derived by private companies, and
- Practice Statement PS LA 2010/4 provides practical ways for businesses to work towards a compliant structure that does not result in significant additional revenue, except where the funds were used for private purposes.

5. We are unable to provide accurate details as to the numbers of businesses that are affected by Taxation Ruling TR 2010/3.

For the year ended 30 June 2009, there were over 50,000 discretionary trusts, which in total made nearly 60,000 private companies presently entitled to the net income of the discretionary trusts. However, we are unable to determine which private companies have received their present entitlements.

6. With regards to the seven or ten year interest only loan options contained within Practice Statement PS LA 2010/4, the unpaid present entitlement amount must be paid to the private company beneficiary at the end of the term of the loan.

Where there is a failure to pay the unpaid present entitlement by the end of the seven or ten year term, a deemed dividend will be assessed to the trustee of the trust.