

**SENATE ECONOMICS
LEGISLATION COMMITTEE**

Budget estimates 2005–06

TABLED DOCUMENTS

Document: Correspondence from the Clerk of the Senate, Mr Harry Evans – Advice on disallowable instruments

Tabled by: Senator Fifield

Date: Thursday, 2 June 2005

Gaetjens, Philip

From: Gaetjens, Philip
Sent: Thursday, 26 May 2005 3:59 PM
To: 'Evans, Harry (SEN)'
Subject: RE: Tax Law Amendment Bill

Happy to release this correspondence and we will do so if asked. You should also feel free to release these exchanges.

*Philip Gaetjens
Chief of Staff
Treasurer's Office*

-----Original Message-----

From: Evans, Harry (SEN) [mailto:Harry.Evans@aph.gov.au]
Sent: Thursday, 26 May 2005 3:21 PM
To: Gaetjens, Philip
Subject: RE: Tax Law Amendment Bill

Phil

TAX LAW AMENDMENT (PERSONAL INCOME TAX REDUCTION) BILL 2005

At Question Time in the House of Representatives today the Treasurer said that I "now conceded" that the withholding schedules must be tabled and are subject to disallowance, as if my original advice was wrong.

As you know, the original advice was not wrong, because it was given before the schedules had been made.

To avoid the implication in the Treasurer's remarks that the original advice was incorrect, I would be grateful if you would release our correspondence. The release of the "interesting advice" I have given you was suggested by the Treasurer himself.

*Harry Evans
Clerk of the Senate
Tel: (02) 6277 3350
Fax: (02) 6277 3199
Harry.Evans@aph.gov.au*

-----Original Message-----

From: Evans, Harry (SEN)
Sent: Thursday, 26 May 2005 1:57 PM
To: 'Gaetjens, Philip'
Subject: RE: Tax Law Amendment Bill

Phil

The advice dealt with what was possible. not what was ethical or proper.

Harry Evans

Clerk of the Senate
Tel: (02) 6277 3350
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Harry.Evans@aph.gov.au

-----Original Message-----

From: Gaetjens, Philip [mailto:pgaetjens@treasury.gov.au]
Sent: Thursday, 26 May 2005 1:08 PM
To: Evans, Harry (SEN)
Subject: RE: Tax Law Amendment Bill

You accept that the making of the schedules is a matter for the Commissioner. Is your original advice really suggesting that he could have delayed making the schedules so as to circumvent Senate scrutiny?

Philip Gaetjens
Chief of Staff
Treasurer's Office

-----Original Message-----

From: Evans, Harry (SEN) [mailto:Harry.Evans@aph.gov.au]
Sent: Thursday, 26 May 2005 12:44 PM
To: Gaetjens, Philip
Subject: RE: Tax Law Amendment Bill

Phil

The advice to senators, the text of which you have been given, was originally provided before it was known whether the Taxation Commissioner had actually made the withholding schedules. Indeed, the date of registration which you have supplied confirms that the schedules had not been made when the advice was originally given. Therefore, the advice is not incorrect, as, at the time when it was provided, the possibility of the making and registration of the schedules being delayed till 30 June was still open.

Now that the schedules have been made and registered, of course they must be tabled within 6 sitting days. Nothing in the advice I provided suggests otherwise.

Harry Evans
Clerk of the Senate
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Harry.Evans@aph.gov.au

-----Original Message-----

From: Gaetjens, Philip [mailto:pgaetjens@treasury.gov.au]
Sent: Thursday, 26 May 2005 12:31 PM
To: Evans, Harry (SEN)
Subject: RE: Tax Law Amendment Bill

Mr Evans

I do not believe your advice with respect to disallowance is accurate in relation to the Tax Commissioner's withholding schedules.

The Legislative Instruments Act 2003 requires that a legislative instrument must be lodged for registration as soon as practicable after the legislative instrument is made (s25). The Commissioner of Taxation, being the rule-maker in this case, has made the instrument and in fact lodged it for registration on 25 May 2005. This is evident from examining the Federal Register of Legislative Instruments on the ComLaw website.

Once registered, the Attorney-General's Department must arrange for legislative instruments to be delivered to each House of Parliament to be laid before each House within 6 sitting days of that House after the registration of the instrument.

This means that by operation of law the schedules will be tabled in the Senate before it rises. This cannot be circumvented and indeed the object of the law is to make sure that the Senate is not circumvented in deliberating on legislative instruments.

*Philip Gaetjens
Chief of Staff
Treasurer's Office*

-----Original Message-----

From: Evans, Harry (SEN) [mailto:Harry.Evans@aph.gov.au]

Sent: Thursday, 26 May 2005 9:32 AM

To: Gaetjens, Philip

Subject: Tax Law Amendment Bill

Phil

As discussed, following is the text of the advice given to senators in relation to this matter.

**TAX LAW AMENDMENT (PERSONAL INCOME TAX
REDUCTION) BILL 2005**

The bill specifies the new rates of income tax proposed by the government to have effect commencing on 1 July 2005. If the bill is not passed, income tax rates will remain unchanged, in the absence of any other legislative change.

The PAYG deductions are prescribed by the Taxation Commissioner by means of withholding schedules made under section 15-25 of Schedule 1 of the Taxation

Administration Act. In making the withholding schedules, the Commissioner must “have regard to” the rates of income tax specified in the Income Tax Rates Act, but the withholding schedules do not have to reflect those rates.

Therefore, the Taxation Commissioner could prescribe PAYG deductions reflecting the proposed new tax rates, with effect from 1 July, in anticipation of the bill passing, even if the bill is not passed before 1 July.

If the bill is passed after 1 July, it still could have effect from 1 July, and the new PAYG deductions, having taken effect from 1 July, could remain in place.

Since the Legislative Instruments Act came into effect on 1 January 2005, withholding schedules are subject to tabling and disallowance (they were not disallowable before then).

The disallowance of the withholding schedules reflecting the government’s new tax rates could be avoided simply by making them on 30 June to come into effect on 1 July.

If the withholding schedules were to be disallowed before 1 July, schedules the same in substance could not be made for another six months without the Senate’s approval. This problem could be avoided by making the withholding schedules different in some way (and, given their nature, virtually any difference would be a substantial difference). Alternatively, the Senate could be summoned to meet on or after 1 July to approve the remaking of the schedules with effect from 1 July.

The rejection or deferral of the bill by the Senate, however, would not prevent the representation of the bill at any time on or after 1 July with a clause making it effective from 1 July.

Harry Evans

Clerk of the Senate

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