

Coalition Members' Dissenting Report

Tax and Superannuation Laws Amendment

(2013 Measures No 1) Bill 2013

Schedule 4

Schedule 4 to this Bill amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to prescribe requirements for the acquisition and disposal of certain assets between SMSFs and related parties.

The proposed changes require that where an underlying market exists, the transaction should be conducted through that market. Where such a market does not exist, a valuation must be sought from an independent qualified valuer.

This measure yet again targets those Australians doing the right thing by saving to achieve a self-funded retirement with additional unnecessary and costly red tape.

It is also clear that the drafting of the measure creates further unnecessary uncertainty.

SPAA, for example, is concerned that the drafting is not clear regarding the valuation of hard-to-value assets such as frozen assets, or assets which do not have a readily available market.

If these assets can't be disposed of to a related party (i.e. the SMSF member) then it is likely many SMSFs won't be able to be wound up:

...there are many types of assets held by SMSFs (many types of collectables for example), where no individual has the specific knowledge, experience and judgement necessary to be considered a qualified valuer. In these scenarios, the absence of a qualified independent valuer may result in the SMSF being unable to dispose of the asset which may then prevent the SMSF from being wound up even if it is clearly in the member's best interest to do so.¹

This would result in the ATO being required to still administer numerous "legacy SMSFs" that have no functional purpose.

These changes are yet another example of the Gillard government's constant undermining, through badly drafted regulation, of the flexibility and effectiveness of SMSFs.

For example in their submission SPAA stated:

1 SPAA, *Submission 4*, p. 5.

SPAA is concerned that the requirement to acquire listed securities from a related party (or to dispose listed securities to a related party) in a prescribed manner is limited to transactions involving SMSFs. Off-market transfers of listed securities also occur in the Australian Prudential Regulatory Authority (APRA) regulated sector of the superannuation industry, where the buyer and seller of the securities is essentially the same entity. This would suggest that similar integrity concerns regarding off-market transfers and the manipulation of transfer prices of listed securities would similarly arise in the APRA sector.²

These changes as drafted are an unnecessary regulatory burden. The Government has not made the case about the evil they are supposedly trying to prevent.

Coalition members of the Committee recommend that this schedule be removed from the Bill.

MRRT Related Schedules

Two of this Bill's seven schedules implement the Government's announced loss carry-back measure – a measure linked to, and supposedly funded by, the government's failed Minerals Resource Rent Tax (MRRT). This is the mining tax which raises no meaningful revenue when the Labor government recklessly already spent all of the money they thought it would raise and more.

Another schedule in this Bill makes a number of amendments attempting to fix 'technical' problems with the MRRT itself.

The Coalition opposes the MRRT because it is a complex and distorting tax which is bad for investment, bad for jobs, bad for our economy and, as is now apparent, bad for the federal budget as well.

The Coalition in government will scrap Labor's failed MRRT and as such remains opposed to all the measures the government has irresponsibly attached to its revenue. The only exception to that principle is the increase in compulsory superannuation from 9 to 12 per cent which a future Coalition government will not rescind.

The federal government cannot afford to implement costly measures which were supposedly to be paid for by an MRRT which has proven to be highly inefficient, costly to administer while not raising any meaningful revenue.

Indeed, the MRRT has raised just \$126 million in gross revenue in its first two (out of three) instalments this financial year, when Treasurer Swan estimated \$2 billion in net revenue in his most recent formal budget update.

Out of that \$126 million in gross revenue, about \$38 million would have been raised in company tax anyway which means the comparable net revenue figure comparable

2 SPAA, *Submission 4*, p. 3.

with the budget forecast is about \$88 million instead of the \$2 billion estimate in MYEFO.

We also know that the ATO alone has spent \$53 million so far administering the MRRT which takes revenue down to \$35 million.

Bearing in mind that the government allocated \$38.5 million to advertising the supposed merits of the mining tax, taxpayers are \$3.5 million in the red in relation to the MRRT so far.

The Coalition has asserted for years that Labor's MRRT was a fiscal train wreck in the making and has been proven right.

The Treasurer incompetently overestimated the revenue from the MRRT and underestimated the cost of the various concessions he and the Prime Minister made in their MRRT Heads of Agreement.

The government has spent all of the money they thought the MRRT would raise and more by linking various measures – including the Loss Carry Back – to the MRRT.

The government has already delivered four out of four deficit budgets with deficits totalling \$172 billion so far. Despite promising on more than 500 occasions that 2012/13 would be a surplus budget year, we now know that we're on track for yet another deficit this financial year.

Further, the way the government has structured its loss carry-back ignores the 1/3 of small and medium sized enterprises that are not incorporated and so cannot benefit from this measure. Only businesses with franking accounts can avail themselves of this measure so unincorporated businesses that must compete with those using carry-back will be at a competitive disadvantage.

For these reasons, the Coalition members of the Committee recommend that schedules 5 and 6 be removed from this Bill.

Schedule 7

Coalition Members of the Committee note that 38 pages of amendments in this schedule are designed to correct "technical errors" in the drafting of the MRRT.

This demonstrates yet again how poorly thought out, how poorly designed and how poorly implemented Labor's failed MRRT has been right from the outset.

Concluding Remarks

Coalition Members and Senators of this Committee recommend that the Parliament not support this Bill in its current form.

Coalition members of the Committee make the following specific recommendation:

Recommendation 1

That the Bill not be passed unless:

- **Schedule 4 dealing with transfer of assets with Self-Managed Superannuation Funds;**
- **Schedule 5 and 6 dealing with the loss carry-back changes (measures linked to the failed MRRT);**

are excised from the Bill.

Senator Sue Boyce

Senator Mathias Cormann

Mr Paul Fletcher MP

The Hon Tony Smith MP