AUSTRALIAN SENATE

ECONOMICS LEGISLATION COMMITTEE

CONSIDERATION OF LEGISLATION REFERRED TO THE COMMITTEE

Taxation Laws Amendment Bill (No.5) 1999

October 1999

Parliament of the Commonwealth of Australia

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Commonwealth of Australia

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REPORT

Background to the inquiry

1.1 Taxation Laws Amendment Bill (No.5) 1999 was introduced into the House of Representatives on 11 March 1999. The Bill was referred to this Committee following a report by the Selection of Bills Committee on 25 August 1999 for examination and report by 20 September 1999. [1] The Senate extended the report date until 29 September 1999 and then to 12 October 1999.

1.2 In its report the Selection of Bills Committee requested that the Committee consider the following:

- Sales Tax provisions are claimed to have retrospective effect; and
- provisions dealing with non-recourse finance have the potential to significantly affect major infrastructure projects.

1.3 The committee secretariat contacted a number of interested parties and received seven submissions to the inquiry (Appendix 1 refers). A public hearing on the Bill was conducted in Canberra on 23 September 1999. A list of witnesses who gave evidence at the hearing appears in Appendix 2, and the full transcript of the hearing is available at the internet address of http://www.aph.gov.au/hansard.

Background to the Bill

1.4 The Second Reading speech and Explanatory Memorandum provides the following outline and description of the regulatory objective of the Bills.

Schedule 1 - Amendment of Sales Tax (Exemptions and Classifications) Act 1992

1.5 The bill amends the sales tax law to correct a deficiency relating to the exemption for goods incorporated into property owned by, or leased to, always exempt persons or the government of a foreign country.

1.6 It specially amends Item 192 of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* which provides a sales tax exemption for certain goods incorporated into any property owned or leased by an always exempt person (AEP) or foreign government.

1.7 Access to the exemption will now be available only where the property is occupied principally by an always exempt person or the government of a foreign country or where the property is used principally for the provision of services to an always exempt person or government of a foreign country.

1.8 The broad scope of Item 192 of the *Sales Tax (Exemptions and Classifications) Act 1992* is being used for commercial development on land owned by, or leased to, an AEP or foreign government. This is inconsistent with original intention of the exemption. In particular it is being used to ensure that at least part of the exemption is going to private

1 Selection of Bills Committee report No. 13 of 1999, dated 25 August 1999.

sector commercial developments at the expense of the Commonwealth revenue. This provides unfair competitive advantage to these developments.

1.9 The proposed legislation will make the following types of property ineligible for sales tax exemption:

- shops and shopping centres;
- hotels;
- casinos;
- apartment blocks;
- any properties mainly consisting of a kind which are similar to the above type of properties; and
- any properties of a type prescribed by regulation as ineligible Item 192 properties.

Date of effect

1.10 The amendment applies to dealings after 2 April 1998, unless the goods concerned were acquired on or before 2 April 1998. This ensures that goods acquired on or before 2 April 1992 will continue to be exempt from sales tax.

1.11 The amendment was originally contained in Taxation Laws Amendment Bill (No. 4) 1998 which was introduced into the House of Representatives on 2 April 1998. That Bill lapsed when Parliament was prorogued.

Financial impact

1.12 The government has estimated a gain in revenue of $10 million in 1997-98 and $50 million in 1998-99 and subsequent years.

Schedule 2 - Arrangements treated as a sale and loan and limited recourse debt

1.13 These amendments were also part of Taxation Laws Amendment Bill (No. 4) of 1998. In the period after the bill lapsed, the government consulted with professional and industry bodies. Consequently, several technical changes have been made to the legislation as originally introduced.

1.14 The bill will implement a measure announced in the 1997-98 budget to prevent taxpayers obtaining deductions for capital expenditures in excess of their actual outlays. The measure will apply where hire purchase or limited recourse finance has financed the expenditure and the debtor does not fully pay out the capital amounts owing.

1.15 In those circumstances, an amount will be included in the debtor's assessable income to compensate for excessive deductions that were allowed to the taxpayer based on the initial cost of the relevant capital asset or specified capital expenditure. The adjustment to taxable income will reflect amounts that remain unpaid when the hire purchase or limited recourse debt arrangement is terminated. The amendment applies to debts that are terminated after 27 February 1998.

1.16 Two major technical changes to the original bill are concerned with limited recourse debt. First, where a debt is terminated and refinanced on arms-length terms, payments of the terminated debt that are funded by a replacement limited recourse debt will be counted in

calculating any adjustment to be made. This will allow investors to refinance assets without adverse tax consequences.

1.17 Second, debt will not be treated as limited recourse debt where the conditions of the debt and any associated security arrangements do not have a limiting effect. For example, where ordinary business debts are fully secured by a floating charge over the assets of a debtor (other than the financed asset).

1.18 Another amendment will treat taxpayers that finance assets by hire purchase as the owners of those assets for purposes of applying the various capital allowance deductions. Hire purchase and instalment sale transactions will be treated as the equivalent of sale, loan and debt transactions in assessing the taxation liability of the financier and the hire purchaser respectively.

Date of effect

1.19 Adjustments to taxable income relating to unpaid amounts under hire purchase and limited recourse debt arrangements apply to such arrangements which terminate after 27 February 1998. The rules which treat hire purchasers as the owners of assets under hire purchase, and a hire purchase arrangement as a sale, loan and debt transaction, apply to relevant transactions entered into after 27 February 1998.

1.20 The proposal was announced in the 1997-98 Budget on 13 May 1997 and by Press Release No. 60 of 1997 and No. 21 of 1998.

Financial impact

1.21 The gain to revenue from this measure will be approximately $40 million in 1998-1999, $50 million in 1999-2000, $50 million in 2000-2001, $50 million in 2001-2002, $50 million in 2002-2003 and $50 million in 2003-2004.

ISSUES RAISED IN EVIDENCE

Amendments to Item 192 of the *Sales Tax (Exemption and Classification) Act 1992*

1.22 The Economics Legislation Committee considered the sales tax amendments in August 1998 just prior to the announcement of the federal election. Numerous submissions were received from the building/construction industry concerned with the retrospectivity of the proposed amendments to item 192 of the *Sales Tax (Exemptions and Classifications) Act 1992*.

1.23 The Committee has again received submissions from organisations representing the building/construction industry. Their major concerns are still with retrospective application of the proposed amendments and how they treat subcontractors in the building industry.

Prospective versus Retrospective

1.24 The Government believes the amendments are prospective in that they apply to dealing after the 2 April 1998. The construction industry however believe the amendments are retrospective in that they affect long term contracts entered into on or before 2 April 1998 and in accordance with the law at that time.

1.25 According to the evidence presented by the construction industry to the Committee, the provisions of the Bill applying to dealing after 2 April 1998 have the practical effect of imposing a substantial retrospective sales tax liability on builders and subcontractors who signed contracts before that date. The Committee was informed that the situation in the building industry is that most building head contracts and related subcontracts are fixed price and are very difficult to vary due to commercial and legal reasons. The commercial reasons put forward were:

- the difficulty in breaking commercial confidences to identify the sales tax content of contracts between suppliers to subcontractors;
- the complexity of the arrangements;
- the multitude of contracts with subcontracts;
- the fact the always-exempt person (AEP) has a fixed budget for the construction of the project that is not easily increased.[2]

1.26 Representatives from the construction industry stated that many building or major infrastructure projects are generally established with an always-exempt person, mainly a government body, and these take many years to complete. They advised the Committee that there is generally a large number of subcontracts for the various building services and the subcontractors are informed by the developers that the goods they are contracted to supply are sales tax exempt in accordance with the terms of the fixed price head contract.[3]

1.27 Accor and Lead Lease Development Pty Ltd both have long term fixed price contracts with the Olympic Co-ordination Authority (OCA) to construct the Homebush Hotel and the Olympic Village and other ancillary facilities in Homebush. The OCA is an "always exempt person" for the purposes of the Sales Tax Assessment Act 1992. Both Accor and

2 Submission No.3, p.5

3 Submission No.3, p.5

Lend Lease were advised by their legal representatives that they were eligible to receive sale tax exemption as a result of their contract with OCA.

1.28 Accor and Lend Lease have estimated the sales tax will be between $5 million and $10 million and will place a huge financial burden on them by levying sales tax on the projects retrospectively. They advised the Committee that the fixed price head contract will not permit them to pass on the added cost to the OCA or for the subcontractors to seek compensation from them.

1.29 The Fallon Group who represent Walter Construction Limited are currently involved in 19 long term projects worth $780 million with Federal, State and Local governments that are potentially affected by the provisions of the Bill.

Application of section 128 of the Sales Tax Assessment Act

1.30 Since the announcement by the Government on 2 April 1998, correspondence has been exchanged between Accor and the Treasurer (see Appendix 3). The Treasurer noted their concerns and advised they should seek relief under section 128 of the *Sales Tax Assessment Act 1992*. The intention of section 128 is to provide relief to contractors who are affected by a change in sales tax law resulting in an increase to the cost of supplying goods. The Treasurer indicated that if section 128 did not resolve their problem, he would be willing to propose an amendment to section 128 to ensure that it did.

1.31 Accor and Lend Lease obtained an legal opinion from A H Slater, QC on section 128. He advised that it would not assist either party for the following reasons:

> There is no "contract price", to which under section 128 the "increase" in cost attributable to the sales tax change can be added, payable by the Olympic Construction Authority, or for that matter by anybody else, to HB Hotels or the consortium. The construction costs are borne by HB Hotels and the consortium for their own account, not to be paid or recouped by the Authority.[4]

1.32 The opinion also advised that it would be difficult to draft an amendment to section 128 to overcome the consequence of the retrospective operation of the amendment to Item 192 without giving the section unwarranted scope and uncertainty:

> In short, sec 128 is too blunt an instrument to deal with the consequences of retrospective amendment such as is proposed to Item 192.[5]

1.33 Ms Nesbitt of the Fallon Group advised the Committee that it would be both commercially and legally unrealistic to implement a claim under section 128.

> It is very hard, if at all possible, to break a fixed price contract and commercially it is unrealistic because you have got to go back through this chain of supply to when the sales tax was paid.[6]

1.34 Ms Nesbitt informed the Committee that to ask a subcontractor to identify how much sales tax he owed the government and then ask them to try to recover this from a builder 18 months to 2 years later is commercially unrealistic. She added that subcontractors

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4 Submission No.4 & 5, Further Opinion from A H Slater, QC dated 9 July 1999, p.2.

5 Submission No.4 & 5, Further Opinion from A H Slater, QC dated 9 July 1999, p.4

6 Evidence p.E5

would be very reluctant to approach a builder with whom they may have tender and ask for a refund for a job done 2 years ago if it meant that this put future tenders in jeopardy.

> It is also commercially unrealistic to expect a subcontractor to face up to a builder who they may be tendering to at the moment to say, 'Look, 12 or 18 months ago I did this job and there should have been sales tax on it. I am out of pocket now. You have got to give it to me'. I am sure the builder is not going to.[7]

1.35 The other problem raised by the Fallon Group is how administratively difficult it will be for a subcontractor to produce receipts and other records when at the time he was not required to as it was not the law.

> It is impossible for these people to keep track of the time at which various goods were purchased and when they were installed into buildings.[8]

> A tradesman, whether a builder or subcontractor merely needs to tender a certificate or exemption form to a supplier. This document is fairly informal, is not an accountable document and can be completely handwritten if necessary.[9]

Lack of action by those affected

1.36 The question of whether subcontractors should have been setting aside money to pay the sales tax from 2 April 1998 arose during the inquiry. The Fallon group advised the Committee that due to the uncertainty of the advice it received from the ATO in October 1998 it considered it inappropriate for the subcontractors to disregard the existing law and start paying the sales tax.[10]

Who will ultimately pay the sales tax

1.37 Representatives of the Fallon Group claim that it will be the subcontractors at the bottom of the chain who will have to bear the cost of these changes. Fallon Group representatives told the Committee that these subcontractors will be required to pay the tax but will have little power or recourse to go back to the builder or the government department and obtain relief due to the nature of the contracts. The representatives argued that many of the subcontractors were not aware of the announcement on 2 April 1998 and again on 11 March 1999. The Committee notes ATO advice, however, that it took out advertising about the changes in the major newspapers of every state.

In-built penalty

1.38 The representatives from the Fallon Group also raised the issue of an in-built penalty if subcontractors were required to pay the sales tax, as they would pay more than if they paid the tax at the time of purchase.

> Sales Tax is payable on the wholesale value so it is payable at the wholesale level of the chain. But a lot of the people who sell these types of goods are selling them

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7 Evidence p.E4

8 Submission No.3, p.5

9 Submission No.3, p.6

10 Submission No.1, p.3

> to users, the subcontractors. So they are selling them at a discounted retail price and tax is only payable on the wholesale value of that price.[11]
>
> If we substituted the purchase price for $10, the tax at 22 percent would be another $2.20. However, if they had said it was taxable before, it would have been on the notional wholesale value and, assuming a 50 percent mark-up, that would have been $5 and 22 percent of that would be $1.10, so it almost 50 percent in that instance. So there is that in-built penalty.[12]

Suggested amendment

1.39 Mr Anderson of Lend Lease suggested an amendment to the proposed legislation to cover long term contracts signed on or before 2 April 1998. His amendment is as follows:

> … inserting in item 2 of the Schedule after the words “were acquired on or before 2 April 1998”, the further words “, or for the purpose of performing a contract entered into on or before 2 April 1998.".[13]

1.40 Ms Nesbitt of the Fallon Group when asked for her view on contracts entered after 2 April 1998, said they would like to see the proposed legislation take affect from the date the Bill is enacted:

> I think that, again, the retrospective law is going to mean that those subcontracts or contracts are unaware of their tax liability and it is unfair to go back to them now and ask them for that tax that they did not know they had to pay.[14]

Government Response

1.41 Representatives of the ATO acknowledged that when the Bill was before Parliament in August 1998 they took note of the concerns raised at that time. As a result they varied the application clause to make the amendment apply to dealings after 2 April 1998.

1.42 They also informed the Committee that the rationale behind the government’s decision was that it had become aware that exemption was being allowed in circumstances that were contrary to the legislation. It was therefore decided to amend the legislation from the date of announcement so as to avoid any further abuses of the intention of the law.

1.43 In relation to section 128, the ATO representatives advised the Committee that they were not aware of the Treasurer's advice to Accor and his commitment to amend section 128 if it was found to be ineffective. They were not in a position to add any further comments on the matter.

1.44 The representatives did however agree to provide the Committee with a written response to the amendment suggested by Lend Lease. At the time of preparing this report, the Committee has not received any response.

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11 Evidence p.E5

12 Evidence p.E5

13 Submission No.4, p.3; Further Opinion of AH Slater, p.5.

14 Evidence p.E8

Conclusions

1.45 The basic issue in respect of this proposed amendment is the date on which the amendment is to come into effect.

1.46 Some witnesses have argued that the amendment should only apply from the date of assent. They claim that there was a lack of certainty about whether the amendment would proceed, and a lack of understanding among some subcontractors about the change.

1.47 In respect of this group, the Committee notes that it is standard practice for changes to tax law to have effect from the date of announcement. This is particularly the case where the Government wishes to introduce anti-avoidance measures.

1.48 Other witnesses have agreed that the amendment should apply from 2 April 1998, but claim that if passed in its current form, it will unfairly affect existing older contracts. This is because it will impose tax on previously exempt goods supplied after that date under non-variable fixed price contracts entered into prior to that date.

1.49 The Committee notes that the Treasurer has indicated a willingness to address this problem through possible amendment to section 128.

1.50 However, the evidence tendered to the Committee challenged the practicality of addressing the potential problem through section 128, for legal and practical commercial reasons.

1.51 The Committee is not in a position to assess the practicality of the Treasurer's proposed solution sight unseen and is of the view that his indicated willingness to address the problem should be accepted.

1.52 Consequently, the Committee does not propose any amendment to Schedule 1 of the Bill but nonetheless draws to the attention of the Treasurer and the Senate the possible amendment proposed by Lend Lease.

1.53 The Committee urges the Government to give due consideration to developing a workable method of dealing with the issue, given the practical concerns raised above.

Proposed Division 243

1.54 The Economics Legislation Committee considered Division 243 in August 1998 just prior to the announcement of the federal election. It had received a number of submissions concerned with the proposed amendments in the Taxation Laws Amendment Bill (No. 4) 1998.

1.55 The Committee has again received several submissions on proposed Division 243. While each submittor has acknowledged that changes made to the original proposed division have addressed some of their concerns, there are still matters causing concern in the proposed division 243 in Taxation Laws Amendment Bill (No. 5) 1999. These include:

- reasons for the amendments;
- relationship between this legislation and the Review of Business Taxation;
- complexity of the proposed legislation;
- impact on major projects; and

- retrospectivity.

Reasons for the amendments

1.56 In response to Committee questioning, Mr O' Neill, Chief Executive Officer of AusCID, stated that "the whole rationale for division 243 was represented as an integrity measure".[15] However, he stated that to this day, at least at the level of large projects, the resource sector projects, the infrastructure projects and increasingly tourism/hotel projects, evidence has not been presented of mischief in relation to this issue of structured non-repayment of limited recourse debt.[16]

1.57 In its submission, the Queensland Government welcomed changes to the original proposal which limit the unacceptably broad definition of limited recourse debt and reduce the scope of the concept of debt termination. However, the Queensland Government is still of the view that Draft Div. 243:

> … reflects an underlying and misplaced assumption that limited recourse debt is primarily a vehicle for tax avoidance. This is not the case.[17]

1.58 The Queensland Government considers that there are sufficient anti-avoidance provisions in the current law with which to challenge abusive practices either at their commencement, during their term, or after they terminate. If specific abuses require special measures, then they should be enacted in a way that offers a safe harbour to legitimate limited recourse borrowings.[18]

1.59 However, Mr Nolan, Assistant Commissioner with the Australian Taxation Office, advised the Committee that:

> … there have been cases that we have come across where taxpayers have utilised the non-payment of limited recourse debt to achieve greater tax benefits than they ought to have. [19]

Relationship between this legislation and the Review of Business Taxation (RBT)

1.60 In its submission, AusCID concludes that, although there have been gains made in the redrafting of division 243, in its view the matter should be placed on hold until Government considers the full range of RBT recommendations and legislates appropriately. In its opinion:

> Addressing integrity measures in this awkward fashion merely introduces unnecessarily complex legislation that contains risks in drafting, implementation and, ultimately, interpretation. There is the further risk that D.243, in its current form, will be short lived as it is like to be overtaken by the Government's legislated response to the RBT.[20]

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15 Evidence, p.E2.

16 Evidence, p.E2.

17 Submission No. 7, p.3.

18 Submission No. 7, p.3.

19 Evidence, p.E13.

20 Submission No. 2, p.2.

1.61 Mr O'Neill told the Committee that in view of the parallel analysis of many aspects of the review of business taxation, his organisation was of the view that it was inappropriate and indeed a clumsy way to deal with the issues of concern that the government has raised about certain aspects of the structured non-repayment of this form of debt.[21]

1.62 Mr O'Neill was concerned that the proposed legislation is difficult to interpret and suspected that because of the recommendations being made by the Ralph review, it will have a limited life if the government does proceed to implement the Ralph Review recommendations within the next 18 months or thereabouts.[22]

1.63 In response to Mr O'Neill's suggestion that the legislation be placed on hold until the Government considers the full range of RBT recommendations, Mr Nolan stated that:

> It really is not for me at this stage to comment on policy issues about which the government has not made decisions, but to defer the measure, which was the implication of Mr O'Neill's submission in connection with Ralph, would certainly be at a cost to the revenue. This measure was first announced in the 1997-98 budget and under current estimates it is going to represent a saving to the revenue of approximately $50 million per annum out to the year 2003-2004. It would open up the prospect of this particular weakness in law remaining there for some time in relation to ongoing debts. The other point I would make— and I do not want to be seen as commenting on Ralph—is that this is an amendment to the existing law. That is the way I think it ought to be viewed.[23]

Complexity of amendments

1.64 AusCID notes its concerns about the proposed division in its submission:

> To the extent that the Government is seeking to rectify a defect in the existing debt forgiveness regime, AusCID considers that it should address this objective in the appropriate part of the tax legislation. … The right to capital allowances should be independent of the nature of the finance used to acquire assets. D.243 undermines the neutrality currently existing between different forms of capital - equity, corporate debt and limited or non-recourse debt. It should not be the realm of government to prescribe acceptable forms of project financing. Such an approach is destabilising and sends inappropriate signals to investors.[24]

1.65 Mr O'Neill was also concerned that the legislation "is difficult to interpret" and that

> … there will be compliance costs associated with seeking legal or accounting advice in terms of either refinancing existing limited recourse debt or indeed in structuring the use of the new application of limited recourse debt.[25]

1.66 Mr O'Neill provided the Committee with a copy of correspondence from the Assistant Treasurer providing responses to issues raised by AusCID. (See Appendix 5). He also sought confirmation on whether the explanations provided in this correspondence would

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21 Evidence, p.E1.

22 Submission No. 2, p.2.

23 Evidence, pp.E13-14.

24 Submission No. 2, p.2.

25 Evidence, p.E2.

be incorporated in a revised explanatory memorandum to assist in the interpretation of the new bill.

1.67 When asked by the Committee whether points raised in the Assistant Treasurer's response could be incorporated in the explanatory memorandum, Mr Nolan indicated that he would consult with the Assistant Treasurer's office about this .[26]

1.68 The Committee asked Mr O'Neill whether he considered the new legislation too accommodating of tax planning and whether the proposed legislation had been "watered down". Mr O'Neill responded:

> On the contrary, I think the government widened the ambit of what is defined as limited recourse debt. I have been advised that there are now definitional issues within this proposed bill which would result in what previously had been termed corporate debt now being considered as limited recourse debt—and that is a matter of concern for a number of companies who have put this view to me. … I suspect resolving that concern will only happen when practical examples are put forward.[27]

Impact on major projects

1.69 The Committee asked Mr O'Neill if he was aware of any new projects which might be affected by this new legislation. He indicated that he was not. He also indicated that he was not aware of any existing projects because "one would need to look at the specifics of the financing packages for each of those projects, indeed, if they are to be rolled over and refinanced, to see that the refinancing arrangements comply with the terms of the proposed legislation".[28]

1.70 The Queensland Government noted that its position was that the tax law should not impede normal uncontrived commercial behaviour. It the Queensland Government's view, "Draft Div. 243, as currently drafted, is such an impediment and as such is unwarranted".[29]

Retrospectivity

1.71 Both the Queensland Government and the Minerals Council of Australia expressed their concern about the retrospectivity of division 243.

1.72 The Queensland Government considered "the retrospective effect of the provision is inequitable".[30] The Minerals Council is concerned that the provisions "apply retrospectively, in that finance arrangements entered into prior to 27 February 1998 are subject to the limited recourse debt provisions".[31]

1.73 While not specifically addressing the question of retrospectivity, Mr Nolan, ATO, stated that:

26 Evidence, p.E13.

27 Evidence, p.E3.

28 Evidence, p.E3.

29 Submission No. 7, p.4.

30 Submission No. 7, p.4.

31 Submission No. 6, p.3.

> … by and large I think people who are financing on limited recourse debt basis, are very well aware and are very well advised taxpayers. I think their response is likely to be a legitimate response. In other words, they will take note of the potential effect of a bill announced, or in the parliament, from a particular date and to that extent there are likely to be revenue effects particularly in respect of transactions or events that do not occur that might otherwise have occurred.[32]

Conclusions

1.74 The Committee notes that each of the submittors has acknowledged that some of their concerns about proposed Division 243 have been addressed by changes incorporated in proposed division 243.

1.75 The Committee notes that the Government has made substantial changes to the proposed division in order to address previous concerns. The Committee is not persuaded that there is any need for further changes to the proposed division.

Recommendation

1.76 The Committee recommends that the Bill be passed.

Senator the Hon. Brian Gibson
Chairman

32 Evidence, p.E15.

LABOR SENATORS' MINORITY REPORT

The bill covers 2 matters:

- sales tax; and
- non-recourse finance.

Sales Tax

Labor does not oppose, in principle, the limitation of the exemption granted by item 192 of the Sales Tax *(Exemptions and Classifications) Act 1992.*

However, as pointed out by evidence from indirect tax experts, the Fallon Group, and other witnesses, the proposed amendments will impose a significant retrospective taxation liability on contractors and/or subcontractors involved in construction projects.

In many cases the contractors and/or subcontractors who would be caught by the provisions of the bill may have actually finished working on the relevant project. Many, or all, of them will be completely unaware of this proposal by the Government which, if enacted, would impose a retrospective liability on these small businesses.

The expert evidence is well documented in the Government committee members' report and Labor considers that this evidence provides ample reason for the Senate to amend the bill so as to not impose an unfair retrospective sales tax liability on many taxpayers in the construction industry. For example, the proposal put forward by Lend Lease, which appears at paragraph 1.39, is one mechanism for addressing this issue.

Accordingly, Labor members recommend that the bill be amended to ensure that it does not apply retrospectively to contracts entered into before 2 April 1998.

Non-recourse financing

The original proposals of the Government were totally unacceptable to the Opposition. Although the stated aim of the proposals were to stamp out tax avoidance practices, which is supported by Labor, the original proposals went way beyond tax avoidance arrangements.

Because of scrutiny through the Senate committee process, the Government has been forced to significantly amend the original proposals whilst still achieving the desirable anti-avoidance outcome the Opposition supports.

Accordingly, Labor members support the amended proposals concerning proposed Division 243.

Senator Shayne Murphy
Deputy Chair

Senator George Campbell

MINORITY REPORT AUSTRALIAN DEMOCRATS

TAXATION LAWS AMENDMENT BILL (NO. 5) 1999

Unless the Government itself addresses the mischiefs generated by retrospectivity, as exposed in this Inquiry, the Australian Democrats will move amendments to deal with this issue.

Senator Andrew Murray
Australian Democrats

Appendix 1

List of Submissions

No. 1	**Fallon Group**
No. 2	**AusCID**
No. 3	**Walter Construction Group Pty Ltd**
No. 4	**Arthur Andersen**
No. 5	**Lend Lease Corporation Ltd**
No. 6	**Mineral Council of Australia**
No. 7	**Queensland Treasury**

Appendix 2

List of Witnesses

AusCID

Mr Dennis O’Neill, Chief Executive Officer

Fallon Group and Walter Construction Group

Ms Pamela Nesbitt

Mr Phil Lawrence

Arthur Andersen/ Lend Lease Corporation

Mr Mark Tafft

Mr Phil Anderson

Government Officials

Mr Darrel Nolan

Mr Brendan Flattery

Mr Michael Smith

Mr Nigel Goodwin

Mr John McCarthy