

Parliament of the Commonwealth of Australia

**SENATE ECONOMICS LEGISLATION
COMMITTEE**

**CONSIDERATION OF LEGISLATION
REFERRED TO THE COMMITTEE**

Taxation Laws Amendment Bill (No. 7) 2000

October 2000

Commonwealth of Australia

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REPORT

Reference of the Bill to the Committee

1.1 The Taxation Laws Amendment Bill (No. 7) 2000 was introduced into the House of Representatives on 29 June 2000 and passed that chamber unamended on 17 August 2000. It was introduced into the Senate on 28 August 2000. Following a report by the Selection of Bills Committee, the Senate referred the Bill to the Senate Economics Legislation Committee on 16 August 2000 for examination and report by 5 October 2000.¹

1.2 The Committee particularly was asked to consider the capital gains tax (CGT) provisions and the pay-as-you-go (PAYG) measures in the Bill.²

The Committee's Inquiry

1.3 The Committee invited a number of interested parties to make submissions on the Bill, in addition to advertising the inquiry on the Parliament website. The Committee received three submissions to the inquiry (see Appendix 1).

1.4 The Committee held a public hearing on the Bill in Canberra on 20 September 2000. The witnesses who appeared at the hearing are shown in Appendix 2.

The Bill

1.5 The bill introduces amendments to five Acts namely:

- Income Tax Assessment Act 1936,
- Income Tax Assessment Act 1997,
- Income Tax (Transitional Provisions) Act 1997,
- New Business Tax System (Capital Gains Tax) Act 1999, and
- Taxation Administration Act 1953.

1.6 The amendments in the Bill serve several, unrelated purposes, namely they:

- allow income tax deductions for gifts to certain nominated charities (Schedule 1 of the Bill),
- amend the PAYG instalments regime (Schedule 2),
- amend various tax Acts to correct unintended consequences resulting from the *New Business Tax System (Capital Gains Tax) Act 1999* (Schedule 3)
- amend various tax Acts to correct unintended consequences resulting from the *Tax Law Improvement Act (No. 1) 1998* (schedule 4),

¹ Selection of Bills Committee Report No. 11 of 2000, dated 16 August 2000, Senate Hansard, 16 August 2000, p. 16,486.

² Selection of Bills Committee Report No. 11 of 2000, dated 16 August 2000.

- make a minor technical amendment to the *Income Tax Assessment Act 1997* (Schedule 5), and
- amend the *Income Tax Assessment Act 1997* to ensure that it is clear when the CGT discount may apply to assets, and clarify the provisions concerning the 12 month rule relating to the CGT general discount (Schedule 6).

Background

1.7 The various unrelated measures in the Bill arose at various times. For example, the tax deductibility of gifts to the Community Disaster Relief (Sydney Hail Storm Assistance) Fund in Schedule 1 of the Bill was foreshadowed by the Assistant Treasurer as long ago as May 1999,³ while the unintended consequences being corrected by Schedule 4 of the Bill arose after the enactment of *Tax Law Improvement Act (No. 1) 1998*.⁴

Measures in the Bill

1.8 Although the Committee was tasked by the Senate with examining in particular the CGT and PAYG measures in the Bill, other issues were raised in evidence and therefore all six schedules of amendments in the Bill are discussed below.

Schedule 1 – tax deductible gifts

1.9 Charitable organisations are formed regularly. Tax deductible gift status assists these organisations in attracting public support for their activities. The current Bill grants tax deductibility to gifts given to eight charities.⁵ In doing so the Bill is putting into effect the public statements, made at various times in 1999-2000, by the Assistant Treasurer.

Schedule 2 – PAYG instalments

1.10 The proposed changes to the PAYG instalments regime were requested by the collective investment industry and announced as part of the measures relating to A New Tax System. The changes seek to amend the *Taxation Administration Act 1953* in relation to the PAYG instalments, by requiring the stated income of a taxpayer, who is an absolutely entitled⁶ beneficiary to the assets of a trust, to include that beneficiary's proportional interest in the income earned by the trust.

1.11 The current PAYG regime requires beneficiaries to include in their income for a particular period a share of the income of each trust that they were a beneficiary of during the period. For tax purposes the share of the trust's income which is deemed to be part of a beneficiary's income is calculated by having regard to the beneficiary's assessable income from the trust for the previous year and the trust's income in the previous year.

³ Assistant Treasurer, 'Sydney Hail Storm Assistance Fund Donations now Tax Deductible', press release No. 024, 29 May 1999.

⁴ Explanatory Memorandum, p 35.

⁵ Taxation Laws Amendment Bill (No. 7) 2000, Schedule 1.

⁶ An absolute entitlement to a trust exists where the terms of the trust deed name the individual beneficiaries, and state explicitly the share each beneficiary is entitled to. In relation to trusts where the beneficiaries have an absolute entitlement, it is clear exactly how much trust income and what proportion of trust assets should be attributed to each beneficiary at any one time. Trusts where all the beneficiaries have an absolute entitlement are generally small family trusts.

1.12 Under existing PAYG arrangements taxpayers generally pay quarterly instalments, so in essence existing arrangements mean that the trustees of trusts are required to provide beneficiaries with details of the trust's income for both the current quarter and the preceding income year. This imposes a significant compliance burden on trustees of some trusts.

1.13 This compliance burden is unnecessary in relation to a trust where the beneficiaries are absolutely entitled to the trust's assets, and therefore there is no doubt as to the amount of the beneficiaries' assessable income.

1.14 The proposed amendments, by allowing some beneficiaries who are absolutely entitled to the assets of a trust to include in their income the amount that the trust actually earns in the relevant period, will obviate the need to calculate assessable income on the trust's income in the previous year. Thus some taxpayers with fluctuating incomes will be able to make their tax payments more closely match their assessable income receipts.

1.15 The amendments proposed by Schedule 2 also require the stated income of a beneficiary of a broadly held resident investment unit trust to include all amounts distributed to, or applied for the benefit of, the beneficiary by the trustee even where the amounts are not assessable as income in the year it is distributed or applied.

1.16 This table compares key features of the Bill with the existing position regarding PAYG.⁷

⁷ Explanatory Memorandum, pp. 14-15.

<i>Proposed New law</i>	<i>Current law</i>
<p>The instalment income of a beneficiary that is absolutely entitled to the assets of a trust will include that beneficiary's proportional interest in the instalment income earned by the trust.</p> <p>The instalment income of a beneficiary of a broadly held resident investment unit trust will include the amounts distributed to, or applied for the benefit of, the beneficiary by the trustee. This is so, regardless of whether that amount is assessable income of the year in which it is distributed or applied.</p> <p>The instalment income of certain beneficiaries of resident investment unit trusts that are not broadly held will include the amounts distributed to, or applied for the benefit of, the beneficiary by the trustee. This is so, regardless of whether that amount is assessable income of the year in which it is distributed or applied. The beneficiary must be:</p> <ul style="list-style-type: none"> • an entity that is exempt from tax; • the trustee of a broadly held resident investment unit trust; • the trustee of a complying superannuation fund, complying approved deposit fund or pooled superannuation trust; • a statutory fund of a life insurance company (which includes the life insurance business of a friendly society); or • a trustee of a trust that meets specified requirements including that the beneficiaries are absolutely entitled to the assets of the trust. 	<p>The instalment income of all beneficiaries of trusts, other than a corporate unit trust or public trading trust, is determined on an 'entitlements basis' having regard to:</p> <ul style="list-style-type: none"> • The beneficiary's assessable income of the previous year; • the trust's instalment income of the previous year; and • the trust's instalment income of the current instalment quarter or year.

Schedule 3 – CGT small business provisions

1.17 Schedule 3 aims to improve the operation of the small business CGT concessions by clarifying provisions to ensure that they have their intended consequences. Essentially the amendments in Schedule 3 will rectify unintended consequences arising from the *New Business Tax System (Capital Gains Tax) Act 1999*.

Schedule 4 – Minor CGT changes

1.18 Schedule 4 would correct unintended consequences arising from the *Tax Law Improvement Act (No. 1) 1998*.

Schedule 5 – Technical amendment

1.19 This Schedule would make a minor technical amendment so as to replace a reference to ‘foreign public official’ with ‘public official’ in paragraph 26-53(2)(c) of the *Income Tax Assessment Act 1997*. This paragraph relates to the non-deductibility of bribes to public officials but currently refers, inexplicably, only to ‘foreign’ officials.

Schedule 6 – Discount capital gains: integrity measures

1.20 This schedule proposes amendments to the CGT discount provisions found in the *Income Tax Assessment Act 1997*. Under the current law the CGT discount is not available:

- if the capital gain is worked out using a cost base that includes indexation; or
- for a capital gain arising from a CGT event, such as a sale, of a share or interest in a company or trust if more than half of the assets of the company or trust were acquired less than 12 months before the sale.

1.21 The proposed amendments aim to avert situations in which the current legislation would generate inappropriate outcomes. It should be noted that this section of the Bill has been informally criticised by persons contacted by the Secretariat for being unclear and even internally inconsistent.

1.22 The following table compares key features of the Bill with the current law relating to discount capital gains.⁸

⁸ Explanatory Memorandum, p. 48.

<i>Proposed New law</i>	<i>Current law</i>
<p>Two additional conditions now apply before a capital gain on an equity interest is <i>not</i> a discount capital gain. That is:</p> <ul style="list-style-type: none"> • the taxpayer (including associates) has at least 10% equity in the entity before the CGT event; and • the notional net capital gain made on assets held by the company or trust just before the CGT event, and acquired less than 12 months before, is greater than 50% of the notional net capital gain on all assets held by the company or trust at that time. <p>If any of the 3 conditions is not met, the gain is a discount capital gain.</p>	<p>Section 115-45 contains only one condition in determining whether a capital gain on an equity interest is <i>not</i> a discount capital gain. That is:</p> <ul style="list-style-type: none"> • the cost bases of assets acquired by the company or trust within 12 months of the CGT event is more than half of the total of the cost bases of the CGT assets of the company or trust at that time.
<p>Section 115-45 does not preclude a capital gain made because of CGT event E4 from being a discount capital gain, if the gain was a discount capital gain for the trustee.</p>	<p>It is possible that section 115-45 may preclude a capital gain, made because CGT event E4 happens, from being a discount capital gain.</p>
<p>A taxpayer who is deemed to have a cost base element that includes indexation can recalculate their cost base to exclude the indexation in order for the capital gain to be a discount capital gain.</p>	<p>A capital gain may not be a discount capital gain if the cost base used to calculate the gain included an indexation component as a result of the application of a provision which deemed an element of the cost base to include an indexation amount.</p>

Issues in Evidence

1.23 The issues raised in evidence, for convenience, are dealt with under the heading of the schedule that they relate to in the Bill.

Schedule 1 – tax deductible gifts

1.24 The Committee sought further information from officials of the Australian Taxation Office (ATO) about the nature of some of the eight charitable organisations listed in Schedule 1. The ATO's response is at Appendix 3.⁹

⁹ Taxation Laws Amendment Bill (No. 7) 2000, Schedule 1.

1.25 The Bill would allow gifts to the following eight charities to be deductible for income tax purposes:

- The *Global Foundation*, headquartered in Victoria, is a non-profit, citizens' group that aims to promote and encourage Australia's national development and international orientation, with a particular focus on Australia's centenary of Federation.¹⁰
- The *Community Disaster Relief (Sydney Hail Storm Assistance) Fund* was established to raise money for those affected by the severe hail storm that damaged parts of Sydney in April 1999.¹¹
- The *Australian Ex-Prisoners of War Memorial Fund* was established to raise funds for a national memorial to be erected in the City of Ballarat; the objective being to promote community recognition of the service and sacrifice made by Australian Prisoners of War.¹²
- The *Foundation for Rural and Regional Renewal Public Fund* was established to raise money to provide a viable social and economic future for Australia's rural and regional communities. It aims to encourage innovative collaboration between business, community and government in philanthropic endeavours that will boost the economic and social stocks of regional Australia. Its emphasis is on economic development and job creation.¹³
- The *Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund* was established to raise money for the ongoing maintenance of the Mount Macedon Memorial Cross. The Cross was built in 1934-35 to commemorate the memory of those who served in the Great War, and it is considered to be one of the most significant war memorials in Victoria.¹⁴
- The *United Hellenic Earthquake Appeal* was established to raise money for the victims of the earthquake that devastated Athens in September 1999.¹⁵
- The *Foundation for Gambling Studies* was established to support independent research on gambling. Reliable and independent research will assist the Government and the community to develop policies relating to gambling.¹⁶

¹⁰ Assistant Treasurer, 'Deductibility of Gifts to the Global Foundation', press release No.050, 3 November 1999.

¹¹ Assistant Treasurer, 'Deductibility of Gifts to the Community Disaster Relief (Sydney Hail Storm Assistance) Fund', press release No. 055, 16 November 1999.

¹² Assistant Treasurer, 'Deductibility of Gifts to the Australian Ex-prisoners of War Memorial Fund', press release No. 049, 20 October 1999.

¹³ Assistant Treasurer, 'Deductibility of Gifts to the Foundation for Rural and Regional Renewal Public Fund', press release No. 011, 29 March 2000.

¹⁴ Assistant Treasurer, 'Deductibility of Gifts to the Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund', press release No. 067, 29 June 2000.

¹⁵ Assistant Treasurer, 'Deductibility of Gifts to the United Hellenic Earthquake Appeal', press release No. 059, 8 December 1999.

- The *RSL and 6th Division Australian-Hellenic Educational Memorial Fund* was established to raise money to assist, each year, a deserving Greek citizen in the island of Crete, who is under the age of 25 years, to undertake tertiary education.¹⁷

Schedule 2 – PAYG instalments

1.26 Miss Lynn Ralph, Taxation Manager, Barclays Global Investors; and a member of the Tax Working Group of the Investment and Financial Services (IFSA), stated that the measures in Schedule 2 were the product of the collective investment industry ‘working intensely’¹⁸ with Government. The aim of this collaboration, and therefore the aim of Schedule 2, was to ensure that the estimated nine million investors in collective investments would be treated in the same way for tax purposes as people who hold their investments directly.¹⁹

1.27 Schedule 2 provided ‘a workable set of arrangements’ for PAYG measures relating to public unit trusts until the new collective investments vehicle regime commenced on 1 July 2001.²⁰ The ‘practical effects’²¹ of the amendments in Schedule 2, according to Miss Ralph, would not extend beyond providing ‘a much simpler formula’²² for investors in public unit trusts to calculate their PAYG instalments.

1.28 Ms Margaret Haly, Assistant Commissioner, Law Integrity Team, ATO, testified that this simpler formula was intended to ‘reduce compliance costs’ on trustees and beneficiaries of some trusts.²³ Ms Haly stated that without the PAYG measures in the current Bill the collective investments industry would have to incur ‘costs in terms of setting up systems’ that will be unnecessary after the new collective investments vehicle regime comes into force on 1 July 2001.²⁴

Schedule 3 – CGT small business provisions

1.29 Ms Deborah Boyd, Acting Assistant Commissioner, Business Tax Reform Implementation, ATO, stated that Schedule 3 of the Bill involved ‘no significant policy changes’. Rather, the amendments in it should be termed ‘very minor modifications’.²⁵

¹⁶ Assistant Treasurer, ‘Deductibility of Gifts to the Foundation for Gambling Studies’, press release No. 010, 8 March 2000.

¹⁷ Assistant Treasurer, ‘Deductibility of Gifts to the RSL and 6th Division Australian-Hellenic Educational Memorial Fund’, press release No. 025, 14 June 2000.

¹⁸ Evidence, p. 1.

¹⁹ Evidence, p. 1.

²⁰ Evidence, p. 2.

²¹ Evidence, p. 2.

²² Evidence, p. 2.

²³ Evidence, p. 11.

²⁴ Evidence, p. 11.

²⁵ Evidence, p. 4.

1.30 A Committee member, Senator Conroy, pointed out that the Bill's Explanatory Memorandum stated that the effect of Schedule 3 would be to 'broaden access' to tax concessions, yet the financial impact of the Schedule was stated to be 'nil'.²⁶ Senator Conroy asked how it was possible for a measure to broaden access to tax concessions while having no financial impact.

1.31 Mr John Burge, Executive Officer, Capital Gains Tax Segment, Large Business and International, ATO, agreed that it was more 'correct'²⁷ to say that, without the measures in Schedule 3, more revenue than envisaged when the original policy intent had been formulated would be collected.

1.32 Testimony on this issue indicates that the Explanatory Memorandum relating to the Bill was not clearly drafted in relation to Schedule 3 since apparently the 'nil' financial impact reported for the Schedule in the Explanatory Memorandum²⁸ relates to a nil impact in relation to the original policy. Nowhere in the Explanatory Memorandum is this made clear.

1.33 Senator Conroy also asked Treasury officials if the costing for the amendments proposed in Schedule 3 were based on 100 per cent of small businesses accessing CGT concessions. This question was taken on notice. After the hearing Treasury responded (see Appendix 4). Treasury stated that small businesses claim CGT concessions when completing their tax returns, and obtain specialist advice when completing such returns. Therefore Treasury had assumed all small businesses would claim CGT concessions and the measures included in Schedule 3 had therefore been costed on the basis of 100 per cent of small businesses claiming CGT concessions.

Schedule 4 – Minor CGT changes

1.34 As part of the Tax Law Improvement Project the capital gains tax provisions in Part IIIA of the income *Tax Assessment Act 1936* were rewritten and incorporated into the *Income Tax Assessment Act 1997*. The intention of this rewrite was that tax legislation should be easier to understand.²⁹

1.35 The Joint Committee of Public Accounts and Audit, in its report No.361, recommended that there be a two-year period following the introduction of the rewritten law during which minor amendments could be made to ensure that the rewritten law reproduced the effect of the original law.³⁰ According to Mr Burge, Schedule 4 of the Bill is the third and last instalment of corrections to ensure that the rewritten tax law replicates the effect of the original law.³¹

²⁶ Evidence, p. 5.

²⁷ Evidence, p. 7.

²⁸ Explanatory Memorandum, p 4.

²⁹ Evidence, p. 7.

³⁰ Evidence, p. 7.

³¹ Evidence, p. 8.

Schedule 5 – Technical amendment

1.36 This Schedule attracted no comment during the hearing³² presumably because it relates to a purely technical amendment that replaces the term ‘foreign public official’ with the term ‘public official’ in paragraph 26-53(2)(c) of the *Income Tax Assessment Act 1997*.

Schedule 6 – Discount capital gains: integrity measures

1.37 Ms Boyd informed the Committee that Schedule 6 was intended to clarify both the circumstances under which a taxpayer may access the CGT discount for assets, and the operation of the 12 month rule for holding assets.³³

1.38 Ms Boyd pointed out that the existing tax regime allowed, in relation to assets acquired before 21 September 1999 and disposed of after that date, a taxpayer to claim either a tax benefit based on accumulated indexation or a CGT discount. Confusion had arisen where assets were acquired under a rollover mechanism that included an indexation component. It had been argued that because an indexation component already applied to these assets the taxpayer owning them was unable to opt for the CGT discount. Schedule 6 now made it clear that taxpayers in this situation may access the CGT discount.³⁴

1.39 The 12 month rule allows a taxpayer to claim the CGT discount in relation to assets that have been held for at least 12 months. Ms Boyd testified that it had been possible, for example, to hold a share in a company for more than 12 months before selling it, yet the company’s assets, which is what the value of the share reflected, may have been held by the company for less than 12 months.³⁵ This situation was essentially a loophole in existing legislation.

1.40 The legislation which closed this loophole was, according to Ms Boyd, ‘prepared very quickly and there [had been] no time for consultation’.³⁶ As a result this amending legislation inadvertently denied some taxpayers access to the CGT discount, even though the policy intent was that they should be able to claim the discount. One example of this cited by Ms Boyd was where a taxpayer held shares in a company for more than 12 months but the company had no cost base, its main asset being ‘created goodwill’.³⁷ By having regard only to the cost base of the company a taxpayer could be considered not to have held an asset for 12 months and so be denied a CGT discount. Schedule 6 of the Bill remedies this situation and ensures that taxpayers may claim the CGT discount in accordance with the original policy intent.

³² Evidence, p. 8.

³³ Evidence, p. 8.

³⁴ Evidence, p. 8.

³⁵ Evidence, p. 9.

³⁶ Evidence, p. 9.

³⁷ Evidence, p. 9.

Other Issues – Listed Investment Companies

1.41 One member of the Committee, Senator Watson, while stating that he had ‘no problems with the Bill’,³⁸ asked a question about the taxation system generally. Specifically Senator Watson asked Treasury officials, on notice,³⁹ if the new collective investments vehicle regimes would ‘discriminate’⁴⁰ against listed investment companies because capital gains tax would operate differently in relation to listed companies as opposed to other companies.

1.42 Treasury has since responded (see Appendix 4) that under recent changes to taxation legislation listed investment companies have lost the benefit of CGT indexation from 30 September 1999, but will benefit from an ongoing lower company tax rate. Moreover, individual shareholders have access to refundable imputation credits; and will be able to access the CGT discount on unrealised gains in listed investment companies by selling shares.

1.43 It should be noted that in a high inflation environment the benefit of CGT indexation may be more valuable than an ongoing lower tax rate. Thus the response to the original question as to whether or not listed investment companies are now discriminated against depends to some extent on prevailing economic conditions.

Other Issues – Additional Legislation

1.44 Three submissions were made to the Committee’s inquiry by Mr Paul Ingram, Senior Associate, Minter Ellison, Adelaide. The first of these submissions dealt with Schedule 4 of the Bill which, among other things, would ensure that CGT provisions do not discriminate against small businesses that require licences, such as fishing enterprises, and which surrender multiple licences in return for a single new licence. Schedule 4 of the Bill only applies from 1 July 1998 thereby disadvantaging those who surrendered multiple licence before that date.⁴¹

1.45 In evidence Mr Burge stated that the date of 1 July 1998 was set because of a policy decision by the government. Mr Burge acknowledged that there were no plans for additional legislation on this matter.⁴² Essentially therefore, as was noted by the Committee, submission No. 1 was a request for “an additional matter to be considered by the government”.⁴³

1.46 Submission 1a also concerned, according to Mr Ingram, ‘a policy issue’.⁴⁴ Specifically, the combined effect of section 152-30(2)(a) and section 152-30(5) of the *Income Tax Assessment Act 1997*, is that ‘every discretionary beneficiary of a discretionary trust will be deemed to control that trust’,⁴⁵ and so all the assets of the discretionary trust will be

³⁸ Evidence, p. 1.

³⁹ Evidence, p. 2.

⁴⁰ Evidence, p. 1.

⁴¹ Submission No. 1, p. 1.

⁴² Evidence, p. 12.

⁴³ Evidence, p. 14.

⁴⁴ Evidence, p. 14.

⁴⁵ Submission No. 1a, p. 1.

considered as their assets. This means that some taxpayers running small businesses are unable to claim small business tax concessions because they would fail the Maximum Net Asset Value Test.

1.47 Mr Ingram submitted that the current Bill should include additional sections which would amend the *Income Tax Assessment Act 1997* to provide a fairer test for determining who controlled a discretionary trust.⁴⁶ In evidence the Committee stated that that was ‘clearly a policy issue beyond this particular bill’.⁴⁷

1.48 Submission 1b dealt with perceived flaws in existing tax law rather than problems with the current Bill. These flaws were stated by Mr Ingram to relate to the controlling individual test and the small business rollover provision.⁴⁸

1.49 Some problems with the controlling individual test were dealt with in discussing submission 1a (see above). Submission 1b also raised the problem of shares in a fixed trust being held by several discretionary trusts, a ‘reasonably common’ situation. The relevant test for determining if the Small Business Relief concession applies to a fixed trust is contained in section 152-55(2) of the *Income Tax Assessment Act 1997*. That section, however, requires that an individual be identified who is beneficially entitled to at least 50 per cent of the income and capital of the trust, something that it is not possible to do in many cases where discretionary trusts are involved.

1.50 Mr Ingram stated that the existing law was operating “unfairly”⁴⁹ in relation to situations involving fixed and discretionary trusts. This is not a problem with the current Bill, however, rather a request for additional legislation.

1.51 In relation to perceived problems with the small business rollover, Ms Boyd and Mr Burge of the ATO undertook to speak to Mr Ingram separately on that matter and report back to the Committee.

1.52 The report subsequently made by the ATO to the Committee (see Appendix 5) noted that submission 1b had referred in error to item 3 of Schedule 3, the correct reference was item 4 of Schedule 3. The ATO report noted Mr Ingram regarded the amendment proposed by item 4 of Schedule 3 to the Bill as appropriate and sufficient in its proposed scope.

1.53 The Committee draws these requests for additional legislation to the attention of the Government.

⁴⁶ Submission No. 1a, p. 2.

⁴⁷ Evidence, p. 14.

⁴⁸ Evidence, p. 15.

⁴⁹ Evidence, p. 15.

Recommendation

1.54 The Committee recommends that the Senate pass the Bill.

Senator the Hon Brian Gibson
Chairman

APPENDIX 1**LIST OF SUBMISSIONS**

- No. 1 Mr Paul Ingram, Minter Ellison Adelaide, on behalf of the fishing industry
- No. 1a Mr Paul Ingram, Minter Ellison Adelaide
- No. 1b Mr Paul Ingram, Minter Ellison Adelaide

APPENDIX 2**LIST OF WITNESSES
APPEARING BEFORE THE COMMITTEE****Wednesday, 20 September 2000, Canberra****Investment and Financial Services Association (IFSA)**

Mr Michael Barbour, Controller Taxation, Westpac (member of IFSA's Tax Working Group)

Mr Andrew Mills, Chief Tax Counsel, MLC (adviser to IFSA)

Miss Lyn Ralph, Chief Executive Office, Investment and Financial Services Association
(IFSA)

Ms Raewyn Williams, Taxation Manager, Barclays Global Investors (adviser to IFSA)

Australian Taxation Office

Ms Sandra Peacock, Acting First Assistant Commissioner, Law Integrity Team

Ms Margaret Haly, Assistant Commissioner, Small Business

Ms Deborah Boyd, Acting Assistant Commissioner, Business Tax Reform Implementation

Mr John Burge, Executive Officer, Capital Gains Tax Segment, Large Business and
International

Mr Andrew Lee, Executive Officer, Small Business

Treasury

Mr Ron Foster, Acting General Manager, Indirect Tax

Mr Paul McMahon, Acting Manager, International Tax Unit

Minter Ellison, Adelaide

Mr Paul Ingram, Senior Associate, Minter Ellison, Adelaide.

APPENDIX 3

DETAILS OF CHARITIES

TAXATION LAWS AMENDMENT BILL (NO. 7) 2000

At the public hearing held by the Senate Economics Legislation Committee on 20 September 2000 as part of its inquiry into Taxation Laws Amendment Bill (No 7) 2000, Senator Conroy was interested to know some further details regarding the activities of the Foundation for Gambling Studies, The Global Foundation, the Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund and the Foundation for Rural and Regional Renewal Public Fund.

I am writing to provide further details as to the activities of those organisations. Subsequent to the hearing further information was requested regarding the names and addresses of the founders and current management of the organisations. This information would be subject to the provisions of the *Privacy Act 1988* and as such it would not be appropriate for this office to comment.

Should the Committee wish to pursue this information directly with the organisations concerned, contact details have been provided for each organisation.

Senator Conroy also sought further information regarding the question of donations and other fundraising activities of the organisations. Unfortunately this information is not available to the office. Again the Committee may wish to pursue this information directly with the organisations. We are also unable to determine how much money has been raised by these organisations as the Australian Taxation Office does not keep records of these details.

Foundation for Gambling Studies

The Foundation for Gambling Studies was established on 3 February 1999 to support independent research on gambling, which is a growing industry in Australia. The Foundation's activities include funding scholarships and commissioning research. Reliable and independent research will assist the Government and the community to develop policies relating to gambling.

The Foundation will seek and consider applications to finance students pursuing higher education and in undertaking research programs at tertiary institutions. The Foundation will endeavour to provide full time or part-time scholarships for successful applicants or meet the HECS contributions of successful applicants and other educational expenses, including travel, living away from home allowances, postage and printing costs and other expenses considered to be appropriate.

The Foundation will also consider establishing either a temporary or permanent presence in a tertiary institution in Queensland as a Centre for the Foundation for Gambling Studies. The Foundation will be able to provide, for the paid positions and infrastructure required by the Foundation negotiated with the institution, while taking all necessary measures to ensure that funds are not utilised for expenditure which may be available from other sources within the institution in which the centre is established.

On 8 March 2000 the Assistant Treasurer announced in Press Release No 10 that the Government intended to amend the *Income Tax Assessment Act 1997* (ITAA 1997) to allow deductions for gifts of \$2 or more to the Foundation for Gambling Studies.

Address:

Foundation for Gambling Studies
C/- Deacons, Graham & James, Lawyers
GPO Box 407
BRISBANE QLD 4001

The Global Foundation

The Global Foundation is a non-profit organisation established to promote and encourage Australia's national development and international orientation, with a particular focus on the nation's centenary of Federation. It is a citizens' initiative which brings together the expertise and influence of eminent people.

The Foundation enjoys bipartisan political support in Australia. The Prime Minister formally launched the Foundation in May 1998, with the full support of the leader of the Opposition. Some of the world's most influential leaders have visited Australia to participate in Foundation projects for which they have been joined by many other prominent figures from global business, government, academia and international affairs.

The Foundation acts as a catalyst and encourages co-operation between interested parties, particularly government and the private sector, for a wide range of nation-building initiatives and international associations. It is strategic in its focus and provides support and encouragement to programs commensurate with its aims which are undertaken by organisations and institutions in Australia and around the world.

Some of the Foundation's principal activities include:

- programs which promote educational, cultural and business links between Australia and other countries;
- schemes or programs which develop links with institutions or organisations which could provide facilities for students who wish to pursue their education in Australia or abroad;
- co-operation with organisations involved in the promotion and development of commerce, business and trade between Australia and other countries; and
- establishment and maintenance of professional links and encouraging affiliation with professional bodies, institutions and agencies of Australia and other countries.

As a non-profit, non-government and non-partisan body, the Global Foundation is supported by membership subscriptions, sponsorships, grants and donations.

On 3 November 1999 the Assistant Treasurer announced in Press Release No 50 that the Government intended to amend the ITAA 1997 to allow deductions for gifts of \$2 or more to The Global Foundation.

Address:

The Global Foundation
PO Box 1820
MELBOURNE 3000

Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund

The Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund has been established to raise money for the ongoing maintenance of the Mount Macedon Memorial Cross. The Cross was built in 1934-35 to commemorate the memory of those who served in the Great War, and is considered to be one of the most significant war memorials in Victoria.

The Mount Macedon Memorial Cross is undoubtedly the second most known and respected War Memorial in Victoria, attracting an increasing number of visitors each year including many from interstate and overseas. The Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund is to raise money to finance the continued maintenance and restoration of the memorial.

On 29 June 2000 the Treasurer announced in a Press Release that the Government intended to amend the ITAA 1997 to extend deductions for gifts of \$2 or more to the Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund.

Address:

Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund
PO Box 175
MACEDON VIC 3440

Foundation for Rural and Regional Renewal Public Fund

The Foundation for Rural and Regional Renewal Public Fund has been established to raise money for the purpose of providing a viable social and economic future for Australia's rural and regional communities. It aims to encourage innovative collaboration between business, community and government in philanthropic endeavours that will boost the economic and social stocks of regional Australia. Its emphasis will be on economic development and job creation.

The Foundation was announced by the Prime Minister, during last year's Regional Australia Summit. It has been injected with Federal Government funding of \$14.5 million and a further \$1 million from the nationally-renowned Sidney Myer Fund.

On 29 March 2000 the Assistant Treasurer and the Deputy Prime Minister in a joint Media Release No 11 announced that the Government intended to amend the ITAA 1997 to allow deductions for gifts of \$2 or more to the Foundation for Rural and Regional Renewal Public Fund.

Address:

Foundation for Rural and Regional Renewal Public Fund
44th Floor
55 Collins St
MELBOURNE VIC 3000

I trust this information is of assistance to the Committee.

Yours sincerely

Mark O'Connor
ASSISTANT COMMISSIONER
LAW DESIGN AND DEVELOPMENT

APPENDIX 4

RESPONSES TO QUESTIONS ON NOTICE

Treasury Response to Senator Conroy

Question

What take-up rates were assumed in the original revenue estimations for the capital gains tax (CGT) small business rollover relief and retirement exemption provisions. How do these assumed take-up rates vary from the take-up rate assumed in the costing for the 21 September 1999 CGT small business changes?

Answer

- The costing estimates undertaken on the original CGT retirement exemption provision and the small business rollover relief provision assumed take-up rates of 100%.
- The take-up rates assumed in the estimate for the 21 September 1999 CGT small business reforms are consistent with those estimates.
 - Take-up rates are the proportion of individuals eligible for the concession who take up that concession.
- A 100% take-up rate is a reasonable assumption because:
 - small business taxpayers claim the concession when completing their tax returns; and
 - typically specialist advice is obtained when completing these tax returns.

Treasury Response to Senator Watson

Question

Will listed investment companies (LICs) be disadvantaged in relation to the taxation of capital gains once the Collective Investment Vehicle (CIV) regime commences?

Answer

- Under entity taxation, companies will lose the benefit of capital gains tax (CGT) indexation from 30 September 1999, but will receive the ongoing benefit of a lower company tax rate.
- Individual shareholders will have access to refundable imputation credits; and will be able to access the CGT discount on unrealised gains in LICs by selling shares.

Background

- LICs can restructure to obtain flow-through tax treatment.
 - The Government announced on 11 November 1999 the provision of transitional rollover relief to facilitate restructuring of existing companies to become unit trusts without tax consequences.
 - The Government has also indicated that it will consult with the States and Territories with the objective of removing any state tax obstacles to entity restructuring and those consultations have commenced.

APPENDIX 5

REPORT OF DISCUSSION BETWEEN ATO AND MR PAUL INGRAM

At the public hearing held by the Senate Economics Legislation Committee on 20 September 2000 as part of its inquiry into the Taxation Laws Amendment Bill (No. 7) 2000, Ms Deborah Boyd of the Australian Taxation Office agreed to discuss further with Mr Paul Ingram of Minter Ellison in Adelaide the third item in his submission dated 19 September 2000 (reference: page E19 of the proof *Hansard*).

I am writing to confirm that Ms Boyd and I phoned Mr Ingram following the hearing on 20 September 2000 and to inform you of the outcome of that discussion. Please note that the relevant proposed amendment is item 4 of Schedule 3 to the Bill (rather than item 3 of Schedule 3 as referred to in Mr Ingram's submission).

Item 4 of Schedule 3 to the Bill proposes the amendment of existing subsection 152-10(4) of the *Income Tax Assessment Act 1997* to allow capital gains deferred under the capital gains tax small business rollover also to qualify for the small business retirement exemption. Mr Ingram submitted that the amendment should go further and allow the deferred capital gains to benefit from the capital gains tax discount and the other small business concessions.

We confirmed to Mr Ingram that if a small business taxpayer defers a capital gain from the disposal of an active asset by using the small business rollover, the capital gain itself is 'tagged' to the replacement asset. Unlike with other rollovers, the cost base of the replacement asset is not reduced by the capital gain. The later disposal of the replacement asset gives rise not only to the capital gain on the replacement asset itself but also to the separate 'tagged' gain from the original asset.

At present, the taxpayer can again roll over the 'tagged' gain by acquiring another replacement active asset. The amendment proposed by item 4 of Schedule 3 would also allow the taxpayer to benefit from the retirement exemption for this gain as an alternative to rolling it over. The 'tagged' gain would already reflect the capital gains tax discount and the small business 50% reduction if the taxpayer were eligible for them. It would therefore not be appropriate to double up by allowing the taxpayer access to these concessions for a second time.

This proposed amendment is supported by that proposed by item 11 of Schedule 3, which would allow a taxpayer not to apply the small business 50% reduction to a particular capital gain. As is explained in the legislative note to proposed new section 152-220, making this choice might allow a company or trust to make larger tax-free eligible termination payments under the small business retirement exemption.

Mr Ingram accepted this explanation and agreed that the amendment proposed by item 4 of Schedule 3 to the Bill is appropriate and sufficient in its proposed scope.

I provided a draft of this letter to Mr Ingram. He is satisfied that it accurately reflects the discussion that we had with him.

Yours sincerely

(John Burge)
EXECUTIVE OFFICER
CAPITAL GAINS TAX SEGMENT
LARGE BUSINESS & INTERNATIONAL
[26 September 2000]