The Senate

Economics Legislation Committee

New Business Tax System (Consolidation and Other Measures) Bill (No. 1) 2002

November 2002

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Senate Economics Legislation Committee

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New Business Tax System (Consolidation and other Measures) Bill (No. 1) 2002

Conduct of the inquiry

1.1 The New Business Tax System (Consolidation and other Measures) Bill (No. 1) 2002 was introduced into the House of Representatives on 26 September 2002 and passed on 16 October. The Senate referred it for inquiry by the Economics Legislation Committee on 16 October, on the recommendation of the Senate Selection of Bills Committee. The Selection of Bills Committee noted as issues for consideration 'to explore the detail of the operation, revenue costs and compliance costs of the major measures in the bill.'[1]

1.2 The Committee advertised the inquiry on its website and in *The Australian*, and wrote to many peak bodies inviting submissions. The Committee received 4 submissions (see Appendix 1). Submissions received electronically are published on the Internet under the Committee's homepage at
http://www.aph.gov.au/senate/committee/economics_ctte/index.htm

1.3 The Committee presumes that the small response reflects the fact that issues to do with consolidation have already been canvassed in the Committee's previous inquiries into the first and second tranches of consolidation legislation. In view of this the Committee did not hold a hearing. The Department of the Treasury provided some written comments in reply to industry submissions (see Appendix 2).

The bill

1.4 The bill is the third tranche of legislation implementing the consolidation regime, which allows wholly owned corporate groups to be treated as single entities for income tax purposes. The first tranche is in the *New Business Tax System (Consolidation) Act (No. 1) 2002*; the second in the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*. This Committee inquired into both the earlier bills.[2]

Provisions relating to consolidation

1.5 The bill supplements the earlier consolidation Acts to:

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1 *Senate Hansard,* 16 October 2002, p. 5235.

2 Senate Economics Legislation Committee, *Report on the New Business Tax System (Consolidation) Bill (No. 1) 2002*, June 2002; *Report on New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002*, October 2002.

- modify the core rules to apportion, where necessary, income and deductions between a head company and a subsidiary member that is only in the consolidated group for part of an income year;
- modify the membership rules to ensure that, in limited circumstances, a consolidated group will not cease to exist when the head company is replaced by a new head company. Similar amendments are also being introduced to cater for the replacement of one head company of a multiple entry consolidated (MEC) group by another;
- modify the general cost setting rules to:
  - cater for situations where a consolidated group joins an existing consolidated group, multiple entities which are linked through membership interests join an existing consolidated group and where trusts join or leave a consolidated group;
  - implement the measures to address revenue risks which were foreshadowed on introduction of the New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002;
  - ensure they apply in an appropriate manner to MEC groups.
- apply cost setting rules to membership interests in eligible tier-1 companies of a MEC group that are held outside of the group;
- modify the loss transfer provisions that will continue to exist outside the consolidation regime for a transfer of tax losses or net capital losses involving an Australian branch of a foreign bank so that:
  - transfers can continue where the other party to the transfer becomes a member of a consolidated group after the loss that is sought to be transferred was incurred;
  - the amount that can be transferred from a branch to a consolidated group approximates the amount that could have been transferred to members of the group had consolidation not occurred;
- complete the removal of the current grouping rules for wholly-owned groups in relation to foreign tax credits, thin capitalisation, the inter-corporate dividend rebate and capital gains and losses;
- ensure the thin capitalisation and foreign tax credit regimes will continue to operate as intended; and
- make a number of technical and consequential amendments and refinements to address issues raised through consultation. By way of example, these amendments will:
  - rectify technical deficiencies in the consolidation loss rules;
  - ensure the existing R&D deductions interact properly with the consolidation provisions and preserve the policies behind both regimes to the greatest extent possible.

Amendments to imputation rules

1.6 The bill contains amendments relating to the new simplified imputation system that commenced on 1 July 2002. Schedule 16 amends the *Income Tax Assessment Act 1936* (ITAA 1936) to remove the inter-corporate dividend rebate under sections 46 and 46A for:

- franked dividends paid after 30 June 2002. The rebate has been replaced by the imputation offset; and
- unfranked dividends paid within wholly-owned company groups after 30 June 2003, as a consequence of the introduction of the consolidation regime.

1.7 Schedule 17 amends the *Income Tax Assessment Act 1997* to:

- broaden the exemptions from the benchmark rule, which requires that all dividends paid by a company in a certain period (a franking period) be franked to the same extent; and
- replicate provisions in former Part IIIAA of the ITAA 1936 relating to distributions on non-share equity interests.

1.8 Schedule 18 amends the *Income Tax (Transitional Provisions) Act 1997* to provide transitional rules relating to:

- franking periods for early and late balancing companies;
- the conversion of franking accounts on a tax paid basis for early balancing companies; and
- the determination of FDT liability for late balancing companies.

Consideration by Scrutiny of Bills Committee

1.9 The Senate Standing Committee for the Scrutiny of Bills has a brief to consider all bills as to whether they trespass unduly on personal rights and liberties, and related matters. The committee had no concerns about this bill.[3]

Issues raised in submissions

1.10 The Institute of Chartered Accountants in Australia (ICAA) supports the consolidation regime in principle and urged that the bill should be passed. However the ICAA continues to have some concerns. These relate to

- the difficulty of transition for the small to medium enterprise (SME) sector and their advisers;

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3 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 11 of 2002, 16 October 2002, p. 17.

- compliance costs of transition, which the ICAA expects to be significant even for SMEs;
- the estimated cost to revenue of transition: the ICAA considers that Treasury's estimate of about $1 billion over the forward estimate period is an overestimate.

1.11 The ICAA believes that a number of technical issues still need to be addressed, and notes that these are being worked through in the government's consultation with stakeholders. It stated:

> We do regard it as critical that this consultation process continues well into 2003 and is properly resourced until all significant technical issues are resolved.[4]

1.12 Similar points were made by a number of parties during this Committee's inquiry into the second tranche of consolidation legislation.

1.13 The ICAA made some recommendations which Treasury commented on as shown in Appendix 2. The arguments are summarised below.

Transitional period for small to medium enterprises (SMEs)

1.14 The ICAA recommended that the transitional period should be extended by 12 months for SMEs. The ICAA believes this is warranted because of the work involved for groups and their advisers:

> Tax advisers face a very challenging time getting 'up to speed' with the technical aspects of the Consolidation legislation… due to the uncertainty of whether the Consolidation legislation would be enacted, and the extremely heavy day-to-day compliance workload faced by practitioners, anecdotal evidence suggests many have not even started to think about its implications for their clients.[5]

1.15 The ICAA also referred to 'a misconception that the Consolidation regime is not relevant to SMEs…'

> A large number of businesses operate through a simple corporate group - a head company with one or two subsidiaries. Every one of these is affected by Consolidation and needs to assess the implications - most will be forced to consolidate although it seems many do not yet appreciate this.[6]

1.16 The ICAA stressed the seriousness of its concerns:

> For tax practitioners and accountants within the businesses concerned, implementing Consolidation is as challenging as the GST… Corporate tax specialists are struggling, for "generalist" practitioners it is quite

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4 Submission 2, The Institute of Chartered Accountants in Australia.

5 Submission 2, The Institute of Chartered Accountants in Australia, p. 3.

6 Submission 2A, The Institute of Chartered Accountants in Australia, p. 2.

> overwhelming… Without wanting to seem alarmist, the ICAA predicts a potential crisis leading up to 30 June 2003, particularly for the SME sector.[7]

1.17 Treasury commented:

- The Government has already deferred the abolition of the grouping rules for 12 months to assist SME groups.
- Groups are able to make their election to consolidate at the time they lodge their tax return. This provides significant additional time beyond 1 July 2003.
- It is not clear that retention of the grouping rules until 30 June 2004 would significantly reduce compliance costs for SMEs.
- The rules needed to provide the necessary level of integrity [if the transitional period was extended] would add complexity to the legislation.[8]

Other issues to do with consolidation

1.18 The ICAA suggested that the existing transitional option to retain existing asset values should be available indefinitely for the SME sector. The ICAA proposes this because 'many SMEs are currently unaware of the disadvantages of not consolidating, and it may take 3-4 years before they realise it is in their interests to do so.'[9] Treasury replied that 'the transitional option is provided in recognition that the cost setting rules may involve higher compliance costs where a pre-existing group (or a partially owned subsidiary of one) enters consolidation…'

> We are not convinced that providing the two alternatives for SMEs on an ongoing basis would reduce compliance costs. Ongoing we would expect the costs of resetting asset values to be significantly less onerous where a new group forms or a new acquisition is brought into a consolidated group. This is because market valuations would normally be established at the time of acquisition and/or in considering the merits of an intended acquisition.[10]

1.19 On the matter of calculating a group's Allocable Cost Amount, the ICAA suggested that a step should be optional if the relevant figures are 'less than say $50,000 on a group basis.' This would 'streamline and simplify the implementation process.'[11] Treasury argued that additional choice tends to increase compliance costs, and would be ineffective 'if taxpayers were required to calculate the amount of the adjustment required under each step in order to determine whether they qualify for the exemption.'[12]

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7 Submission 2A, The Institute of Chartered Accountants in Australia, p. 2-3.

8 See Appendix 2.

9 Submission 2, The Institute of Chartered Accountants in Australia, p. 6.

10 See Appendix 2.

11 Submission 2, The Institute of Chartered Accountants in Australia, p. 6.

12 See Appendix 2.

1.20 The ICAA argued that the estimated cost to revenue of consolidation, assuming it was accurate initially, is now an overestimate, since:

- granting an additional year to consolidate will have deferred part of the cost to revenue;
- measures to prevent duplication of losses should be included; and
- much of the 'upside' for taxpayers has been pared back by amendments since the Exposure Draft was released.[13]

1.21 Treasury replied that these matters have been factored into the costing.[14]

1.22 The ICAA raised a concern about whether the costs of entering consolidation, such as valuation fees and consultation fees, would be tax deductible. The Australian Taxation Office (ATO) has released a Draft Determination on this but the ICAA argues that this 'only partially addresses the issue.' The ICAA is concerned since 'informal discussion with the ATO suggest the current law may not allow a deduction for these costs in some common instances.'[15]

Non-share dividends: effect of section 215-25

1.23 The Australian Bankers' Association (ABA) had a concern about what it believes is an unintended consequence of the drafting of section 215-25.

1.24 Section 215-25 allows an entity, in some circumstances, to take into account expected profits when it applies the rules in sections 215-15 and 215-20 to calculate whether, and how much, a non-share dividend is frankable. The core rule is that a non-share dividend (a distribution on a non-share equity interest) is frankable only to the extent that profits are available.

1.25 The ABA argued that the drafting of section 215-25 prevents it achieving the desired end:

> The key problem that makes the definition unworkable is that an entity has to deduct all committed distributions in calculating the frankable amount of a non-share dividend but is not permitted to add expected profits for the same period. A misordering of the provisions in subsection 215-25(2) has the result that expected profits can **never** be added whereas all committed future dividends must be deducted.[16]

1.26 Treasury commented:

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13 Submission 2, The Institute of Chartered Accountants in Australia, p. 4.

14 See Appendix 2.

15 Submission 2A, The Institute of Chartered Accountants in Australia, p. 1.

16 Submission 1, Australian Bankers' Association, p. 3.

> The ABA submission identifies potential problems in the operation of original 160APAAAB, *ITAA 1936* (sections 215-15 to 215-25, *Consolidation Bill*). The appropriate operation of this particular measure will become the subject of consultations with the ABA in the normal course, independent of the consolidation measures.[17]

Conclusion

1.27 The Committee notes that the ICAA, though it has some outstanding concerns about the implementation of consolidation, is keen for this bill to be passed. The Committee endorses the ICAA's concern that government/industry consultation should continue until outstanding issues are resolved.

1.28 The Committee is sympathetic to the ICAA's serious concerns about the load on tax practitioners and the transitional period for small to medium enterprises. The Committee encourages Treasury to consider this matter further.

1.29 The Committee encourages the ATO to clarify any outstanding questions concerning the tax deductibility of costs of entering consolidation.

1.30 The Committee notes that the ABA's concern about the operation of section 215-25 will be a matter for further consultation between Treasury and stakeholders.

1.31 The Committee draws the Government's attention to its previous report on the New Business Tax System (Consolidation, Value Shifting and Other Measures) Bill 2002, and its views at paragraph 7.10 of that report that a number of problems need correction. If this Bill is to be put to the Senate in the December sittings, and if the Government is by then able to address any of those problems previously identified and so can amend this Bill in the Senate in December, then that would obviously be to the advantage of the business sectors affected.

Recommendation

The Committee recommends that the bill be passed.

SENATOR GEORGE BRANDIS
CHAIRMAN

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17 See Appendix 2.

Additional comment by Labor Senators

This Bill represents the third tranche of legislation regarding the consolidations measure. Consolidations is a very complex measure, with significant revenue implications (as a whole, it is estimated to cost the revenue in excess of a billion dollars over the forward estimates).

Many of the overarching issues concerning the measure were considered in some detail in the public consultation process for the second tranche of legislation, which was held only a month ago.

Nevertheless, the referral of the third tranche to the Legislation Committee has enabled further valuable exploration of the detail of the operation, revenue costs and compliance costs of the measure.

Once again, the information provided in the Submissions was very helpful to the Committee in this exploration. Labor Senators commend those involved in the inquiry process for their constructive input.

Notwithstanding the additional comments on matters of detail set out below, Labor Senators continue to support the business tax reform principles underlying the Bill.

Impact on small to medium enterprises

Labor Senators remain concerned about the impact of the consolidations measure on small to medium enterprises (SMEs), particularly during the implementation phase of the measure.

We note that the submission by the Institute of Chartered Accountants in Australia (ICAA) describes the situation as follows:

> The complexity of entering into the Consolidation regime must not be underestimated, particularly for businesses in the small to medium enterprise (SME) sector and their advisers.
>
> …
>
> Tax advisers face a very challenging time getting 'up to speed' with the technical aspects of the Consolidation legislation. Even corporate tax specialists are finding it a challenge – for the more generalist practitioners servicing the SME sector, the legislation is overwhelming.
>
> …

> The practical implementation process of entering the Consolidation regime is very involved, even for small corporate groups. Businesses need to gather large amount of financial data dating back many years, undertake valuation of assets and subsidiaries, and undertake potentially very complex calculations in relation to asset values and carry-forward losses. The necessary systems changes for ongoing compliance with the new regime also require careful planning.

Labor Senators regard these as legitimate and continuing concerns. We call upon the Government to revisit its transitional arrangements for the consolidations measure, with particular focus on reducing the compliance burden for the SME sector during this transitional period.

Additional revenue integrity measures

Labor Senators note that this Bill contains provisions to address a number of revenue risks in the consolidations measure.

The Explanatory Memorandum explains that these provisions address unintended tax benefits concerning the uplifting of the tax values of trading stock, possible double deductions for internally generated assets and the interaction between the current capital gains tax (CGT) provisions and the resetting of the cost of revenue assets under consolidations.

We commend the Government for this constructive response to our specific concerns on these issues, as highlighted in the referral of the first tranche of consolidations to this Committee.

It is a positive sign that the Government has been prepared to modify its own legislation only three months after the initial Bill was introduced, and before it has even come into effect, as a result of the Senate Committee processes. This is the rigour of the Parliamentary process acting as it should, and emphasises yet again the critical importance of allowing time for appropriate Parliamentary scrutiny of such complex legislation.

Labor Senators welcome these additional provisions as an appropriate protection of the revenue under this measure.

Senator Jacinta Collins
Labor Senator for Victoria

Senator Ruth Webber
Labor Senator for Western Australia

Appendix 1 - submissions

1	Australian Bankers' Association
2,2A,2B	The Institute of Chartered Accountants in Australia
3	Corporate Tax Association
4,4A	Department of the Treasury [see Appendix 2]

Appendix 2 - comment by Treasury

11 November 2002

The Secretary
Economics Legislation Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Dr Dermody

SUBMISSION: NEW BUSINESS TAX SYSTEM (CONSOLIDATION AND OTHER MEASURES) BILL (NO. 1) 2002

The attached Treasury Submission responds to issues raised in a submission by the Institute of Chartered Accountants in Australia (ICAA), specifically, SME compliance costs under the consolidation regime and Treasury's costing of the measure.

Yours sincerely

Paul McCullough
General Manager
Individuals and Entities Tax Division

TREASURY SUBMISSION TO THE SENATE ECONOMICS LEGISLATION COMMITTEE: NEW BUSINESS TAX SYSTEM (CONSOLIDATION AND OTHER MEASURES) BILL (NO. 1) 2002

Treasury notes the ICAA's in-principle support for the consolidation regime and the ICAA's estimate of the compliance costs likely to be incurred by a simple SME group entering consolidation at $8,000. This compares with estimates of $20,000 to $30,000 previously presented to the Committee by CPA Australia. As previously indicated to the Committee, based on the numbers of SMEs currently accessing the grouping rules, we estimate that approximately 4,000 to 5,000 SME groups will enter consolidation. For these purposes, SME groups are those comprising entities with annual turnover of less than $10 million.

In its submission, the ICAA recommends certain changes to the consolidation measure which it considers would reduce transitional compliance costs for SMEs. A number of points need to be made in response to these proposals and these are detailed below. The recommended changes generally involve providing SMEs with additional choices in entering the consolidation regime. While the provision of choice under the tax law may be beneficial for taxpayers in many respects, our assessment is that it would not reduce compliance costs in this instance.

Extend the existing grouping provisions for a further 12 months to 30 June 2004 for SMEs (recommendation 3)

The Government has already deferred the abolition of the grouping rules for 12 months to assist SME groups. In addition, groups are able to make their election to consolidate at the time they lodge their tax return. This provides significant additional time beyond 1 July 2003 for SMEs and their advisers to consider whether to enter consolidation and to complete the necessary preparations. Past practice would indicate that the lodgement date for 2003-04 tax returns for SMEs with a June balance date may be as late as March or April 2005.

It is not clear that retention of the grouping rules until 30 June 2004 would significantly reduce compliance costs for SMEs entering consolidation. Any perceived advantages in allowing SMEs to access grouping benefits outside of consolidation for a further 12 months would need to be balanced against the additional complexity that would be imposed on taxpayers by the existence of parallel grouping regimes for an extended period of time, including the need to define and administer an eligibility threshold. While we would expect the revenue cost of such an extension to be relatively small if restricted to SME groups, this is dependent on the ability to ensure that the grouping can not be accessed inappropriately during this period by, for example, larger corporate taxpayers or related parties forming a number of smaller groups. The rules needed to provide the necessary level of integrity would also add complexity to the legislation and potentially increase compliance costs for taxpayers and advisers.

Extend the transitional cost setting option for SMEs (recommendation 4)

Groups consolidating prior to 1 July 2004 may elect to retain a subsidiary's existing asset costs, rather than resetting its costs. The ongoing rules requiring asset values to be aligned with the equity cost base of the joining entity are intended to prevent the dual recognition of gains and losses for tax purposes.

The transitional option is provided in recognition that the cost setting rules may involve higher compliance costs where a pre-existing group (or a partially owned subsidiary of one) enters consolidation and there is a tax history to unravel and new market valuations to obtain. We are not convinced that providing the two alternatives for SMEs on an ongoing basis would reduce compliance costs. Ongoing we would expect the costs of resetting asset values to be significantly less onerous where a new group forms or a new acquisition is brought into a consolidated group. This is because market valuations would normally be established at the time of acquisition and/or in considering the merits of an intended acquisition.

Providing two alternative models for establishing asset values will increase compliance costs where taxpayers or their advisers choose to calculate the outcome under both options before settling on the one that provides the most favourable outcome. The proposal may therefore increase, rather than reduce compliance costs, while also continuing to leave open the possibility of gain and loss duplication where existing asset values do not reflect the cost to the head company of acquiring a member entity.

The ICAA's compliance cost estimates recognise that there is a cost associated with assessing alternative choices and includes an amount of $2,650 for high level modelling of the alternative options for establishing asset values. This accounts for a substantial proportion of the total estimate of $8,000.

De minimus exemption thresholds for some of the steps in calculating the group's ACA (recommendation 5)

The process of establishing the Allocable Cost Amount (ACA) – the cost able to be allocated to a subsidiary's assets – contains seven steps. These steps ensure that the ACA reflects the true cost to the head company of acquiring the entity and its assets and prevent double taxation or the dual recognition of tax deductions. However, a number of these steps will only be relevant where an existing group enters consolidation, or when a consolidated group acquires an entity incrementally.

The tendency for additional choice to increase compliance costs has already been noted above. A compulsory exemption may therefore be more effective in addressing business concerns about compliance costs, while also limiting the potential cost to revenue. The ICAA's submission does not provide a detailed outline of how this proposal would work, however, an exemption would be rendered ineffective if taxpayers were required to calculate the amount of the adjustment required under each step in order to determine whether they qualify for the exemption.

Reassess the revenue impact of consolidation (recommendation 6)

The ICAA gives three reasons why they consider the published estimates of the revenue cost of consolidation to be too high:

- The cost to revenue will be deferred as a result of retaining the grouping rules for an additional year for groups that defer entry to consolidation;
- The integrity measures to prevent duplication of losses before entering consolidation should be included in the consolidation costing; and
- Much of the “upside” for taxpayers has been pared back since the release of the exposure draft.

Extending the grouping rules for an additional year is estimated to result in a gain to revenue of $20 million in 2002-03 and a cost of $50 million in 2003-04. This estimate was published in the Budget and is now built in to the overall estimate of the cost of the consolidation regime. The estimated gain to revenue in 2002-03 reflects expected savings as a result of some groups not accessing the benefits of consolidation until 2003-04. However, some of the integrity benefits of consolidation will also not be realised for the additional year.

The impact of the loss integrity and value shifting measures that apply outside consolidated groups has been factored into the costing. Consolidation provides a more comprehensive solution to these and other integrity concerns and hence, there is some cost from groups remaining outside consolidation for the additional year. The costing assumes that, where taxpayers can achieve a significantly better tax outcome by entering consolidation early, or by remaining outside the regime for the additional year, they will generally choose the option that maximises their tax benefit.

The Bill includes a number of revenue protection measures which were announced by the Minister for Revenue and Assistant Treasurer on 27 June 2002. These measures are designed to ensure that consolidation does not provide unintended benefits to groups during transition and, as such, they ensure that the regime operates as anticipated in the original costing.

The contribution made by the public education programme

The process to shape the consolidation measure has been inclusive, involving an extensive communication campaign by the Australian Taxation Office (ATO) directed at tax professionals likely to have clients who are eligible to consolidate.

The campaign’s main features have included:

- A 23 site national forum to gain feedback on the February 2002 exposure draft, covering regional and metropolitan areas.
- A Consolidation ‘walkthrough’ (comprising display panels to take people through the consolidation process) was held in late May 2002, in eight locations including two regional centres. The walkthrough included up to 15 tax office

people to answer questions and was undertaken in conjunction with external tax professional conferences in several locations, reaching around 1000 members of the public and about 1000 tax staff.

- Two primary communication products. Initially available at the walkthrough, these products were subsequently direct mailed to affected tax professionals, large companies, and associations.
  - *Consolidation In Brief* is a straight forward, four page summary of the key elements of the measure. Small business representatives helped fine-tune this product to help ensure its suitability to the small end of town.
  - *The Consolidation Reference Manual* is a comprehensive technical guide and is well regarded, with a number of organisations in the tax profession using it for in-house training.

These products were published to coincide with the introduction of the May consolidation bill and are being updated and redistributed to reflect the contents of the successive bills.

- Use of a wide range of messages and communication channels, including:
  - The Tax Reform web site, housing all current consolidation products. The ATO has also utilised an e-mail subscription function to enable people to receive an e-mail whenever new consolidation material is loaded onto the web.
  - Regular, introductory level e-mail messages to all registered tax professionals, with links to the web site for more detail.
  - A general call centre with supporting scripts.
  - A temporary dedicated technical hotline to support the measure.
  - Regular articles in the Tax Office's tax agent newsletter.
  - The tax time satellite seminar (reaching 17,000 tax professionals) - another satellite seminar takes place later this month.

The ATO's product range will be further enhanced by a number of other initiatives, including:

- The impending release of the first in a series of fact sheets targeted at tax practitioners who cater for small business.
- Researching the tax profession audience. The results of the survey will help inform the approach taken to communicating consolidation in future.

Promoting awareness of consolidation through articles in tax profession association newsletters.

13 November 2002

Mr Geoffrey Dawson
Economics Legislation Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Mr Dawson

NEW BUSINESS TAX SYSTEM (CONSOLIDATION AND OTHER MEASURES) BILL (NO. 1) 2002

I refer to your request yesterday for comments by the Treasury in relation to the submission of 4 November 2002 by the Australian Bankers Association (ABA) to the committee. The submission was in response to an invitation by the committee to make submissions on the *New Business Tax System (Consolidation and Other Measures) (No 1) Bill 2002* (*Consolidation Bill*).

The ABA submission concerns imputation provisions that are intended to replace, with no material changes of meaning, provisions that are currently contained in section 160APAAAB of the *Income Tax Assessment Act 1936* (*ITAA 1936*). The *Consolidation Bill* inserts these provisions into the *Income Tax Assessment Act 1997* (*ITAA 1997*) and is part of a simplification of the imputation system.

Section 160APAAAB was inserted into the *ITAA 1936* by the *New Business Tax System (Debt and Equity) Act 2001* (Act No 163 of 2001), with effect from 1 July 2001. It was consequential upon the enactment of a set of rules distinguishing between debt and equity for income tax purposes.

The ABA submission identifies potential problems in the operation of original 160APAAAB, *ITAA 1936* (sections 215-15 to 215-25, *Consolidation Bill*). The appropriate operation of this particular measure will become the subject of consultations with the ABA in the normal course, independent of the consolidation measures.

Yours sincerely

Paul McCullough
General Manager
Individual and Entities Tax Division