

CONTRACTING INDUSTRY REDUNDANCY TRUST

CIRT (QLD) PTY LTD ACN 011 050 329 (Trustee)

April 15, 2003

The Secretary,
Economic Legislation Committee
Department of the Senate
Suite SG.64
Parliament House
Canberra ACT 2600



Dear Sir,

Re: Taxation Laws Amendment Bill (No 4) 2003.

We refer to the above bill which is currently subject to review by this committee.

Contracting Industry Redundancy Trust (CIRT) is one of the two (2) main redundancy trusts operating in Queensland and the matters contained in Schedule 7 are of particular importance to CIRT.

Given the current attitude of the Commissioner of Taxation towards employer contributions to Redundancy/Severance Trusts, and although we have a number of concerns with the bill (Discussed below), **we believe that the sections of the Bill concerning this matter need to be urgently passed, in a form substantially as included in this Bill.**

The current situation for employers and redundancy trusts is unconscionable. The Australian Taxation Office has advised that any contributions to a redundancy trust from 1st April, 2003 will be subject to Fringe Benefits Tax (effectively nearly doubling the cost to employers), while the Government has advised that contributions to funds that comply with certain criteria will be exempt from Fringe Benefits Tax. The Commissioner has advised that he will not extend his administrative ruling beyond 31st March, 2003, and the Act providing the exemption from Fringe Benefits Tax has not been enacted.

Many of our concerns are well known to the committee, and have been well aired in other forums. We do not wish to labour those concerns here, but merely to summarise those that have a direct effect on CIRT:-

1. For funds to comply with the new laws, they had to have their trust deeds amended prior to 31st March, 2003. However, the Capital Gains exemptions to protect funds that change their constituting document to comply with the proposed legislation only provided exemption to changes that occur after 1st April, 2003. As there would be no cost to revenue as other provisions of the act limit the application of this exemption, there is no reason why the applicable date for this section not be changed to a date prior to 1st April, 2003 (say 1st March, 2003, or the date the Bill was introduced to the House of Representatives.
2. There is no provision in the Bill for a complying fund to pay Income Tax on accumulated profits. Given the restrictive nature on how surpluses may be appropriated, it is almost

inevitable that any fund that attempts to comply with the requirements of this Bill will incur the wrath of the Deputy Commissioner of Taxation.

3. Sec 58PA (b) of the Bill refers to persons being 'required to make contributions by an industrial agreement'. This clause ignores the situation where an employer is required to pay a redundancy benefit to an employee on termination, but chooses to make periodic payments to a complying fund to negate the liability (and cash flow problems) that may not occur for many years. We believe that this is not what the Government intended, and the people drafting the legislation were a little too over zealous in their attempt to ensure the exemption is not abused by aggressive tax planners.
4. Much discussion has centered around whether payments to training organisations should be allowed, and such payments would render the fund non-complying. While we wish to record our support the concept of training grants being authorised payments, we would not like to see this issue being an impost to the legislation being passed.

We have already had our solicitors issue a number of letters on our behalf, and copies of those correspondences are attached. We would appreciate the committee doing all within its power to see this legislation passed as soon as possible.

Yours faithfully,



.....

Kirby Leeke
Company Secretary.

Please reply to:
Our Ref: JWP:LTF:3360229
Your Ref:



LAWYERS

24 March 2003

Mr. Michael Carmody
Australian Taxation Commissioner
Australian Taxation Office
PO Box 900
Civic Square ACT 2608

Dear Sir,

Re: Taxation Laws Amendment Bill (No. 4) 2003, Schedule 7 - Fringe Benefits Tax ("FBT") & Worker Entitlement Funds.

The Bill

This Bill will confer an FBT exemption on employers who must contribute to an *approved worker entitlement fund*.

The Bill also confers CGT concessions. It does so because trust deed amendments are often required in order to make industry redundancy trusts comply with the new FBT exemption conditions.

Your Office's Position

Your officers stated at the FBT subcommittee of NTLG on 15 August 2002 that funds would have until 31 March 2003 to comply with the new FBT rules.

The Bill has now been referred by the Senate to the Economics Legislation Committee for report by 16 June 2003.

Despite this delay in the legislative process, we were nonetheless advised by your offices last week that industry redundancy funds still had only until 31 March to amend trust deeds, so as to comply.

Gravity of the position

A trustee of an industry redundancy fund is faced with the need to amend a deed, without the assurance of CGT exemption for the trust deed amendments.

This places the trustee in an impossible situation.

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PROFESSIONAL SERVICES
AND SUPPORT SPECIALISTS

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Mr. Michael Carmody

24 March 2003

Assistance requested

We act on behalf of the trustee of the Contracting Industry Redundancy Trust (*CIRT*). This is a substantial industry fund, which intends to apply to you, when the Bill becomes law, for prescription as an *approved worker entitlement fund*.

Please advise us that your officers will continue to administer the FBT laws, on the transitional basis stated at FBT-NTLG last year, for a period of grace after the Bill is signed into law (say, 3 months).

Specifically, we would appreciate confirmation, in those terms, that CIRT will be subject to such extended transitional arrangements.

You may not appreciate the substantial work, including calling meetings that can be involved in this transition. Given the size of the funds involved, very significant CGT is at stake, which may represent a substantial loss to ordinary workers.

As the matter is presently before the Senate, we have also taken the opportunity to apprise the following Senators of the sensitivity concerning the timing of passage of the Bill: the Minister for Revenue and Assistant Treasurer, and the Parliamentary Secretary to the Treasurer. We enclose a copy of that correspondence.

We are also expecting instructions to make a submission on this issue to the Senate Economics Legislation Committee, as we understand that it is these provisions which are of interest to the Committee.

If you require any further information regarding this matter then please do not hesitate to contact the author.

Yours faithfully
HALL PAYNE LAWYERS

John Payne
Partner

cc. Minister for Revenue and Assistant Treasurer
Parliamentary Secretary to the Treasurer

Please reply to:
Our Ref: JWP:LTP:3360229
Your Ref:



LAWYERS

24 March 2003

Honourable Senator Helen Coonan
Minister for Revenue and
Assistant Treasurer
Parliament House
Canberra

By Facsimile: (02) 6273 4125

No of Pages: 5

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Dear Senator Coonan,

Re: Taxation Laws Amendment Bill (No. 4) 2003 Schedule 7 - Fringe Benefits
Tax ("FBT") & Worker Entitlement Funds.

We refer to the above and enclose;

- Relevant page from Minutes of FBT sub-committee of National Tax Liaison Group meeting, 15 August 2002.

This Bill is before the Senate Economics Legislation Committee ("the Committee"). Schedule 7 of the Bill deals with a proposed FBT exemption for employers required to contribute to *approved worker entitlement funds*.

Vitaly, the Bill also provides for capital gains tax ("CGT") exemptions required so that fund deeds can be amended to comply with the new FBT exemption.

We act for C.I.R.T (QLD) Pty Ltd, the trustee of a major industry redundancy fund, the Construction Industry Redundancy Trust ("C.I.R.T."). Our client intends to become an *approved worker entitlement fund* once the Bill becomes law.

The Bill became necessary because the Commissioner formed a view about FBT on contributions to industry funds. To date, employers in the industry have relied on the Commissioner's promise not to enforce this view about the

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* PERSONAL FINANCIAL
ACCOUNTANTS

- 2 -

Honorable Senator Helen Coonan

24 March 2003

FBT laws until 1 April 2003. (See attached page from Minutes of FBT sub-committee of National Tax Liaison Group meeting on 15 August 2002.)

The Commissioner's administrative concession terminates from 1 April 2003.

It is unlikely, as a result of the referral of the Bill to the Committee, that the Bill can be passed before 1 April 2003.

The Bill contemplates that the Commissioner should review and prescribe which funds are eligible for the concession. It is unlikely that the Commissioner can do that before 1 April 2003.

In light of referral of the Bill to the Committee our client believes that it would be appropriate for the existing administrative arrangements to continue, so as to exempt employers from FBT on payments to redundancy funds until, say, 3 months after the Bill receives assent.

Should the current concessional arrangements not be continued beyond 31 March 2003, prudent trustees would be placed in an impossible position. Employers will demand that deeds be amended, so that no FBT is payable. Yet, the CCTT amendments needed, so that trust deeds can be amended, are contained in the same Bill, and are thus not yet law.

Despite consultation between industry fund representatives, the ATO and Treasury, there remains another flaw in the proposed legislation, which will require attention during the legislative process. The present wording seems to require that contributions to the approved worker entitlement fund be "required" under an industrial instrument. In practice, some Awards leave contribution in the discretion of the employer, though such contributions become commonplace in an industry for a variety of reasons

As the Minister for Revenue, our client thought it best to advise you of the gravity of the situation facing employers required to contribute to industry redundancy funds.

We have also written to Mr Carmody, and to Senator Campbell (who introduced the Bill in the Senate). When the Committee calls for submissions about the Bill, we expect to be instructed to make a submission to the Committee, as well.

If you require any further information regarding this matter then please do not hesitate to contact the author.

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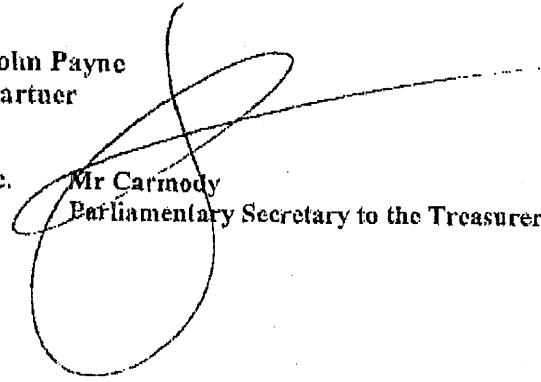
Honorable Senator Helen Coonan

24 March 2003

Yours faithfully
HALL PAYNE LAWYERS

John Payne
Partner

cc. **Mr Carmody**
Parliamentary Secretary to the Treasurer



Please reply to: Head Office
 Our Ref: JWP:LTP:3360229
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LAWYERS

24 March 2003

The Honourable Senator Ian Campbell
 Parliamentary Secretary to the Treasurer
 Manager of Government Business in the Senate
 Parliament House
 Canberra

By Facsimile: (02) 6277 3958**No of Pages: 4**

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The Honourable Senator Ian Campbell

24 March 2003

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As you introduced the Bill in the Senate, our client thought it best to advise you of the gravity of the situation facing employers required to contribute to industry redundancy funds.

We have also written to Mr Carnody, and to the Minister for Revenue. When the Committee calls for submissions about the Bill, we expect to be instructed to make a submission to the Committee, as well.

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Yours faithfully

~~HALL PAYNE LAWYERS~~

~~John Payne
Partner~~

cc. ~~Mr Carnody
Minister for Revenue and Assistant Treasurer~~