



A U S T R A L I A N C H A M B E R
O F C O M M E R C E A N D I N D U S T R Y

**Tax Laws Amendment (Loss
Recoupment Rules and Other
Measures) Bill 2005**

**ACCI Submission to
the Senate Economics
Committee**

October 2005



BACKGROUND

1. The Australian Chamber of Commerce and Industry (ACCI) has been the peak council of Australian business associations for over 100 years.
2. ACCI is Australia's largest and most representative business association.
3. Through our membership, ACCI represents over 350,000 businesses nationwide, including:
 - Australia's top 100 companies
 - Over 55,000 medium sized enterprises employing 20 to 100 people
 - Over 280,000 smaller enterprises employing less than 20 people
4. These businesses collectively employ over 4 million people.
5. ACCI's 37 member organisations include the State and Territory Chambers of Commerce and Australia's leading national employer and industry associations. Our members represent all major sectors of Australian industry including small employers and sole traders as well as medium and larger businesses.
6. A list of ACCI members is attached.

INTRODUCTION

7. On 11 October 2005, the Senate referred the Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Bill 2005 (the Bill) to the Senate Economics Legislation Committee (the Committee).
8. Concerns were particularly raised that Schedule 1 (loss recoupment rules for companies) may constitute a disincentive for investment in mining and the policy intent of Schedule 2 (conduit foreign income) required further discussion.

Background

9. Currently, companies are able to deduct losses from previous years if they either meet the continuity of ownership test (COT) or the same business test (SBT).
10. Schedule 1 of the Bill amends the operation of these rules – in simple terms it makes it easier for widely held companies to meet the COT and excludes companies with income above \$100m from the SBT.
11. Schedule 2 of the Bill allows a withholding tax exemption for companies paying dividends to foreign shareholders, if the dividend is from foreign income on which no Australian tax is payable.
12. The other Schedules to the Bill are not being discussed by the Committee.

ACCI RESPONSE

Schedule 1 – use of tax losses

13. ACCI welcomes the changes to make it easier for companies to meet the continuity of ownership test (COT). We understand that it is difficult for widely held companies to meet the current test.
14. The changes are likely to reduce compliance costs for widely held companies.
15. ACCI understands that it may be appropriate to restrict access to the SBT as a tradeoff for easing access to the COT.
16. However, the tradeoff in the Bill is not exact. Access to the SBT is being eased for widely held companies, whereas access to the COT is being prevented for companies earning over \$100m. In many cases, this will be the same companies, but in some cases it will not.
17. ACCI can see no clear rationale for penalising companies earning over \$100m that are not widely held.
18. Therefore, ACCI recommends that companies earning over \$100m that are not widely held should still be able to access the SBT.
19. It is submitted that this change will not have a significant effect on the tax system. There are only a limited number of companies earning over \$100m that are not widely held, and the SBT may be difficult for most large companies to meet.
20. However, making this change would ensure that this particular type of company would not be disadvantaged by the changes.
21. Based upon other submissions to this inquiry, this could include mining companies and joint venture companies particularly in infrastructure and other major projects.
22. The Department of Treasury has argued that a large consolidated company would rarely fail the SBT¹. However, large companies are likely to be widely held and so not fall within ACCI's proposal. To address Treasury's concern, ACCI suggests that the Committee should investigate whether there are large consolidated companies that are not widely held.

Schedule 2 – conduit foreign income

23. ACCI strongly supports proposals to make Australia a more competitive location for multinationals. International companies would clearly consider taxation to be one of the most important factors in determining where to locate.
24. However, the level of taxation is only one consideration. The compliance costs of the tax system also be an important factor.
25. Therefore, ACCI supports proposals to address the conduit foreign income issue as part of a program of reducing compliance costs for business.

1. Department of Treasury (2004) *Loss Recoupment Rule for Companies* at paragraph 17.

ACCI MEMBERSHIP

ACT and Region Chamber of Commerce and Industry
Australian Business Ltd
Business SA
Chamber of Commerce and Industry Western Australia
Chamber of Commerce Northern Territory
Commerce Queensland
Employers' First TM
State Chamber of Commerce (New South Wales)
Tasmanian Chamber of Commerce and Industry
Victorian Employers' Chamber of Commerce and Industry
Agribusiness Employers' Federation
Air Conditioning and Mechanical Contractors' Association of Australia
Association of Consulting Engineers Australia
Australian Beverages Council
Australian Consumer and Specialty Products Association
Australian Entertainment Industry Association
Australian Hotels Association
Australian International Airlines Operations Group
Australian Made Campaign Limited
Australian Mines and Metals Association
Australian Paint Manufacturers' Federation
Australian Retailers Association
Housing Industry Association
Insurance Council of Australia
Investment and Financial Services Association
Master Builders Australia
Master Plumbers and Mechanical Services Association Australia
National Electrical and Communications Association
National Retail Association Limited
NSW Farmers Industrial Association
Oil Industry Industrial Association
Pharmacy Guild of Australia
Plastics and Chemicals Industries Association
Printing Industries Association of Australia
Restaurant and Catering Australia
Standards Australia Limited
Victorian Automobile Chamber of Commerce