

20 June 2005

**The Secretary  
Senate Economics Legislation Committee  
Suite SG.64  
Parliament House  
CANBERRA ACT 2600.**

**Further Supplementary Submission to the Inquiry into the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005 and the Shortfall Interest Charge (Imposition) Bill 2005**

The following further submission is made to clarify some of the issues raised by evidence given to the inquiry.

**Retrospective Application**

Part 3, paragraph 31 of Bill (No. 1) provides that the date of application for the proposed legislation is for assessments for the 2004-05 income and later years, that is commencing on 1 July 2004, a retrospective date. Schedule 2 – Penalties, at paragraph 16 provides that the date of application for income tax is 2004-2005 income year (i.e. 1 July 2004) and later income years; for FBT 1 April 2004 or a later tax year; and for other taxes 1 July 2004.

In other words the date of application for the proposed legislation is already retrospective. It should be clear from the above that because the Commissioner of Taxation is able to make retrospective alterations to past transactions the only way that legislators can appropriately introduce new legislation to correct current practice is to make that new legislation apply to

an earlier date. This is an appropriate and necessary response to the way tax legislation is structured and operates and is therefore not retrospective legislation per se.

In relation to the appropriateness or frequency of introducing legislation with retrospective effect, the following is some of the currently proposed legislation listed by the Senate Scrutiny of Bills Committee with proposed retrospective effect to as far back as 1980.

**Civil Aviation Amendment Bill 2005**, introduced in the House of Representatives 16 March 2005. The amendments proposed by the Bill will have effect retrospectively from the making of the **Civil Aviation Regulations 1988** and **Civil Aviation Safety Regulations 1998**.

**Crimes Legislation Amendment (Telecommunications Interception and Other Measures) Bill 2005**, introduced in the Senate 16 March 2005. Schedule 1 of the Bill will commence on **1 March 2005** and therefore retrospectively. The amendments proposed by item 15 in Schedule 2 would commence on **1 June 1980** introducing a substantial period of retrospectivity. The Senate Committee justifies the retrospectivity on the basis that the amendment “does not adversely impact on individuals or the community as a whole”

**Family Law Amendment Bill 2005**, introduced in the Senate 16 March 2005. The Senate Committee has commented that the retrospective application of the amendments may trespass unduly on personal rights and liberties.

**New International Tax Arrangements (Foreign Owned Branches and Other Measures) Bill 2005**, introduced in the House of Representatives 17 March 2005. The amendments proposed by this Bill will have effect retrospectively to **1 July 2004**. The Committee comment is that the retrospectivity is justified because the amendment is “said to correct a deficiency in the law ... and no one will be disadvantaged by the retrospective application of the provisions.”

It is therefore, neither uncommon nor impossible to introduce amendments with retrospective effect provided that the key elements of correcting a deficiency and not adversely affecting individual rights or the community as a whole are present, as in this case.

### **Number of taxpayers adversely affected**

Evidence (page 21 Hansard) given by Mr McCullough representing Treasury is that 380,000 taxpayers a year receive amended assessments. Because the Commissioner of Taxation will continue to amend past returns dating back at least six years from the present date, unless the legislation is amended to have effect at an earlier date, 2,280,000 (2.28 million) taxpayers will continue to be subject to and suffer the consequences of the onerous and unfair legislation that this Bill is meant to rectify. In other words, there is a significant gap in the legislation that can and must be rectified by making the date of application earlier.

## **Relevance to current disputes**

The Committee seemed to be concerned about the relevance or link between this legislation and the various current group tax disputes. Regardless of any link, the legislation highlights the continued inconsistency in approach by legislators who avoid retrospective legislation when there is an adverse consequence to revenue while continuing to allow the Commissioner of Taxation's retrospective application of changes in position to increase revenue.

In our submission making the legislation take effect at an earlier date will not automatically resolve the various group disputes, however it will be a step in the right direction and the various group disputes will be resolved if the remainder of the ROSA legislation is made effective from an earlier date. Most importantly, as 2.28 million taxpayers will over the next six years continue to be treated inequitably unless the legislation is amended to have effect from 1 July 1994, this is an immediate concern that needs immediate action.

## **Charter Boats, Service Trusts**

When the Tax Commissioner announced a crackdown on Charter Boats and Service Trusts there was public criticism of the Commissioner's proposed retrospective actions. Subsequently, the Commissioner backed down and for Charter boats involving wealthy investors announced a six-month amnesty; for Service Trusts involving lawyers and accountants the amnesty is twelve months but for small business investors in other investments there has been no amnesty, only penalties and interest. Political representatives advise their constituents that they cannot influence the Commissioner and claim to condemn the Commissioner's inconsistent and unfair application of discretionary powers, however, when the opportunity arises to introduce legislation that will assist these taxpayers, their political representatives seem unwilling to make the changes that will actually help. The proposed ROSA legislation is the appropriate vehicle to redress the Commissioner's inconsistencies and retrospective actions. Because, retrospectivity by the Commissioner can only be rectified by legislation with retrospective effect, it is a necessary action and properly justified.

## **Request to Committee**

It was apparent from all of the evidence given to the Inquiry that there is no reason, other than revenue impact, that the legislation should not have application from an earlier date. It was recognised by the evidence that if introduced as proposed the legislation will create inequities and different rules that will continue into the future for at least six years. One witness seemed to want to justify the inequity on the basis that it will all be over in five years.

Treasury's spokesperson claimed that the legislation was an improvement, so it did not matter if some taxpayers did not receive any benefit.

In our submission legislation that knowingly rectifies part of a problem when it can fully rectify the problem is deliberately flawed legislation. We therefore request that Committee rectify the obvious shortcomings in the legislation by recommending amendments to:

- make the date of application 1 July 1994;
- reduce the interest rate to the bank rate without any uplift factor; and
- remove the 20% threshold for review completely.

A handwritten signature in black ink that reads "Resolution Group Australia". The signature is written in a cursive, flowing style.