

ADDITIONAL REMARKS OF LABOR SENATORS

PROVISIONS OF THE TAX LAWS AMENDMENT (2006 MEASURES NO. 3) BILL 2006

Schedule 5: Capital gains tax exemption of expense-reimbursing government grants

This Schedule exempts the Unlawful Termination Assistance Scheme and Alternative Dispute Resolution Assistance Scheme grants from capital gains tax provisions.

Labor supports the measure in defence of employee in dispute with their employer or contemplating Unlawful Termination actions.

However, there seems to be insufficient integrity measures to ensure that these vouchers are properly used. The current quotations from the hearings are cogent:

Senator WEBBER—When they take their voucher along to this person that they have found, how do you determine how much money you pay? It says ‘up to \$4,000’.

Mr Thomas—The provider would remit the invoice to the department for payment on behalf of the applicant and that invoice would need to set out the services that have been provided.

Senator WEBBER—Yes, and you will just pay on submission of that invoice?

Mr Thomas—Yes.¹

It seems that insufficient safeguards are in place to ensure the Commonwealth is not being billed \$4000 for all matters even those which can be dismissed in 10 minutes as not having a prima facie case.

Labor Senators recommend that the Department investigate options to ensure that the voucher is only used for hours genuinely billed on a commercial basis.

Schedule 15: GST treatment of residential premises

These amendments:

¹ *Proof Committee Hansard*, 19 June 2006, p. 17.

- ensure that supplies of certain types of real property are input taxed to confirm the policy intent that the words ‘residential’ and ‘residence’ are not limited to extended or permanent occupation;
- confirm that residential premises which have only previously been sold as commercial residential premises or as a part of commercial residential premises are still regarded as new residential premises; and
- confirm that a supply of accommodation provided to individuals in commercial residential premises by an entity that owns or controls the premises remains subject to GST.

These amendments apply to net amounts for tax periods that commence on or after 1 July 2000.

Labor Senators are of the view that the evidence presented the Treasury officials at the hearing and as outlined in the report seems to conflict with the material provided in the explanatory memorandum in section 15.4. In particular the Explanatory Memorandum stated that:

15.4 The interpretation of the GST Act arising from the Court’s judgment represents a significant departure from the intended GST treatment of affected premises. As such it would create uncertainty as well as an advantage for some taxpayers and a disadvantage for others. Further, the new view could add to complexity and the compliance burden for taxpayers. In particular:

- uncertainty would be created in respect of the GST treatment of other forms of accommodation (eg, holiday homes);
- investors who have purchased affected premises since the introduction of the GST and who were previously denied input tax credits would be advantaged by the interpretation adopted in the *Marana* decision. If these investors are registered for GST, they would be entitled to claim input tax credits for the earlier acquisition costs. However, they would need to remit GST on supplies of premises (including on a subsequent sale of the premises) unless past transactions have been protected by reliance on an Australian Taxation Office (ATO) ruling;
- GST registered owners of units who purchased premises before the introduction of the GST would be disadvantaged by the interpretation adopted in the *Marana* decision. They would not be able to claim input tax credits for acquisition costs incurred before 1 July 2000 but would need to remit GST on supplies of premises (including on a subsequent sale of the premises) unless past transactions have been protected by reliance on an ATO ruling;

But the Report states:

2.41 Treasury representatives commenced their evidence by pointing out that the *Marana* decision was not focused on the key issues discussed by the Committee: The *Marana* decision was about related issues around when something is new residential property. It dealt with the situation where an old motel was converted into strata title units, so it was quite a specific case. As part of that, the court made some comments about what residential property might be, as opposed to what new residential property might be.

2.42 As such, the comments were '*obiter dicta*'.

If this issue was purely *Obiter Dicta* why has the Government sought to legislate on this matter? Statements in the Explanatory Memorandum that indicate that as a result of *Marana* certain taxpayers 'would be advantaged' or 'would be disadvantaged' is not consistent with the interpretation of *Obiter Dicta* proffered by officials. The Explanatory Memorandum tabled by the Minister is a document of note to the courts in the interpretation of taxation law. So, it carries greater weight than oral testimony given by officials to a hearing.

Labor Senators request that the Minister address the issue of a potential conflict between the evidence given and the material stated in the Explanatory Memorandum.

In addition, Labor Senators call on the government to publish the number of taxpayers who have entered into relevant investments since the time of the *Marana* decision and the 27 of February 2006 - and who have successfully made an input tax credit claim with the ATO.

Labor Senators call on the Minister to request from the Commissioner of Taxation advice into whether he can use his discretion to grant great relief to such taxpayers and to publish this advice.

In the event that Government is not prepared to make such material public then Labor Senators would ask the Government to consider the introduction of measures to grant relief to taxpayers who have entered into relevant investments since the time of the *Marana* decision and the 27 of February 2006 - and who have successfully made an input tax credit claim with the ATO.

Senator Ursula Stephens
Deputy Chair

Senator Ruth Webber

