

APPENDIX 3

Response to Question on Notice taken by Treasury

Senator MURRAY—I do not mind much if you decide that you just want to change the black-letter law. The problem is that black-letter law as it is expressed does not meet industry practice and it will negate your policy intention if the evidence of witnesses is accurate. That is why I ask you to have a look at it from that perspective.

I will now move to my second question. The witness who appeared before us in camera allowed for a specific element of their in-camera evidence to be put to you on the record. They said that the way in which the legislation is presently expressed makes it difficult for them to capitalise on the tax concession because they conduct a cash accounting method instead of an accrual accounting method, and their contractual constructions are difficult. So they asked that, with respect to the items in the explanatory memorandum, paragraph 10.231 should be drafted as follows: ‘Before 1 July 2007 to the extent that such expenditure is paid after 1 July 2007’.

It is not my intention to try and recap their evidence, because I do not think that is proper. I will merely put it to you baldly as I have and ask whether you could take it on notice and let the committee know your view.

Answer

The provisions at Schedule 10, Part 4, subitem 91(3) of the draft bill present a fair and practical treatment of expenditure for a film that was already in production at 1 July 2007. Sub subitem (3)(b) allows for the recognition of qualifying Australian production expenditure incurred before 1 July 2007 to the extent that such expenditure is attributable to goods or services provided on or after 1 July 2007. This provision ensures that any economic activity on a production after 1 July 2007 will be recognised for the purposes of the tax offset, regardless of when any contractual arrangement was entered into or cash was paid for the goods or services.

The principle of attribution is used elsewhere in the tax law. In this context, it avoids the possibility of the film tax offset being available on activity which occurred prior to the start date of 1 July 2007, simply because the payment for that activity was delayed until after this date.

