Chapter 2

Schedule 1: non–commercial loans

Background

2.1 Division 7A of the *Income Tax Assessment Act 1936* contains provisions that ensure that in situations where a private company pays an amount or forgives a debt to an associated entity because of that relationship, that the benefit is taxed in the hands of the recipient by deeming that the payment received is a dividend.[1]

2.2 On 12 May 2009 the Government announced that it would tighten these rules to remove the ability of private companies to allow a company's assets to be used, by its shareholders or their associates, for free or at less than their arm's length value, without the payment of tax; the same use of the asset by an employee would attract fringe benefits tax.[2] The reforms set out in Schedule 1 of the bill are integrity measures, designed to ensure that the Division 7A rules operate in accordance with their original intent.

2.3 The changes will commence from 1 July 2009 and are expected to have small revenue savings, of $10 million per year, over the forward estimates.[3]

The changes

2.4 The closing of 'loopholes' through these measures was generally regarded as appropriate:

> …it extends the equity provisions in division 7A to shareholders who have a right to use property. I basically support this extension on the grounds of equity. Currently the provision of rights to shareholders to use private company assets confers benefits in a seemingly non-taxable form. I think this is inequitable to other taxpayers, to other shareholders and to shareholders in public companies. I support the move. I think it is an appropriate move to address a benefit in an untaxed form.[4]

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1 CCH Australia Limited, *Master Tax Guide 44th Edition*, 2009, para 4–200, p. 125.

2 The Hon Wayne Swan, Treasurer of the Commonwealth of Australia and The Hon Chris Bowen, Assistant Treasurer and Minister for Competition Policy and Corporate Law, Improving Fairness and Integrity in the Tax System, Media Release No. 67, 12 May 2009.

3 Explanatory Memorandum, Tax Laws Amendment (2010 Measures No. 2) Bill 2010, p. 3.

4 Mr John Passant, Senior Lecturer Tax Law, University of Canberra, *Proof Committee Hansard*, Friday 30 April 2010, p. 2.

> It is certainly about integrity and equity. In fact, that was the message that the government put out with its press release.[5]
>
> Without question, we fully support the government's overarching objective of improving fairness and integrity in our tax system.[6]

2.5 Two main amendments to Division 7A were the focus of concern throughout the course of the inquiry: (i) the introduction of a new section 109CA which will broaden the definition of payment; and (ii) the introduction of new Subdivision EB which will ensure that in situations of unpaid present entitlements, interposing an entity between the company and a shareholder cannot circumvent the operation of Division 7A.[7] Submitters are concerned that the breadth of the changes will have unintentional consequences, particularly given the retrospective effect of the measures.

Extending the definition of payment

2.6 Under the existing provisions of Division 7A, section 109C sets out that a payment to an entity means:

> (a) a payment to the extent that it is to the entity, on behalf of the entity or for the benefit of the entity; and
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> (b) a credit for an amount to the extent that it is:
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> a. to the entity; or
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> b. on behalf of the entity; or
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> c. for the benefit of the entity; and
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> (c) a transfer of property to the entity.[8]

2.7 Through the introduction of a new section, s109CA, this definition will be extended to cover the provision of an asset for use (other than a transfer of property), including the provision of an asset for use under a lease or license.[9] Section 109CA will set out that payment is made when the entity first:

- uses the asset with the permission of the provider; or
- has a right to use the asset, at a time when the provider does not have a right to use the asset or to provide the asset for use by another entity.

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5 Mr Raphael Cicchini, Manager, Business Tax Division, Department of the Treasury, *Proof Committee Hansard*, Friday 30 April 2010, p. 21.

6 Mr Yasser El-Ansary, Tax Counsel, Institute of Chartered Accountants in Australia, *Proof Committee Hansard*, Wednesday 28 April 2010, p. 13.

7 Explanatory Memorandum, Tax Laws Amendment (2010 Measures No. 2) Bill 2010, p. 9.

8 Subsection 109C(3) of the ITAA 1936.

9 Tax Laws Amendment (2010 Measures No. 2) Bill 2010, item 13, lines 20–22, p. 7.

2.8 It should be noted however that provision has been made to ensure certain benefits that would otherwise be captured by the amended provisions and deemed to be payments will be excluded from the definition of payment; these exceptions will be set out in new subsection 109CA(4) and include situations where:

- the provision of the asset is a minor benefit; or
- the entity using the asset would be able to claim a once-off deduction in respect of the expense of using the asset had they paid for the use of the asset; or
- certain dwellings are being used.

2.9 These exceptions are covered in paragraphs 2.31 to 2.38 of this chapter.

Available for use

2.10 The introduction of section 109CA, particularly the proposal that where a shareholder has a right to use the asset, ie the asset is 'available for use', is considered by some to be much too broad. They argue that it will penalise taxpayers who, for reasons other than tax avoidance, have elected to hold private assets, acquired with after tax dollars, in company structures.

2.11 Submitters argue that:

> …the scope of the proposed use of asset rules reaches well past what was stated in the budget night announcement. There was no indication on budget night or in the budget papers that company assets merely available for use, rather than in fact put to use, by shareholders would be caught by the new laws.[10]

> The proposed amendments will apply in respect of virtually any asset of a private company, regardless of when that asset was acquired, and it will operate to deem a dividend to the shareholders of a company where the company has merely provided an asset for the use of a shareholder or their associate, without any disguised or other distribution of company profits… The extension of the division goes well beyond the original intent of the division. It will apply where there is no transfer of company resources away from the company, it will apply where those assets being used were not acquired with company profits and it will apply where there are simply no company profits. It will deem a dividend regardless... In many cases—whether it is for asset protection, succession or other reasons—individuals will use a company structure funded from their own after–tax moneys to hold assets. The money used on those circumstances by the company is the shareholder's own after–tax funds. It is not company profits. The bill will,

10 Mr Yasser El–Ansary, Tax Counsel, Institute of Chartered Accountants in Australia, *Proof Committee Hansard*, Wednesday 28 April, p. 13.

> however, tax the use of such an asset acquired in that fashion as if it was a dividend made out of profits, which it is not.[11]
>
> Going forward we would have to look at every asset that a company holds and work out if those assets would be used by the shareholders or be available for use by the shareholders. We would then have to ascertain if there is any risk in terms of them being used or available to be used by way of the technical definition in the act. So we are talking about small businesses understand exactly what that definition means and how wide that definition can be. We then would require them to keep track of their use or their availability for use on an annual basis and we would then have to ask them to value those uses, so we would have to get a market valuation for each of those. We then would have to determine whether those are under the exceptions. They are proposing to introduce a minor benefit exception for infrequent use or if it is under $300 in value. It would have to be ascertained whether it falls within those exceptions. We see that as a significant level of compliance for small business taxpayers.[12]

2.12 Treasury however reiterated that these measures are integrity measures, designed to close a loophole that previously existed within the construct of Division 7A and recognise that by holding certain assets in a company, taxpayers have been able to obtain tax savings and benefits that were unintended.[13] The extension of the definition of payment addresses this issue by ensuring shareholders of private companies cannot take value out of a company without paying the comparable amount of tax.

Committee view

2.13 The committee considers that within the small business community there is a level of misunderstanding on the legal obligations that arise from the establishment and operation of companies. The committee has formed this view in light of its discussions, particularly around the aspect of proposed section 109CA concerning 'available for use' in the context of the plumber who takes the company ute home of an evening. The committee considers that when entering into business arrangements and structuring businesses, there should be a greater onus on tax and legal advisers to ensure that the appropriate structures and arrangements are being put in place. In the example of the plumber's ute, if the plumber were an employee of the company, the company would pay fringe benefits tax for the value of his use of the ute as well as provide him with benefits of wages, superannuation, and various other entitlements. The committee takes the view that this is not equitable and does not provide a level playing field for other small businesses with whom the plumber may be competing.

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11 Mr Daniel Appleby, Taxation Committee, Law Council of Australia, *Proof Committee Hansard*, Wednesday 28 April, p. 2.

12 Institute of Chartered Accountants in Australia, *Proof Committee Hansard*, Wednesday 28 April, p. 17.

13 Mr Raphael Cicchini, Manager, Business Tax Division, Department of the Treasury, *Proof Committee Hansard*, Friday 30 April 2010, p. 22.

2.14 On that basis the committee does not share the concerns raised by various submitters that extending the definition of payment to assets that are available for use although notes that there may be additional compliance and administrative burdens.

2.15 The committee does however consider that the issue of company title housing was not intended to be captured by the operation of the provisions.

The company title apartment issue

2.16 Company title used to be a fairly common method of organising the ownership of apartments and in the older Australian cities is still in use. In some streets in long established areas of Sydney, a prospective buyer may prefer an apartment with company title over a similarly priced one with strata title just due to a preference for art deco over modernist design. There is no tax avoidance motivation.

2.17 The buyer of such an apartment is technically buying a share in a company that owns the building and looks after the common areas (and has no trading activities). There will only be a few shares in the company, and they all confer distinct rights. Rather than entitling the owner to received dividends the share gives the owner the right to live in (or rent out) a specified apartment in the building. In many ways the company is more analogous to a 'body corporate' in a strata title apartment block than to a trading company.

2.18 The Law Council raised the concern that the bill would have the unintended consequence of treating the owner of a company title apartment as though the company were giving them a benefit, imposing a large tax on them which would not be imposed on someone who owned an otherwise similar apartment under strata title:

> The owners of company title apartments or duplexes—their own homes—will be deemed to have received income, taxable to them, every year equal to the notional rental of their own home…The Law Council considers the bill should not operate in respect of company titled assets…[14]

2.19 Another legal expert was less sure company title apartments would be captured, but thought it safer to exclude them explicitly:

> I think it would be good if the legislation had an express provision which said that company title arrangements would not give rise to a deemed dividend. The potential issue is whether, in a company title arrangement, it is the company itself that is granting the right or it is a provision in the constitution of the company itself, its memorandum and articles, that creates the right. You get into some complex legal issues about whether the legislation applies to company title.[15]

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14 Mr Daniel Appleby, Taxation Committee, Law Council of Australia, *Proof Committee Hansard*, 28 April 2010, p. 3.

15 Mr Philip de Haan, Partner, Thomson Playford Cutlers, *Proof Committee Hansard*, 28 April 2010, p. 10.

2.20 The Law Council overstates the problem a bit as there is an exemption for owner occupied homes purchased before June 2009. But even if they are not liable for the tax themselves, should the current owner wish to sell, a prospective buyer will know they are facing a large ongoing tax liability if they buy the company title apartment rather than a similar apartment down the street. This would likely lead to a large drop in the value of company title apartments. Apartments (such as a holiday home) that are not the main residence would still attract tax. Furthermore, it may be that the pre 2009 exemption would be lost to all owners in the building once a majority of the apartments had been resold.[16]

2.21 It may be possible for owners of company title apartments to restructure to strata title but this would require the agreement of most or all the owners in each building and involve extensive legal fees and stamp duties.[17]

2.22 Treasury conceded this was an unintended consequence of the legislation:

> The first time we were made aware of that sort of situation was in the submission here…. We certainly were not aware of this arrangement when we drafted the bill.[18]

Recommendation 1

2.23 The committee recommends that the bill be amended so that company title apartments (where the company title arrangement, its memorandum and articles creates a right for the occupier) are clearly excluded from its coverage before the bill is passed.

Valuation of use

2.24 Where private use of a company asset gives rise to a 'payment' or 'benefit' under the amended Division 7A, the recipient will be taxed on the value. The amended provisions will require that the value of the payment be the amount that would have been paid for the provision of the asset by parties dealing at arm's length, less any consideration actually paid.[19]

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16 A 'significant change in ownership of the company' could trigger this; Mr Raphael Cicchini, Manager, Business Tax Division, Department of the Treasury, *Proof Committee Hansard*, 30 April 2010, p. 20.

17 Alexis Kokkinos, Chair, National Tax Technical Committee, Institute of Chartered Accountants, *Proof Committee Hansard*, 28 April 2010, p. 14.

18 Mr Raphael Cicchini, Manager, Business Tax Division, Department of the Treasury, *Proof Committee Hansard*, 30 April 2010, p. 20.

19 Explanatory Memorandum, para 1.24, p. 15.

2.25 In situations where the consideration paid equals or exceeds the amount that would have been paid by the parties dealing at arm's length, the amount of the payment will be nil.[20]

2.26 The committee was told that the requirement to value assets provided/available for use would impose 'unreasonable and extremely high compliance costs [on] many businesses, especially small businesses'[21] as:

> these businesses will be required to determine the extent of any provision of an asset for use—not just the actual use. They [will] then need to determine the market value of that use on a year–by–year basis. That will require valuations to be obtained every single year.[22]

2.27 The evidence received highlighted the concern that an 'arms–length' amount will not be easy to determine.[23] Mr John Passant, Senior Lecturer in Tax Law at the University of Canberra however discounted the claims by other stakeholders who contend that professional valuations will be required. He said:

> The fact is that it is not just that you need the professionals to do it to make it arm's length; it is the circumstances that you are looking at to say, 'in this case I've looked at the market and made a valuation of what the arms–length value is.'[24]

2.28 Mr Passant explained that this method of valuation is appropriate in Australia given that 'we have a self–assessment process…which relies on taxpayers making these value judgments all the time in a whole range of other circumstances.'[25]

2.29 An alternative valuation system was suggested by some submitters. They contend that extending the relevant valuation provisions of the *Fringe Benefits Tax Assessment Act 1986*[26] would provide more certainty and could be more reliably used by taxpayers. They also suggest that it would promote consistency across the tax laws

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20 Explanatory Memorandum, para 1.24, p. 15.

21 Mr Daniel Appleby, Taxation Committee, Law Council of Australia, *Proof Committee Hansard*, Wednesday 28 April 2010, p. 3.

22 Mr Daniel Appleby, Taxation Committee Law Council of Australia, *Proof Committee Hansard*, Wednesday 28 April 2010, p. 3.

23 Mr Andrew Gardiner, Spokesman, National Tax and Accountants Association, *Proof Committee Hansard*, Thursday, 29 April 2010, p. 18.

24 Mr John Passant, Senior Lecturer Tax Law, University of Canberra, *Proof Committee Hansard*, Friday 30 April 2010, p. 6.

25 Mr John Passant, Senior Lecturer Tax Law, University of Canberra, *Proof Committee Hansard*, Friday 30 April 2010, p. 6.

26 Section 58P of the Fringe Benefits Tax Assessment Act sets out in detail (from paragraph (a) to (f) how to determine whether a benefits is a minor benefit; it also specifically excludes some benefits from being minor benefits, eg an airline transport benefit.

as the same valuation methodology would be applied.[27] As an alternative, the Institute of Chartered Accountants suggested that a 'safe harbour' valuation method, possibly based on applying the Division 7A interest rate to the original cost of the asset be implemented.[28]

Committee view

2.30 In light of the evidence taken by the committee at its public hearings and from submissions received, the committee is satisfied that the valuation provisions proposed in the amendments of Schedule 1 of the bill will not impose an unmanageable compliance and administrative burden on taxpayers and their tax agents. The committee considers that the valuation provisions are reflective of the self assessment regime in which the Australian taxation system operates and is confident that taxpayers will be able to manage the changes.

Exceptions to the extended definition of payment

2.31 Following public consultation on the exposure draft of the legislation, the Government introduced exceptions to the definition of payment to cover situations where:

- the provision of the asset is a minor benefit; or
- the entity using the asset would be able to claim a once-off deduction in respect of the expense of using the asset had they paid for the use of the asset; or
- certain dwellings are being used.

2.32 These exceptions have been proposed to ensure that compliance costs for taxpayers affected by the changes are minimised and that unintended consequences do not arise.[29]

Minor benefits

2.33 This exception is based on the rules concerning minor benefits as set out in the fringe benefits tax legislation. Those rules provide that where a benefit that has a notional taxable value less than $300 is provided to an employee, it is an exempt benefit and therefore one in respect of which the employer is not required to pay

27 Mr Noel Beharis, Director, Tax Technical Services, Dominion Private Clients, *Proof Committee Hansard*, Thursday 29 April 2010, p. 12; Mr Andrew Gardiner, Spokesman, National Tax and Accountants Association, *Proof Committee Hansard*, Thursday 29 April 2010, p. 18.

28 Institute of Chartered Accountants, Submission 9, p. 14.

29 Explanatory Memorandum, pp 16–17.

fringe benefits tax.[30] In determining a minor benefit, the fringe benefits rules also refer to factors such as infrequency and irregularity of the benefit.[31]

2.34 The minor benefit exception that will be introduced into Division 7A will be set out in subsection 109CA(4). It will ensure that an amount will not be treated as a payment if the provision of the asset would constitute a minor benefit if it were done in respect of the employment of an employee.[32]

Otherwise deductible payments

2.35 Proposed subsection 109CA(5) will contain an exception that operates to ensure that the definition of payment will not extend to amounts that, had the person incurred and paid for the provision of an asset, they would have been entitled to claim a tax deduction for that amount.[33]

2.36 Based on evidence heard throughout the course of the inquiry the committee understands that these exceptions may apply to minimise the affect of the changes for certain taxpayers, for example in situations where a car is used for personal use.

> …the otherwise deductible rule, you have to ask yourself what business is a shareholder in that would enable the shareholder to claim a deduction for using that vehicle…if they are a shareholder and an employee then you have to look to the substance of the arrangement. It depends on facts and circumstances.[34]

Dwellings

2.37 There are two exceptions that apply to dwellings set out in section 109CA.

2.38 Subsection 109CA(6) which provides an exception for the provision of a dwelling for use by a shareholder where the provision of the dwelling is for private purposes provided the following circumstances are met:

- The entity or their associate is carrying on a business;
- The entity or their associate uses or is granted or has a lease, license or other right to use land, water or a building for carrying on the business; and

30 Explanatory Memorandum, p. 16.

31 Explanatory Memorandum, p. 16.

32 Explanatory Memorandum, p. 16.

33 Explanatory Memorandum, p. 17.

34 Mr Raphael Cicchini, Manager, Business Tax Division, Department of the Treasury, *Proof Committee Hansard*, Friday 30 April 2010, p. 13.

- The provision of the dwelling to the entity is connected with that use or with that lease, license or other right to use the land, water or building to carry on a business.

Proposed Subdivision EB – interposed entities and unpaid present entitlements

2.39 The amendments set out in Schedule 1 of the bill will also introduce a new subdivision to Division 7A, Subdivision EB. Subdivision EB has become necessary to ensure taxpayers are unable to avoid tax on unpaid present entitlements by interposing entities between the private company and themselves.

2.40 Unpaid present entitlements are presently covered in Division 7A, Subdivision EA. Effectively they ensure:

> …an unpaid present entitlement where there is then a payment from the trustee to a shareholder is the provision of a benefit and so is caught under Division 7A, Subdivision EA.[35]

2.41 Subdivision EB will extend these provisions further to ensure that interposing another entity 'does not remove the flow of funds to the shareholder from the taxing regime' of Division 7A.[36]

2.42 Throughout the course of its inquiry, the committee heard concerns that the introduction of Subdivision EB would result in complexity, particularly in situations where any business group is operating through a multitude of trusts.[37] Mr Beharis of Dominion Private Clients explained that although in the 'vanilla case'[38] amending Division 7A to cover interposed entities will 'work in an appropriate manner'[39] the complexity arises when there are many entities involved.[40] The particular concern that Mr Beharis raised relating to what he considers an 'open-ended discretion' that will allow the Commissioner to determine the amount of a payment or loan to an interposed entity under what will be new section 109XH. Mr Beharis contends that the

35 Mr John Passant, Senior Lecturer Tax Law, University of Canberra, *Proof Committee Hansard*, Friday 30 April 2010, p. 4.

36 Mr John Passant, Senior Lecturer Tax Law, University of Canberra, *Proof Committee Hansard*, Friday 30 April 2010, p. 5.

37 Mr Noel Beharis, Director, Tax Technical Services, Dominion Private Clients, *Proof Committee Hansard*, Thursday 29 April 2010, p. 9.

38 Mr Noel Beharis, Director, Tax Technical Services, Dominion Private Clients, *Proof Committee Hansard*, Thursday 29 April 2010, p. 9.

39 Mr Noel Beharis, Director, Tax Technical Services, Dominion Private Clients, *Proof Committee Hansard*, Thursday 29 April 2010, p. 9.

40 Mr Noel Beharis, Director, Tax Technical Services, Dominion Private Clients, *Proof Committee Hansard*, Thursday 29 April 2010, p. 9.

legislation should provide more detail of the factors that the Commissioner must consider when determining that amount.[41]

2.43 When questioned about the possible uncertainty that may arise if the concerns of witnesses are realised, Treasury responded:

> Division 7A by itself does not need to be complex; it is when individuals and companies and trusts are set up with particular structures for whatever reason…invariably result in complexity...that is just a function of choosing particular structure for whatever purposes, some of them tax, some of them non-tax.[42]

2.44 The Institute of Chartered Accountants in Australia believes a recent Tax Office ruling renders Subdivisions EA and EB redundant:[43]

> Within that ruling the ATO have concluded that an unpaid present entitlement for the purposes of division 7A, in their view, is a loan. So, as soon as they have defined that unpaid present entitlement as a loan, effectively subdivisions EA and EB have become redundant provisions, or they will not operate unless there is an unpaid present entitlement for the purpose of revisions. The ruling goes on further to state that, although legally it would be an unpaid present entitlement, for the purposes of the provisions it is a loan, which means it is not an unpaid present entitlement just for the operation of these provisions. In order to address that issue and restore purpose to subdivisions EA and EB, we propose an amendment specifically highlighting that an unpaid present entitlement is not a loan for the purposes of division 7A. In terms of providing that amendment, we believe that it provides certainty to the provisions so that taxpayers know exactly why EA and EB are there and what they are intended to address as issues, and there is no uncertainty or ambiguity in terms of the ATO view as contained in the ruling.[44]

2.45 Tax expert Mr Passant commented on this view stating that:

> …although they are related, they are actually separate concepts that are being dealt with here. One is specifically dealing with unpaid present entitlements through the law and the other is a ruling which is going to say that some of those entitlements may be caught by other provisions of the same division which are wider and may have different consequences… these are interpretive matters about law that already exists and they do not impact on changes to the law. When and if the new law is passed it will still have effect. The rulings process is still that it is only the considered view of

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41 Mr Noel Beharis, Director, Tax Technical Services, Dominion Private Clients, *Proof Committee Hansard*, Thursday 29 April 2010, p. 10.

42 Mr Raphael Cicchini, Manager, Business Tax Division, Department of the Treasury, *Proof Committee Hansard*, Friday 30 April 2010, p. 13.

43 Institute of Chartered Accountants in Australia, *Submission 9*, p. 2.

44 Mr Alexis Kokkinos, Chair, National Tax Technical Committee, Institute of Chartered Accountants in Australia, *Proof Committee Hansard*, Wednesday 28 April 2010, p. 14.

> the ATO. We let the ATO develop its own views in consultation with taxpayers and others who have been making submissions to the ATO and we see what comes out of that. But, even if the ruling as it presently exists as a draft becomes final in its present form, I do not think that is going to have a major impact on the changes that the government is proposing for division 7A around unpaid present entitlements.[45]

Committee view

2.46 The committee considers some uncertainty remains as to the interaction between draft Subdivision EB and Tax Office Draft Ruling 2009/D8.

Recommendation 2

2.47 The committee recommends that the Commissioner of Taxation review Draft Ruling 2009/D8 following passage of the Schedule 1 amendments to ensure it is operating appropriately.

Corporate Limited Partnerships

2.48 A minor amendment set out in Schedule 1 of the bill will be the introduction of section 109BB into Division 7A of the ITAA 1936. Section 109BB will operate to ensure that corporate limited partnerships no longer escape the operation of Division 7A where:

- they have fewer than 50 members; or
- the entity has, directly or indirectly, and for its own benefit, an entitlement to a 75 per cent or greater share of the income or capital of the partnership.[46]

Retrospectivity

2.49 The amendments set out in Schedule 1 of the bill will be retrospective in operation, applying from 1 July 2009.

2.50 Throughout the course of the inquiry, this particular feature of Schedule 1 received much criticism, stakeholders generally of the view that the retrospective nature of the changes does not provide taxpayers with the opportunity to restructure their affairs if they will be unintentionally affected by the changes.

2.51 Submitters also raised the brevity of the period for public consultation as an issue of concern and appealed to the committee for a period during which roll–over relief is made available. This would also enable affected taxpayers who have not been

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45 *Proof Committee Hansard*, Friday 30 April 2010, p. 5.

46 Explanatory Memorandum, paras 1.36–1.37, p. 20.

keeping sufficient records to put processes in place to ensure they will be able to comply with their obligations

2.52 When asked if roll-over relief had been contemplated, Treasury advised that roll-over relief is not necessary to facilitate restructures.[47]

Committee view

2.53 On the balance of the evidence received throughout the course of its inquiry detailing the complexity of the Schedule 1 amendments and the modest revenue savings projected over the forward estimates, the committee takes the view that Schedule 1 should not operate retrospectively. Rather, taxpayers and tax agents should be given time to make changes to their business arrangements and structures as they consider appropriate. The committee does however note that this is an important integrity measure.

Recommendation 3

2.54 The committee recommends that Item 2 of the bill dealing with the commencement date of the provisions be amended to reflect that Schedule 1 takes effect from 1 July 2010. The committee is of the view that this time frame strikes the appropriate balance between providing taxpayers with time to prepare for the changes with the need to strengthen the integrity of the tax laws.

47 Mr Paul McCullough, General Manager, Business Tax Division, Department of the Treasury, *Proof Committee Hansard*, Friday 30 April 2010, pp 16–17.