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Lawyers and Advisers

8 August 2008

Dr Richard Grant
Principal Research Officer
Senate Standing Committee on Economics
Parliament House
Canberra ACT 2600

Your Ref
Our Ref ML
File No. 010444444

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Dear Richard

I refer to our telephone conversation of yesterday's date. I understand that on Tuesday afternoon 12 August, the Senate Economics Committee will be considering the provisions of Tax Laws Amendment (2008 Measures No 4) Bill 2008 giving effect to the Government's proposal to reverse those family trust changes introduced in Tax Laws Amendment (2007 Measures No 4) Act 2007 which allow family trust elections and interposed entity elections to be reversed in certain circumstances and also broaden the definition of "family" to include lineal descendents of family members.

If one examines the speeches of Mr Chris Bowen and Dr Craig Emerson delivered in the House of Representatives on 13 August 2007, it will be readily apparent that neither objected as a matter of principle to the relevant changes introduced during the latter part of 2007. Rather, it was a question of priorities given the projected cost of \$8M per annum over the forward estimates.

I have not been given access to Treasury's costings but I assume the Committee will have an opportunity to examine them. However, it is inconceivable to me that the estimate of \$8M per annum could have related to the inclusion of the lineal descendents of family members. The inclusion of lineal descendents is only likely to have revenue cost implications - if at all - well into the future.

The publicly released costing document (see annexure) states as follows:

"This costing assumes the reversal of family trust status for people who were included in a family trust group under the legislation introduced by the Government in Tax Laws Amendment (2007 Measures No 4) Bill 2007, with effect to trust distributions made from 1 July 2008. A significantly smaller revenue gain would arise if the change did not involve a reversal of family trust status".

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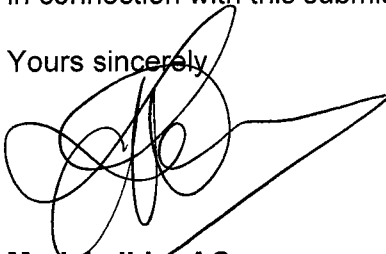
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I do not understand why the removal of the "lineal descendants of family members" provision would involve "a reversal of family trust status". The costing document itself states that a significantly smaller revenue gain would arise if the change did not involve "a reversal of family trust status".

The changes relating to family trusts introduced in Tax Laws Amendment (2007 Measures No 4) Act 2007 were negotiated between Treasury officials and representatives of the relevant tax and accounting professional bodies over a period of many months. They were introduced for the purpose of dealing with anomalies, reducing unnecessary compliance costs and increasing flexibility in a manner which would not pose a threat to the revenue. If it can be demonstrated, as I believe it can, that there will be no significant revenue saving, then there remains no justification for the reversal of at least that aspect of the legislation currently under consideration by the Senate Economics Committee which broadened the definition of "family" to include lineal descendants of family members.

I would be pleased to have the opportunity of appearing before the Committee in connection with this submission.

Yours sincerely



Mark Leibler AC
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PUBLIC RELEASE OF COSTING

Summary of costing:	Reverse the family trust changes introduced by the Government in Tax Laws Amendment (2007 Measures No 4) Bill 2007.
Person making the request:	Leader of the Opposition
Date of request:	21 November 2007
Name of policy to be costed:	Family Trusts discontinuation of government measure
Date of public release of policy:	13 August 2007
Costing request provided by the Prime Minister/Leader of the Opposition:	Leader of the Opposition
Additional information requested (including date):	NA
Additional information received (including date):	NA

Financial Implications (outturn prices)^(a)

	2007-08	2008-09	2009-10	2010-11
Impact on				
Underlying cash balance (\$m)	-	8	8	8
Fiscal balance (\$m)	-	8	8	8

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A positive number for the underlying cash balance indicates an increase in revenue or a decrease in expenses or net capital investment in cash terms.

The financial implications are an increase in revenue as the policy reverses a concessionary measure related to Family Trusts.

Caveats or qualifications to the costing

This costing assumes the reversal of family trust status for people who were included in a family trust group under the legislation introduced by the Government in Tax Laws Amendment (2007 Measures No 4) Bill 2007, with effect to trust distributions made from 1 July 2008. A significantly smaller revenue gain would arise if the change did not involve a reversal of family trust status.

Where relevant, explain the reason for any significant differences between the assumptions specified in a party costing request and those used in a Treasury or Finance costing.

This costing is consistent with the policy specification. The ALP costing has the financial impact commencing in 2009-10 for a 1 July 2008 date of effect. The costing takes account of tax being payable by trustees the time a distribution is made.

Background information

Costing methodology used:

- This costing is consistent with the cost presented in the Explanatory Memorandum to Tax Laws Amendment (2007 Measures No 4) Bill 2007.
- The commencement date of 1 July 2008 means that individuals who benefit from the Family Trust amendment will do so for the 2007-08 income year.