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BARRISTERS AND SOLICITORS

ACN 103 499 181

18 August, 2008

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir/Madam,

INQUIRY INTO TAX LAWS AMENDMENT (2008 MEASURES NO.4) BILL

My apologies for this late submission, but I would like to make the following submissions in relation to the above Bill:

1. I am a practising lawyer specialising in tax and trusts. I have been practising in these fields for over 20 years.
2. The proposal to reverse the extended definition of "family", which would have the effect of limiting lineal descendants to children and grandchildren of the test individual, should not proceed for the following reasons:
 - (a) it will not deliver the revenue savings on which the change is premised;
 - (b) it is not necessary for, and does not achieve, integrity of the tax system;
 - (c) it creates potential tax problems that were most likely unforeseen when the proposal was originally conceived.

I now briefly address each of these points in turn.

3. If the proposal genuinely achieved the multi-million dollar revenue savings promised, it could at least be supported by the Parliament as a responsible budgetary measure. However, it is difficult to see how such revenue savings can be achieved. Family trust distribution tax, a penalty tax which applies to distributions outside the "family", is a very small revenue-raiser. If the overall operation of the tax delivers very little revenue, the proposed change (which only applies to distributions more than 2 generations down from the test individual) will certainly only raise miniscule revenue, if any. There is no evidence at all of much more tax being raised under the old definition of "family" when it was limited (as now proposed) to 2 generations down from the test individual. There

are several reasons for this to be the case. First, family trust elections have only been in place for 10 years. Therefore, distributions to great-grandchildren and beyond is unlikely to happen on any significant scale for many years to come. Second, if there was a desire to give family trust money to a great-grandchild it could be easily achieved without confronting the tax by making the payment to a grandchild (a member of the "family") who would then gift the money to the great-grandchild.

Further, I note from reading the transcript of the Senate Committee hearing on 12 August 2008 that Treasury does not justify the change on revenue saving grounds. The measure is treated as implementing a policy without reliance on any evidence in relation to revenue saving.

4. As far as tax integrity is concerned, it is difficult to imagine how a distribution to a great-grandchild is tax avoidance, whereas a distribution to a grandchild is not. The distinction is therefore arbitrary and artificial and does nothing more than potentially impede distributions to later born family members for genuine family or financial reasons.
5. Family trusts which are aimed at being multi-generational in terms of their benefits (many trusts fall into this category) are effectively defeated by excluding great-grandchildren and beyond from the definition of "family". As a result, these trusts may have to be closed down before they are due to vest in order to avoid family distribution tax on distributions to great-grandchildren and beyond. The closing down of these trusts will invariably produce capital gains tax liabilities on distribution of the trust assets when the trusts close down. I expect that this consequence was unforeseen when the proposal was conceived.
6. For the reasons set out above, the proposal is misconceived. It is almost certainly based on incorrect information. More importantly, it fails to achieve any proper policy objectives and simply causes unnecessary hardship. While that hardship is not immediate, it is questionable why a legislative amendment which sets the stage for long term hardship without achieving any current policy objectives should be introduced at all. Under these circumstances, it makes sense for it not to proceed.

Should you have any queries, please do not hesitate to contact me.

Yours faithfully,



Graeme Halperin
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