The Senate

Select Committee on Scrutiny of New Taxes

Interim Report -

New Taxes Monitoring Database

March 2011

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Senate Select Committee on Scrutiny of New Taxes

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Interim Report of the Select Committee of the Scrutiny of New Taxes

Introduction – a report on the progress of proceedings: new taxes monitoring database

1.1 On Thursday 30 September 2010 the Senate established the Select Committee on the Scrutiny of New Taxes (the committee) to inquire into the following matters:

(a) new taxes proposed for Australia, including:

(i) the minerals resource rent tax and expanded petroleum resource rent tax,

(ii) a carbon tax, or any other mechanism to put a price on carbon, and

(iii) any other new taxes proposed by Government, including significant changes to existing tax arrangements;

(b) the short and long term impact of those new taxes on the economy, industry, trade, jobs, investment, the cost of living, electricity prices and the Federation;

(c) estimated revenue from those new taxes and any related spending commitments;

(d) the likely effectiveness of these taxes and related policies in achieving their stated policy objectives;

(e) any administrative implementation issues at a Commonwealth, state and territory level;

(f) an international comparison of relevant taxation arrangements;

(g) alternatives to any proposed new taxes, including direct action alternatives; and

(h) any other related matter.

1.2 To date, pursuant to these terms of reference, the committee has resolved to inquire into a national mining tax, a carbon tax and the government's proposal to allow higher education providers to charge a compulsory student services and amenities fee. The committee has conducted public hearings in relation to matters concerning a national mining tax and has finalised its report on the proposed student amenities fee.

1.3 Further hearings will be held to facilitate the committee's ongoing inquiries into a national mining tax, a carbon tax and other taxes the committee resolves to investigate.

1.4 To assist its inquiry into these matters the committee has been monitoring government announcements of policy and legislative change as well as media articles that suggest policy change. This information is being collated and is circulated periodically to inform the committee's discussions.

1.5 As the government has introduced more than $40 billion of new or increased taxes over the past three years the committee views this process as a means of identifying and scrutinising new and increased taxes as they are introduced by the government. Reporting these findings on a regular basis will further expose the government's clandestine efforts to increase the tax burden on all Australians.

1.6 The committee's first extract of its database is contained in Chapter 2. This version of the database covers the period from 30 September 2010 (the date of the committee's establishment) to 28 February 2011.

Chapter 2

The database[1]

Issue	Description	Reference material
PSLA 2010/4 – Division 7A: trust entitlements	• 14/10/2010 • Practice Statement issued by Commissioner of Taxation. • Purpose: to provide practical guidance on administrative aspects of taxation ruling TR 2010/3 (issued 2/6/10) - TR 2010/3 sets out the Commissioner's view on when a private company with an unpaid present entitlement makes a loan to the trust estate which generated the entitlement, for the purposes of Division 7A of the Income Tax Assessment Act 1936. • PSLA 2010/4 provides guidance for businesses to work towards achieving a compliant structure and identifies those arrangements where an unpaid present entitlement will not be treated as a loan. • A loan treated as a dividend will be assessable	http://www.ato.gov.au/corporate/content.asp?doc=/content/00258985.htm

1 The monitoring database is generally updated on a daily basis. The information contained in the database has been sourced from the cited reference material.

	income unless an exception applies or the loan is fully repaid in the year it was made.	
TR 2010/7 – Income tax: the interaction of Division 820 of the Income Tax Assessment Act 1997 to the transfer pricing provisions	• 28/10/10 • Ruling issued by the Commissioner of Taxation. • Ruling explains how the thin capitalisation provisions of Div 820 of the ITAA 1997 interact with the transfer pricing provisions. • The focus of the ruling is the interaction between the thin capitalisation and transfer pricing provisions. • TR 92/11 and TR 97/20 set out the Commissioner's views on the appropriate methods to work out arm's length consideration in relation to debt financing that is provided on a non-arm's length basis. • Division 820 sets an upper limit on the amount of debt in respect of which an entity can claim tax deductions. Where an entity's level of debt exceeds the maximum allowable debt Div 820 will deny a proportion of the otherwise deductible amounts. • Div 820 can reduce deductible amounts after the application of the transfer pricing provisions. • Ruling is retrospective and there is some public concern it will increase uncertainty and will be unfavourable for taxpayers.	http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR20107/NAT/ATO/00001
'Tax ruling will mire multinationals'	• 28/10/2010 • Article comments on TR 2010/7 suggesting that the ruling will create uncertainty for multinationals	AFR 28/10/10 Katie Walsh, p. 3.

	that invest in Australia, may stifle investment and is likely to trigger litigation. • Under the ruling the ATO may adjust or disallow interest deductions for intra-group loans if it considers that the interest rate is uncommercial. • Ruling has retrospective application. • Clayton Utz has suggested that the ruling is inconsistent with the policy behind thin capitalisation rules that were introduced to encourage investment.	
Draft taxation determination TD2010/D6	• 17/12/2010 • Draft tax determination issued. • Income tax: consolidation: capital gains: does paragraph 40-880(5(f) of the ITAA 1997 prevent the deduction, under section 40-880 of that Act, of incidental costs described in subsection 110-35(2) of that Act that the head company of a consolidated group or MEC group incurs, in disposing of shares in a subsidiary member to a non-group entity, after the member leaves the group? • Yes, paragraph 40-880(5(f) of the ITAA 1997 does prevent the deduction. This may result in an increased liability for affected taxpayers.	http://law.ato.gov.au/pdf/pbr/td2010-d006.pdf
'M&A costs ruling puts tax deductions in doubt'	• 23/11/2010 • Article comments on TD2010/D6 • The ATO has released a draft ruling that denies corporate groups tax deductions for costs incurred	AFR 23/11/2010 Katie Walsh p. 12.

	before or after a merger or acquisition. • The determination sets out examples of when a group can deduct certain expenses in relation to subsidiaries. • Ernst & Young partner has said that the determination illustrates how complicated the interaction of tax consolidation and capital gains tax is particularly with the overlay of black-hole deductions. • RSM Bird has commented that the interpretation put forward in the determination is the correct one and mistakes are more likely to have been made by SMEs who typically don't have the skills in-house or resources to obtain external advice.	
TD 2010/D4 – draft taxation determination: Income tax: consolidation: capital gains: does paragraph 40-880(5)(f) of the Income Tax Assessment Act 1997 prevent the deduction, under section 40-880 of that Act, of incidental costs described in subsection 110-35(2) of that Act that the head company of a consolidated group or MEC group incurs, in acquiring shares in an entity that	• 17/11/2010 • Draft taxation determination released for public comment. • Draft determination concerns deductions that can be claimed by head companies of consolidated groups. • Determination sets out that these companies are unable to claim deductions for incidental costs described in subsection 110-35(2) of the ITAA 1997 incurred in acquiring shares in an entity that becomes a subsidiary member of the group, before the entity joins the group. • Although the costs cannot be claimed as an expense/deduction they may be taken into account	http://law.ato.gov.au/atolaw/view.htm?rank=find&criteria=AND~2010%2FD4~basic~exact&target=FA&style=java&sdocid=DXT/TD2010D4/NAT/ATO/00001&recStart=1&PiT=99991231235958&recnum=5&tot=5&pn=RDB:::RDB

becomes a subsidiary member of the group, before the entity joins the group	at a later time when calculating a capital gains tax liability.	
TD 2010/7D – draft taxation determination: Income tax: is 'Australian source(s)' in subsection 6-5(3) of the ITAA 1997 dependent solely on where purchase and sale contracts are executed in respect of the sale of shares in an Australian corporate group acquired in a levered buyout by a private equity fund?	• 1/12/2010 • Draft taxation determination released for public comment. • Draft determination outlines that, for the purposes of subsection 6-5(3) of the ITAA 1997 (determining what is ordinary income), 'source' is determined having regard to all the facts and circumstances of the particular case. • As a result, the source of the profit from the disposal of shares acquired in a private equity backed leveraged buyout is crucial in determining if an Australian tax liability will arise. • Determining the source of income is a matter of fact that is to be determined with regard to the facts and circumstances of the case. • The draft determination provides guidance around determining source. • Draft determination will have different impacts for different taxpayers.	http://law.ato.gov.au/atolaw/view.htm?docid=DXT/TD2010D7/NAT/ATO/00001
TD 2010/D8 Income tax: does the business profits article (Article 7) of Australia's tax treaties apply to Australian sourced business profits of a foreign	• 1/12/2010 • Draft taxation determination released for public comment. • Draft determination outlines that to the extent the business profits are liable to tax in the hands of the partners in their country of residence and the	http://law.ato.gov.au/atolaw/view.htm?docid=DXT/TD2010D8/NAT/ATO/00001

limited liability partnership (LLP) where the partners in the LLP are residents of a country with which Australia has entered into a tax treaty and the LLP is treated as fiscally transparent in the country of residence of the partners?	partners meet any other applicable tax treaty requirements the business profits article of Australia's tax treaties will apply. • The tax treaty will only be applied where the Commissioner is satisfied that the partners are persons who are residents of that country for the purposes of the tax treaty. • Whether or not business profits are taxable in Australia will be determined depending on the circumstances of the taxpayer.	
TD2010/20: Income tax: treaty shopping: can Part IVA of the ITAA 1936 apply to arrangements designed to alter the intended effect of Australia's International Tax Agreements network?	• 1/12/2010 • Tax determination issued. • Determination applies to years of income commencing both before and after the date of issue of the determination (1 December 2010) however it will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute before the date of issue. • Yes, Part IVA will apply however, it will depend upon whether a taxpayer has obtained, or would but for section 177F of the Income Tax Assessment Act 1936 (ITAA 1936) obtain, a tax benefit in connection with the scheme and, having regard to the factors in paragraph 177D(b), it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for the purpose of enabling the relevant taxpayer to obtain	http://law.ato.gov.au/atolaw/view.htm?docid=TXD/TD201020/NAT/ATO/00001

	a tax benefit in connection with the scheme. • Part IVA sets out the general anti-avoidance provisions. As a result, where an arrangement is put in place to attract the operation of a tax treaty in the context of a broader structuring arrangement it may be a Part IVA scheme in which case any tax benefit will be cancelled.	
TD 2010/21: Income tax: can the profit on the sale of shares in a company group acquired in a leveraged buyout be included in the assessable income of the vendor under subsection 6-5(3) of the Income Tax Assessment Act 1997?	• 1/12/2010 tax determination issued. • Tax determination sets out that the profit from the disposal of shares in a company group acquired in a leveraged buyout may be included in the assessable income of the vendor under section 6-5(3) of the ITAA 1997 where the profit is ordinary income. • This may also be the case when the vendor is a non-resident private equity entity and the profit arises from an Australian source. • Whether a profit is ordinary income or a gain of a capital nature will depend on all the circumstances of the particular case. • Where a private equity entity that has acquired shares in an Australian company is a resident of a country with which Australia has a tax treaty, the business profits article will determine which country has the taxing rights in respect of any profit that is of an income nature. • A profit made by a private equity entity resident in a non-treaty country from the disposal of shares in	http://law.ato.gov.au/atolaw/view.htm?rank=find&criteria=AND~2010%2F21~basic~exact&target=FA&style=java&sdocid=TXD/TD201021/NAT/ATO/00001&recStart=1&PiT=99991231235958&recnum=7&tot=8&pn=RDB:::RDB

	an Australian company acquired for the purpose of profit-making by sale in a commercial transaction will constitute ordinary income for the purposes of subsection 6-5(3). • If the profit is not ordinary income, a capital gain or capital loss from the disposal of most CGT assets is disregarded for Australian income tax purposes if made by a non-resident of Australia. Gains and losses on CGT assets that are not taxable Australian property are disregarded. • The facts of each case can vary and each case has to be determined on its own merits.	
Increase in medical expenses tax offset claim threshold	• 7/12/2010 • The Tax Laws Amendment (2010 Measures No 4) Bill 2010 received Royal Assent. • Schedule 5 to this Bill amends the ITAA1936 to increase the threshold above which a taxpayer may claim the medical expenses tax offset and commence annually indexing the threshold to the consumer price index. • The threshold above which the 20% net medical expenses tax offset can be claimed will be increased from $1,500 to $2,000. • The number of taxpayers eligible to access the offset will be reduced.	http://www.ato.gov.au/taxprofessionals/content.asp?doc=/content/00270776.htm
TR 2010/D7: Income tax: business related capital expenditure – section 40-880	• 8/12/2010 • Draft taxation ruling released for public comment. • The draft ruling considers the type of expenditure	http://law.ato.gov.au/atolaw/view.htm?docid=DTR/TR2010D7/NAT/AT

of the ITAA 1997 core issues	to which section 40-880 of the ITAA 1997 (business related costs) and in respect of which a deduction can be claimed. • Ruling relates to application/operation of 'black hole expenditure' provisions. Ruling will help taxpayers determine their tax liability. • When final ruling is issued the arrangements are proposed to apply from 8 December 2010 – date of issue of draft ruling.	O/00001

TR 2010/D8: Income tax: retail premiums paid to shareholders where share entitlements are not taken up or are not available	• 8/12/2010
	• Draft taxation ruling released for public comment.
	• When final ruling is issued it is proposed to apply both before and after its date of issue.
	• The draft ruling is about the taxation of retail premiums paid to shareholders in companies in respect of amounts subscribed for shares.
	• Ruling sets out that:
	  ○ A Retail Premium paid to a Non Participating Shareholder is assessable income as a dividend under section 44 of the ITAA 1936.
	  ○ A Retail Premium paid to a non-resident will be non-assessable non-exempt income under section 128D of the ITAA 1936 where it is subject to withholding tax under section 128B.
	  ○ A Retail Premium paid to a Non Participating Shareholder is an unfrankable
		http://law.ato.gov.au/atolaw/view.htm?docid=DTR/TR2010D8/NAT/ATO/00001

	distribution sourced, directly or indirectly, from a company's share capital account pursuant to paragraph 202-45(e) of the ITAA 1997. ○ A Retail Premium paid to a non-resident Non Participating Shareholder will be a dividend subject to withholding tax under subsection 128B(1) of the ITAA 1936, unless excluded under another provision of the ITAA 1936, ITAA 1997, or of the International Tax Agreements Act 1953 which gives the force of law to certain international tax agreements. Withholding tax does not apply to franked dividends. ○ As a Retail Premium paid to a non-resident is an unfrankable distribution pursuant to paragraph 202-45(e) of the ITAA 1997 withholding tax will apply under subsections 128B(1) and 128B(4) of the ITAA 1936. • Tax consequences will be determined on a case by case basis dependant on the recipient's shareholder status.	
TD 2010/D9 – draft taxation determination: income tax: Division 7A - unpaid present entitlements - factors the Commissioner will take into	• 15/12/2010 • Draft taxation determination released for public consultation. • Where section 109XI of the ITAA 1936 operates to treat a private company as being or becoming presently entitled to an amount from the income of	http://law.ato.gov.au/atolaw/view.htm?docid=DXT/TD2010D9/NAT/ATO/00001

account in determining the amount of any deemed entitlement arising under section 109XI of the Income Tax Assessment Act 1936	the target trust for the purposes of paragraphs 109XA(1)(c), 109XA(2)(b) and 109XA(3)(b), in determining the amount of this entitlement under subsection 109XI(4), the Commissioner will take into account relevant factors occurring before the earlier of the due date for lodgment and the date of lodgment of the trust's return of income for the year of income in which the actual transaction referred to in section 109XA takes place. • In each and every year in which there is a section 109XA transaction and the conditions in subsection 109XI(1) are satisfied, the Commissioner will be required under subsection 109XI(4) to determine the amount (if any) that the private company is taken to be or to become entitled to from the net income of the target trust. • The Commissioner will make this determination taking into account the relevant factors existing immediately before the target trust's lodgment date for the year in which the section 109XA transaction occurred. • Determination outlines the factors that the Commissioner will take into consideration when determining if a company is entitled to income from the target trust. • The making of a determination may result in an increased tax liability.	
TD 2010/D10 – draft	• 15/12/2010	http://law.ato.gov.au/atol

taxation determination – income tax: Division 7A - payments and loans through interposed entities - factors the Commissioner will take into account in determining the amount of any deemed payment or notional loan arising under section 109T of the Income Tax Assessment Act 1936	• Draft taxation determination released. • Draft determination outlines that where section 109T of the ITAA 1936 operates to treat a private company as having made a payment or loan to a shareholder, in determining the amount of that deemed payment or notional loan under section 109V or 109W, the Commissioner will take into account relevant factors occurring before the earlier of the due date for lodgment and the date of lodgment of the private company's return for the income year in which the company is taken to have made the deemed payment or notional loan. • The relevant factors that the Commissioner will take into account immediately before the lodgment date for the private company's return for the year in which it is taken to have made a deemed payment or notional loan include: (a) the amount that an interposed entity referred to in that subsection loaned or paid the target entity under the arrangement described in that subsection; (b) how much (if any) of the amount loaned or paid to the target entity by an interposed entity under the arrangement the Commissioner believes represented arm's length consideration payable to the target entity by the private company or an interposed entity for anything; (c) the extent to which any actual loans made as part of the arrangement have been repaid by that	aw/view.htm?docid=DXT/TD2010D10/NAT/ATO/00001

	time; (d) the extent to which any actual payments made as part of the arrangement were converted into loans pursuant to subsection 109D(4A) that have been repaid by that time; (e) the extent to which any loan made from the private company to an interposed entity as part of the arrangement meets the criteria set out in section 109N at that time; (f) the extent to which any payment made from the private company to an interposed entity as part of the arrangement was converted, pursuant to subsection 109D(4A), into a section 109N compliant loan by that time; (g) the extent to which the above factors reflect genuine transactions that are not designed to avoid the application of Subdivision E otherwise than as envisaged within the scheme of Division 7A. • The calculations will affect a taxpayer's tax liability.	
TR 2010/D9 – draft taxation ruling: income tax: deductibility under subsection 295-465(1) of the ITAA 1997 of premiums paid by a complying superannuation fund for an insurance policy providing	• 15/12/2010 • Draft taxation ruling released. • This draft Ruling is concerned with issues relating to the deductibility under subsection 295-465(1) of the ITAA 1997 of premiums paid by a complying superannuation fund for insurance policies which provide total and permanent disability (TPD) cover in respect of the fund's members. • This draft Ruling deals with: The Commissioner's	http://law.ato.gov.au/atolaw/view.htm?docid=DTR/TR2010D9/NAT/ATO/00001

Total and Permanent Disability cover in respect of its members	view on how subsection 295-465(1) together with paragraph 295-460(b) applies to such premiums; and the relationship between the deductibility of the premiums and the rules for the provision of benefits by a complying superannuation fund to its members as set out in the Superannuation Industry (Supervision) Act 1993 and the Supervision Industry (Supervision) Regulations 1994. • For an insurance premium on a TPD insurance policy paid by a complying superannuation fund to be deductible, there must be a connection between the payment and a current or contingent liability of the fund to provide a disability superannuation benefit. The payment must be wholly or partly related to the provision of disability superannuation benefits. • The extent to which a premium is in respect of a fund's liability to pay a disability superannuation payment will be determined by the nature and scope of the insured events. • If a deduction is disallowed a fund's liability will be more than it would be if the premium were deductible.	
Decision impact statement - Watson v Deputy Commissioner of Taxation	• 22/12/2010 • Outlines the ATO's response to this case which concerned whether or not insurance proceeds paid to the taxpayer under an income protection policy were assessable income 'from' his business activity for the purposes of section 35-10 of the ITAA	http://www.ato.gov.au/distributor.asp?doc=/content/Content/00265868.htm

	1997. • The Full Federal Court unanimously agreed with the primary judge that the payments made under the insurance policy were not assessable income 'from' the taxpayer's business activity, for the purposes of the non-commercial loss rules in Division 35 of the ITAA 1997. • The Court considered that the policy income was received because the taxpayer was not able to carry on the business activity to the same extent as before he became ill. • The Court held that income will be 'from' a particular business activity where it has its starting point/source/origin in that activity.	
Decision Impact Statement - Tagget v Commissioner of Taxation	• 22/12/2010 • Concerns whether or not the taxpayer should be assessed on the value of land transferred to him at the time of transfer, or the value of the land at an earlier time when the taxpayer acquired a conditional right to have the land transferred to him. • The court found that as the taxpayer accounted on a cash receipts basis the parcel of land was income when derived – ie in the year ended 30 June 2006. • The case was decided on its facts – it is unlikely to have broader consequences for other taxpayers.	http://www.ato.gov.au/distributor.asp?doc=/content/Content/00265873.htm
Decision Impact Statement – JMB Beverages Pty Ltd v	• 22/12/2010 • The Full Court decision confirms that processes	http://law.ato.gov.au/atolaw/view.htm?docid=LIT

Commissioner of Taxation	such as fermentation may change the nature of the juice of a fruit or vegetable such that it no longer bears that character. It is necessary to determine whether the beverage consists either wholly or at of at least 90% by volume of juices of fruit (as the case may be) by referring to the constituents of the beverage actually existing at the time the beverage is supplied. • The requirement in item 11 for carbonated beverages to 'consist wholly of juices of fruit or vegetables' requires that, apart from carbon dioxide used for carbonation, the beverage consist 100% of the juices of fruit or vegetables. The requirement does not allow any additives that are not juices of fruit or vegetables, even if the addition is only of a de minimis amount. • The Commissioner considers this to be settled law following the decision of the primary judge and of the Supreme Court of New South Wales in P & N Beverages Australia Pty Ltd v Commissioner of Taxation [2007] NSWSC 338. • In accordance with the decision of the primary judge, non-alcoholic beverages referred to in the table in clause 1 of Schedule 2 to the GST Act are confined to those beverages which do not acquire their alcohol content through human intervention (i.e. by using yeast to cause or accelerate fermentation) - GST applies to non-alcoholic beverages produced through human intervention.	/ICD/NSD1071of2009/00001

	• This DIS clarifies the law.	
Decision Impact Statement - Dreamtech International Pty Ltd v Commissioner of Taxation	• 22/12/2010 • Favourable DIS published. • This case concerned whether or not a stretched Hummer vehicle was a 'limousine' and, therefore, came within the definition of 'car' in section 27-1 of the New Tax System (Luxury Car Tax) Act 1999 (LCT Act). • The Tribunal gave the word 'limousine' it's ordinary meaning and took into account all relevant considerations. They found that the ordinary meaning of the term 'limousine' is reasonably wide. • Consideration was given to the claims made by Dreamtech that the vehicle was similar to a bus and was a heavy vehicle. • The decision confirms the ATO's view of the attributes that are to be taken into account when determining whether or not a vehicle is a limousine. • Whether or not a vehicle will fall within the definition of a limousine is a question of fact.	http://www.ato.gov.au/distributor.asp?doc=/content/Content/00265841.htm
Changes to GST treatment of residential premises	• 27/1/2011 • The Assistant Treasurer has announced that the Government will amend the GST law to ensure that it achieves the intended policy outcome for the GST treatment of residential premises. A discussion paper on the design of the proposed	http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/020.htm&pageID=003&min=brs&Year=&DocType

	amendments has been released for public comment. • The intent of the GST law is to capture GST on the value added to real property by developers, with newly constructed residential premises being subject to GST and other residential premises being input taxed. To ensure neutrality between owner-occupiers and investors, the supply of residential accommodation and long-term commercial accommodation by landlords are generally input taxed supplies. • The changes will clarify how residential property is treated under the GST, following a Full Federal Court decision last year that found that GST was not payable on some supplies of new residential premises to owner-occupiers and investors. • The amendments will ensure that new residential premises constructed under development lease arrangements since 3 October 2007 are treated as taxable supplies, rather than input taxed supplies, where the premises are sold by developers to home buyers or investors. This amendment will contain a transitional provision to ensure that taxpayers who have entered into arrangements on a basis consistent with the Court's findings, prior to this announcement over newly constructed residential premises, are not disadvantaged.	http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1920
Government announces one-	• 27/01/2011 • The Prime Minister today announced the Gillard	http://www.pm.gov.au/press-office/rebuilding-

off flood levy	Labor Government's response to the immense national challenge of rebuilding flood-affected regions across Australia. • Preliminary estimates, following consultation with the Queensland Government, indicate that the Government will need to invest $5.6 billion in rebuilding flood-affected regions, with the vast majority going on rebuilding essential infrastructure. • Two-thirds of that funding will be delivered through spending cuts. • The other third will be provided by a modest one-year progressive levy that won't be paid by people directly affected by the floods or by low-income earners. • The levy will apply to taxpayers with a taxable income over $50,000 at a rate of 0.5 per cent. Taxpayers earning over $100,000 will pay an additional 1 per cent levy on any income that exceeds $100,000. • The levy is expected to raise $1.8 billion and will be paid by approximately 40 per cent of taxpayers.	after-floods http://www.smh.com.au/environment/weather/gillard-confirms-oneoff-flood-levy-20110127-1a65c.html
Tax breaks in too-hard basket	• 8/2/2011 • Federal government is considering regulatory changes in response to collapses in the managed investment industry • Treasury advice suggests that curtailing generous tax breaks would be counterproductive.	AFR 8/2/2011, John Kehoe, p. 7.

	• Treasury said changing the special tax rules for managed investment schemes would be complex and risk unintended consequences and that change would risk structural damage to the tax system. • A parliamentary inquiry in 2009 recommended changes but didn't call for an end to the tax breaks. • The Greens have said that MIS distort land and water prices and damage communities across regional Australia and that they are committed to removing MIS tax rorts for forestry.	
Huge tax bill for breached cap [super contributions cap]	• 8/2/2011 • Article discusses more aggressive approach being taken by the ATO to excessive contributions and self managed funds. • A taxpayer has become liable for an ECT liability after rolling over funds from her SMSF to a public fund. • Lawyers consider that the ATO has a conflict of interest in being both regulator of these funds and policeman suggesting that a regulator's primary focus should be making sure peoples' money is safe. • Accountants have called for changes to penalties for exceeding the contributions caps.	AFR 8/2/2011, Jason Clout, p. 12.
Taxation Ruling 2011/1	• 9/2/2011 • Taxation Ruling 2011/1 released. • TR2011/1 Income tax: application of the transfer pricing provisions to business restructuring by	http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR20111/NAT/ATO/00001

	multinational enterprises • The ruling set outs the Commissioner's views on the application of Australia's transfer pricing provisions in Division 13 of Part III (Division 13) of the ITAA 1936 and the Associated Enterprises Article of Australia's tax treaties (treaty Article 9) of the International Agreements Act 1953 to business restructuring arrangements to help determine the arm's length value of consideration where the consideration for a supply or acquisition of property by a taxpayer under an international agreement in respect of a business restructuring is not an arm's length amount.	
Labor mulls $5bn levy for disability	• 16/2/2011 • Productivity Commission expected to recommend the government introduce a $5 billion levy to fund a universal disability insurance scheme. • The proposed scheme may take the form of a Medicare style levy. Other funding approaches are believed to be a pay as you go method or a superannuation style model.	AFR 16/2/2011 Fleur Anderson and Lisa Murray, p. 1.

Senator Mathias Cormann
Chair

Government Senators' dissenting report

Interim Report of the Select Committee on the Scrutiny of New Taxes–Report on the progress of proceedings: new taxes monitoring database

On Thursday 30 September 2010 the Senate established the Select Committee on the Scrutiny of New Taxes (the Committee) to inquire into the following matters:

(a) New taxes proposed for Australia, including:

(i) the minerals resource rent tax and expanded petroleum resource rent tax;
(ii) a carbon tax, or any other mechanism to put a price on carbon, and
(iii) any other new taxes proposed by Government, including significant changes to existing tax arrangements;

(b) the short and long term impact of those new taxes on the economy, industry, trade, jobs, investment, the cost of living, electricity prices and the Federation;

(c) estimated revenue from those new taxes and any related spending commitments;

(d) the likely effectiveness of these taxes and related policies in achieving their stated policy objectives;

(e) any administrative implementation issues at a Commonwealth, state and territory level;

(f) an international comparison of relevant taxation arrangements;

(g) alternatives to any proposed new taxes, including direct action alternatives; and

(h) any other related matter.

The terms of reference of the committee have been the subject of disagreement between members of the committee. Coalition members of the committee have taken the view that the committee has a broad remit to inquire into a range of matters, the range and scope of which shall be determined by the Coalition members of the committee, despite this type of remit having not necessarily been contemplated by the Senate when it resolved to establish the committee.

The decision of the Coalition members of the committee to inquire into the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010 was, in the opinion of government Senators, a case in point.

It was then and it remains the view of the government members of the committee, based on the advice the committee received on the nature of the student services and

amenities charge, that it is not a tax and the inquiry into it was in all likelihood beyond the committee's terms of reference. We have outlined our reasons for this view in our dissenting report on the outcome of that inquiry and there is no need to canvass it in any further detail in this report, other than to provide background to our view on this latest interim report.

In what the Coalition Senators describe in their report as a measure to assist the committee's inquiries, "the committee has been monitoring Government announcements of policy and legislative change as well as media articles that suggest policy change. This information is being collated and is circulated periodically to inform the committee's discussions."

It will do nothing of the sort.

What the so-called database set out in Chapter 2 does is merely provide references to a series of Australian Taxation Office rulings and determinations along with references to media reports and court judgements. It takes no account of the accuracy or otherwise of what are, at times, speculative media reports and we fail to see how a reference to an ATO decision impact statement on whether or not a stretched Hummer vehicle is a limousine or more akin to a bus will assist the committee or the Senate in deliberating over tax policy.

Government Senators seriously question the practical value of the so-called database to the deliberations of the committee and the Senate. We also note that the compilation of the database also places what we believe to be a burden on the already heavily stretched resources of the Committee secretariat. With this in mind, government Senators moved the following at a recent meeting of the Committee:

> *The Committee notes the extensive workloads placed on Senate committee secretariats due to the increasing number of references to committees.*
>
> *The Committee notes the resources available to Senators both through their own research staff and the Parliamentary Library.*
>
> *The Committee therefore resolves in the interest of reducing workload and allowing the Secretariat to focus on key priorities to relieve the Secretariat of the task of collating news articles on new taxes and ATO determinations and to discontinue the new taxes database as this information can be readily accessed through other means.*

This motion was defeated however, our concerns remain.

In relation to whether or not tax rulings and determinations are relevant to the committee's terms of reference, the following correspondence from the Commissioner of Taxation, Mr. Michael D'Ascenzo to the committee chair, Senator Cormann is instructive. It is as well to set out Mr. D'Ascenzo's correspondence in full:

Senator Mathias Cormann

Chair

Senate Select Committee on the Scrutiny of New Taxes

PO Box 6100

Parliament House

Canberra ACT 2600

Dear Senator

Draft Taxation Rulings and Determinations

Thank you for your letter of 13 December 2010 seeking additional information in relation to the ATO's recently published draft taxation rulings and determinations.

In your letter you note that the terms of reference for the Senate Select Committee on the Scrutiny of New Taxes "...include inquiring into any new taxes proposed by the government, including significant changes to existing tax arrangements".

It is unclear to me why the Committee would be considering taxation rulings and determinations because they do not impose new taxes or make significant changes to existing arrangements – they merely clarify my view of how existing tax arrangements work.

The view of rulings as law making is a common misconception. Taxation rulings and determinations are an expression of my view on the interpretation of the existing law. They do not change the law. However, they do influence taxpayer behaviour and therefore we are very careful to ensure they are of the highest integrity.

Draft rulings such as those referred to in your letter are published in order to enable consultation with the community before they are finalised. For example, we consult widely in their development and benefit from the views of private sector experts in our Public Rulings Panels.

A comprehensive review of our public rulings program by the Australian National Audit Office found public rulings to be of a high integrity.

As final public rulings represent the Commissioner's authoritative view of how the existing law applies, it is then the duty of the Commissioner to apply the law in a manner consistent with those rulings.

Where policy considerations apply, we often benefit from the views of Treasury. However, it remains our duty to interpret the statute in accordance with is tenor. It is then a matter for government whether any legislative amendment is appropriate.

For these reasons, in my view your request does not relate to new taxes but to administrative matters that fall within my statutory responsibility. However if you consider it desirable, I would be pleased to meet with you and your Committee on this matter. I have attached material that more fully explains Australia's public ruling system. However, I and my officers are available to clarify for your Committee the role which rulings play, both generally and in relation to the draft and final rulings referred to in your letter of 13 December 2010. I have asked my people to arrange such a meeting at your convenience, subject of course to your thoughts.

Yours sincerely

(signed)

Michael D'Ascenzo

Commissioner of Taxation

22 December 2010

Based on the explanation provided by the Commissioner of Taxation and having regard to the actual content of the so-called database, government members of the committee are of the view that it serves no useful purpose and only places an administrative burden on the committee secretariat.

In their report, the Coalition Senators state, "As the Government has introduced more than $40 billion of new or increased taxes over the past three years the committee views this process as a means of identifying and scrutinising new and increased taxes as they are introduced by the government. Reporting these findings on a regular basis will further expose the government's clandestine efforts to increase the tax burden on all Australians."

Firstly, government members of the committee take issue with the figure of $40 billion. It is an unsubstantiated claim in the Coalition Senators' report without anything which would allow anyone reading the report to verify it. As is the case with the Coalition's entire approach to such things, it is merely a figure plucked from the air.

Secondly, as discussed above, any reading of chapter 2 reveals that contrary to the claim of Coalition Senators, the process adopted in compiling the so-called database does nothing to identify and scrutinise "new and increased taxes".

Thirdly, to the extent that Coalition Senators actually believe that this process will somehow, "further expose the government's clandestine efforts to increase the tax burden on all Australians", suggests merely a tendency toward conspiracy theory. As is clear from Chapter 2 of the majority report and for the reasons we outline, the

process adopted by Coalition Senators does nothing to inform, expose or educate anyone, the Senate included, about taxation policy clandestine or otherwise.

Senator Steve Hutchins

Deputy Chair

Senator Doug Cameron