



31 October, 2011  
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Ms Julie Owens  
Chair  
Standing Committee on Economics  
House of Representatives  
Parliament House ACT 2600

Dear Madam Chair

**TAX LAWS AMENDMENT (2011 MEASURES NO. 8) BILL 2011 AND PAY AS YOU GO WITHHOLDING NON-COMPLIANCE TAX BILL 2011**

I write to respond to the comments of Mr Peter Strong, Council of Small Business of Australia, made at the Committee hearing of 27 October 2011 about the application of the amendments to the directors of clubs and associations. I also wish to clarify for the Committee that many of the criticisms made by some witnesses, including the Institute of Company Directors, in their submissions and oral evidence are well established features of the existing director penalty regime.

**Incorporated associations and clubs**

I seek to clarify the impact of these amendments on clubs and associations run by volunteers.

The existing director penalty provisions only apply to directors of companies registered under the *Corporations Act 2001*. These amendments do not change that application.

Clubs and associations are commonly incorporated under the incorporated associations legislation in the various states and territories. As clubs, sporting associations and not-for-profits are generally not run as companies under the *Corporations Act 2001*, the director penalty provisions and proposed changes will not alter their status, obligations or potential implications.

Clubs that compete in the professional leagues in various sports are more commonly owned by companies registered under the *Corporations Act 2001*. However, these generally operate as businesses, rather than community associations run by volunteers.

**Existing obligations under the director penalty regime**

The existing director penalty regime applies to a company's obligations under the Pay As You Go withholding provisions and the associated estimates provisions. As I explained at the hearing, the Bill broadly extends those obligations to a company's unpaid superannuation guarantee amounts.

The summary in the submission of the Institute of Company Directors lists various points for the Committee to note. Many of those points relate to features of the current system that have operated since 1993. For example:

- the provisions apply generally to directors of non-compliant companies, not just phoenix companies;
- the provisions can apply to individuals who become directors while the original liability remains unpaid;
- the provisions include various defences; and
- director liability can be based on an estimate by the Commissioner of Taxation of the underlying liability.

I hope this information will assist the Committee in its review of the legislation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Haydn Daw', written in a cursive style.

Haydn Daw  
Manager  
Small Business and Trusts Unit  
Business Tax Division