

Senate Economics Committee

Inquiry into Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.

1) Bill 2019

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

AUGUST 2019

Department/Agency: ATO

Question: 1

Topic: Schedule 1 and 2 revenue values

Question:

Senator GALLACHER: Can we get a value on those 2 budget measures?

Mr WERBIK: It is unquantifiable

[...]

Mr WERBIK: I don't have a number but we will take that on notice

Answer:

Treasury provided the response to this question later in the hearing.

Please refer to page 48 of the Hansard.

Senate Economics Committee
Inquiry into Treasury Laws Amendment (2019 Tax Integrity and
Other Measures No. 1) Bill 2019

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Department/Agency: ATO

Question: 2

Topic: Holding vacant land

Question:

Can the ATO provide the Committee with further clarity relating to the considerations that would be used to determine a vacant land holding assessment outcome?

Answer:

We note that the ATO is not able to provide advice on the operation of proposed law and that the application to a specific taxpayer will be dependent on all of the relevant facts and circumstances. Our comments are therefore necessarily general in nature and reflect how we would approach the provisions if enacted.

As per the Explanatory Memorandum, Schedule 3 to the Bill amends the ITAA 1997 to deny deductions for losses or outgoings incurred that relate to holding vacant land. However, the amendments do not apply to any losses or outgoings relating to holding vacant land to the extent to which the land is:

- used or held available for use by the entity in the course of carrying on a business in order to earn assessable income; or
- used or held available for use in carrying on a business by;
 - an affiliate, spouse or child of the taxpayer; or
 - an entity that is connected with the taxpayer or of which the taxpayer is an affiliate.

The amendments also do not apply to taxpayers that are:

- corporate tax entities, superannuation plans (other than self-managed superannuation funds), managed investment trusts or public unit trusts; or
- unit trusts or partnerships of which all the members are entities of the above types.

In the case where the owner of the land is engaged in a farming operation which is carrying on a business of cropping and some of the farm is left fallow as part of normal crop rotation practices or where a crop is not planted due to anticipated weather conditions for that season, it would be expected that the measure would not apply to limit deductions because the land is in use or held available for use in an ongoing farming business.

Similarly it would be expected that the measure would not apply to limit deductions where the owner of the land conducts a cropping business and then changes that activity to run livestock or some other business use. This is because the land is still being used in the carrying on of a business by its owner.

Senate Economics Committee
Inquiry into Treasury Laws Amendment (2019 Tax Integrity and
Other Measures No. 1) Bill 2019

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

AUGUST 2019

Included in the attachment is a flow-chart which is indicative of the type of guidance material on the application of the proposed measure that we will publish to our website subject to the passage of the legislation.

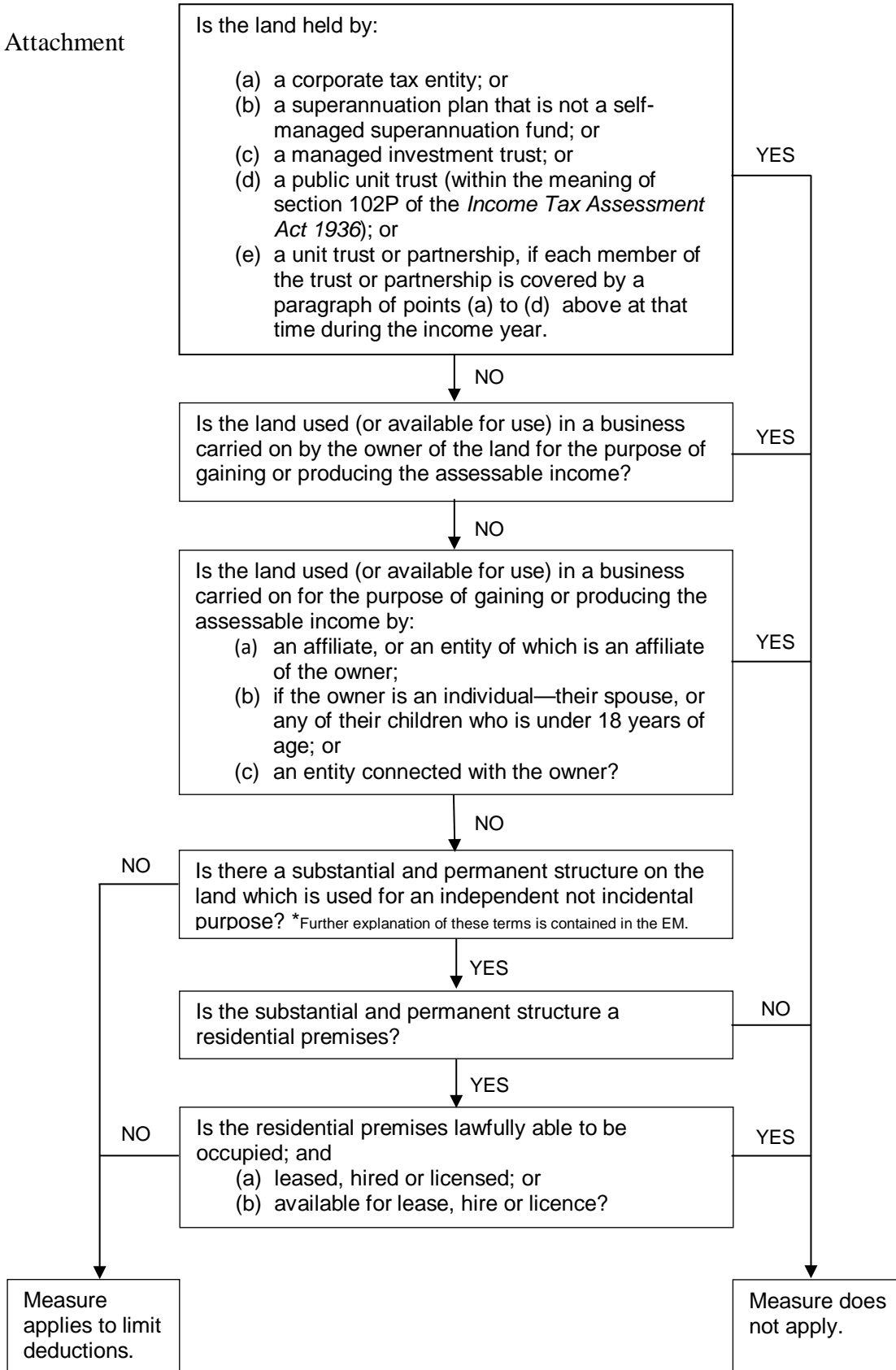
Senate Economics Committee
Inquiry into Treasury Laws Amendment (2019 Tax Integrity and
Other Measures No. 1) Bill 2019

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

AUGUST 2019

Attachment



Senate Economics Committee

Inquiry into Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.

1) Bill 2019

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

AUGUST 2019

Department/Agency: ATO

Question: 3

Topic: Anti-avoidance laws revenue contribution

Question:

Senator GALLACHER: A couple more schedules here to go through. Anti-avoidance for family trusts extends the anti-avoidance laws for circular trust distributions, what is that about and how much does it contribute?

[...]

Mr HIRSCHHORN: Senator I am going to have to take on notice what is in the budget papers but I suspect it is unquantifiable.

Answer:

The revenue contribution was estimated in the 2018/19 Budget to be \$20 million over the forward Estimates period (\$10m in 2020-21 and \$10m in 2021-22). The measure is proposed to apply from 1 July 2019.

Senate Economics Committee

Inquiry into Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.

1) Bill 2019

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

AUGUST 2019

Department/Agency: ATO

Question: 4

Topic: Administrative guideline drafts

Question:

Senator PATRICK: [...] When do you think you will finalise your administrative guidelines in respect to this legislation?

[...]

Ms SMITH: I am very happy to talk to you about some of the safeguards that we think are appropriate in administrating this legislation should it be passed if that is helpful?

Senator PATRICK: Could you table where you are up to in terms of your drafts?

Ms SMITH: Yes I could

[...]

Senator PATRICK: If you would table where those administrative guideline drafts are up to that would be of great assistance

Ms SMITH: Yes I think we will take that on notice and provide that to you Senator

Answer:

A [consultation paper](#) on the ATO's administrative approach to the Disclosure of Business Tax Debts was published 13 August 2019.

The paper sets out the administrative processes the ATO will undertake in respect of the proposed law and legislative instrument, as well as explaining further administrative safeguards.

Consultation is open for four weeks and closes 6 September 2019.

The consultation paper was published previously (15 February 2018) during initial consultation prior to the measure being put on hold. Given the time delay and policy changes in the reporting criteria (raising the debt threshold and additional involvement of the Inspector-General of Taxation as a further safeguard), the ATO agreed further consultation was necessary to explain its approach to these changes and to provide the community opportunity to comment.

The ATO will also undertake further design and consultation including:

- design of processes with the Inspector-General of Taxation
- credit reporting bureaus
 - deed of agreements
 - registration conditions
 - systems, processes and conformance

Senate Economics Committee

Inquiry into Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.

1) Bill 2019

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

AUGUST 2019

- Australian Information Commissioner – deed of agreement and registration conditions for credit reporting bureaus to be registered.

The ATO will finalise public guidance on its administrative approach to the Disclosure of Business Tax Debts well in advance of considering any businesses for reporting to credit reporting bureaus.

Senate Economics Committee

Inquiry into Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.

1) Bill 2019

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

AUGUST 2019

Department/Agency: ATO

Question: 5

Topic: Schedule 5 revenue target

Question:

Senator GALLACHER: In relation to schedule 5, how much do you anticipate the foreword estimates will kick up when that gets into play? Do you think you'll have an increase in tax recovered?

Ms SMITH: This is not a measure that's been introduced with a revenue target around it

Senator GALLACHER: Is it unquantifiable?

Ms SMITH: I will take that question on notice

Senator GALLACHER: Mr Hirschhorn?

Mr HIRSCHHORN: Senator I think we better take this on notice but I suspect this is not characterised as a revenue measure, so it would not have a revenue target. Technically it may not be that it is unquantifiable, but just that it is not viewed as a revenue measure at all. This is more about information

Answer:

In MYEFO December 2016 the government announced the measure and estimated a gain to the budget of \$63.0 million in underlying cash balance terms over the forward estimates period. In fiscal balance terms the cost to the budget is estimated to be \$27.0 million over the forward estimates period. The estimated fiscal cost is represented by \$25.0 million in GST payments to the states and territories and \$2.0 million in ATO funding. There is no revenue in fiscal balance terms as the tax liabilities have already been recognised.

The measure was delayed and again announced in MYEO December 2018 with a revised forward estimate of \$30.0 million.

Senate Economics Committee

Inquiry into Treasury Laws Amendment (2019 Tax Integrity and Other Measures No.

1) Bill 2019

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AUGUST 2019

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Question: 6

Topic: 10,000 – 100,000 thresholds and Treasury interactions

Question:

Senator GALLACHER: [...] you hold the data about 10,000 to 100,000 in terms of debt.

Ms SMITH: That is true, we would be able to analyse how many taxpayers sit in each of those thresholds

Senator GALLACHER: Can you let us know on notice how many people sit in those thresholds?

Ms SMITH: Yes I can take that question on notice

[...]

Senator GALLACHER: And any interaction you have with Treasury, the policy makers?

Ms SMITH: Treasury, yes

Answer:

Numbers can vary slightly depending on when they are collated.

When the \$10,000 threshold was proposed, our analysis showed that around 38,000 businesses could potentially be reported based on the legislation and additional ATO safeguards.

In relation to the \$100,000 threshold, our current analysis shows that around 5,000 businesses could potentially be reported based on the legislation and additional ATO safeguards.

However the ATO intends to commence slowly, initially focussing on a small number of higher risk companies.

The ATO regularly liaised with Treasury, consistent with its normal practice when Treasury seeks advice in policy development.

Senate Economics Committee

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1) Bill 2019

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Question: 7

Topic: Safeguards process drafts

Question:

[...]

Ms SMITH: We are putting exceptional safeguards in place to ensure that we, particularly in the early stages, are administering this fairly in every instance

Senator PATRICK: Can you table where you are at now with respect to that process? Those safeguards?

Ms SMITH: Yes, of course

Answer:

As outlined in question 4, the ATO has published a consultation paper open for feedback until 6 September 2019 which outlines the safeguards the ATO will include in administering the measure.

In addition to the safeguards set out in the law and draft legislative instrument the consultation paper proposes the following additional ATO safeguards:

- The ATO will not report the tax debt information of a business where
 - it is experiencing exceptional circumstances such as a family tragedy, a serious illness or a natural disaster
 - the business has requested an ATO review of the proposal to report their tax debt information to a credit reporting bureau.
- Also, after the ATO has fulfilled all the legislative requirements (consulting with the Inspector-General of Taxation, written notice and 21 day period) the ATO will again seek to contact the business by phone before reporting their tax debt information to a credit reporting bureau.

The ATO will consider any feedback on these proposed safeguards and any other administrative safeguards that are suggested as part of its consultation on the administrative design.