



Australian Government

The Treasury

23 February, 2009

Mr John Hawkins
Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hawkins

INQUIRY INTO TAX LAWS AMENDMENT (2009 MEASURES NO. 1) BILL 2009

Thank you for your email of 13 February 2009 notifying the Treasury of the referral of the Tax Laws Amendment (2009 Measures No. 1) Bill 2009 to the Senate Economics Committee.

The measures contained in the Bill are designed to enhance the fairness and integrity of the tax and transfer systems by removing inconsistencies in the treatment of non-wage remuneration and taking better account of certain losses.

From 1 July 2009, individuals who have access to salary sacrifice arrangements to reduce their taxable income will be treated on an equivalent basis to those who do not have access to salary sacrifice arrangements for the purposes of determining their eligibility for certain means-tested government assistance programs.

That is, while individuals will continue to benefit from particular tax concessions as a result of salary sacrificing, these benefits will no longer automatically flow through to the assessment of their eligibility for means-tested transfer programs and tax offsets.

The Bill adds net rental property losses to income tests for those programs that do not currently include such losses. Net losses from other discretionary financial investments such as shares and managed funds are also added to income for applicable tax and transfer programs and the adjusted value of fringe benefits is included in income for those tax offsets that do not currently assess fringe benefits.

The income tests for the dependency tax offsets, which are available to taxpayers that maintain particular dependants, will be reformed so that they align with the income test used for the purposes of family assistance payments. This follows the application of an \$150,000 taxable income test on eligibility for the dependency tax offsets with effect from 1 July 2008 as part of the 2008-09 Budget.

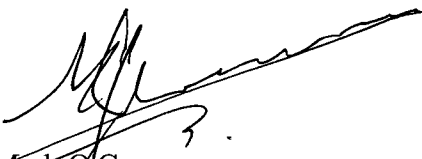
These measures ensure that various tax and transfer programs are fairer and better targeted to those in need of government assistance. Affected programs include student financial assistance programs, family assistance payments, income support payments for individuals below Age Pension age and various means-tested tax benefits.

By focusing financial assistance on low and middle-income families, these measures will also save around \$545 million over the next four years.

A draft version of the income test reforms in the Bill was released for public consultation on 7 November 2008. Information on the consultation process and submissions received are provided in Attachment A.

I trust this information will be of assistance to the Inquiry. Please do not hesitate to contact me on 02 6263 3890 or Tony Coles on 02 6263 3215 if you have any questions regarding any of the information provided or if we can be of any further assistance to the Committee.

Yours sincerely



Mark O'Connor
Principal Advisor
Personal & Retirement Income Division

Outline of the public consultation process

Public consultation on draft income test reform amendments took place for four weeks from 7 November 2008 to 5 December 2008. The public consultation process involved the issue of a draft version of the income test reform amendments and a consultation paper from the Treasury website (www.treasury.gov.au) and submissions were due by the close of business 5 December 2008.

More than 120 individuals from key stakeholder organisations were invited, via email, to make submissions. In addition, the Australian Taxation Office notified members of its Charities Consultative Committee, National Tax Liaison Group FBT sub-committee, Superannuation Consultative Committee, Club Consultative Forum, and Software Developers Consultative Group of the public consultation process. These committees comprise representatives of major accounting, professional, superannuation, employer, business, charitable, not-for-profit and government bodies as appropriate.

Outcomes of consultation

Sixteen formal submissions were received as part of the public consultation process. Of these, five each were received from software companies and industry associations; two each from professional bodies and consulting companies; and one each from a superannuation fund and a private individual. The main issues raised in submissions were the commencement date of the reforms and a perceived added complexity in complying with the reforms.

Almost all submissions raised particular concerns with the *reportable employer superannuation contribution* (RESC) definition, which was generally considered to be too complex to calculate and would place a significant burden on employers in order to comply. Specific concerns raised included difficulty in calculating superannuation contributions exactly in excess of amounts required under superannuation guarantee (SG) legislation; and difficulty determining the RESC amount for contributions mandated by industrial agreements.

Submissions from software companies expressed difficulties in modifying programs in time for commencement from 1 July 2009. The submissions indicated that software companies would not be prepared to start work on updating systems until at least April 2009 when Parliament is expected to have completed its consideration of the Bill. There were claims that the time between April 2009 (when Royal Assent is expected) and July 2009 is not enough to develop, test, and implement the software changes. In addition, there were concerns that there will not be enough time to educate employers on the changes to ensure the new software will be used correctly, which may result in errors or non-compliance.

Some submissions queried the interaction of these reforms with the review of Australia's Future Tax System. There is concern that any changes made as part of the reforms may be unwound by further reforms occurring as a result of the review.

Reforms to legislation following consultation

As a result of comments received during consultation, changes were made to simplify the RESC definition. The deciding criteria for the inclusion of particular employer superannuation contributions in the revised RESC definition is the concept of an employee's 'capacity to influence'

the amount paid or the way in which it was paid. Therefore, where an employer is mandated (for example by the governing rules of the relevant superannuation fund, or by an industrial agreement) to contribute an amount greater than the superannuation guarantee (SG) amount, this excess is outside the scope of RESC and will not be assessed as income in the various eligibility tests.

Also, as a result of the changes, employers that make contributions above the amount required to satisfy their obligation under SG law (because it is administratively simpler, or because of an employment condition outside of the employee's control), will no longer be required to work out the exact amount of the excess. The changes mean that employers will only be required to report amounts contributed over which an employee has some capacity to influence.

The RESC definition concerning a rebuttable presumption of RESC in respect of employees employed under a small collective agreement governing 20 employees or less has been omitted. This is in response to concerns raised about the need to monitor and report different RESC amounts for different employees depending on their date of commencement. This change addresses concerns raised in submissions that this would involve significant expense and complexity for employers.

A proposal raised in a submission for employers to only report superannuation contributions in excess of 9 per cent of gross salary and wages (as opposed to the SG which is calculated as 9 per cent of ordinary time earnings) was not adopted because it raised equity issues. Employees in industries where a large proportion of income is derived from overtime and penalty rates would be significantly advantaged as their 9 per cent 'carve-out' would be applied to an increased figure. Another issue with the proposal was that it involved significant administration and compliance issues for the Australian Taxation Office.

Other proposals to defer the commencement of the reforms were not accepted. It is considered that the changes to the RESC definition since the consultation draft have simplified the definition and mitigated the compliance costs for software companies.