

Tax Laws Amendment (2012 Measures No. 4) Bill 2012

Introduced into the House of Representatives on 28 June 2012

Portfolio: Treasury

Committee view

1.2 The committee seeks further information from the Treasurer regarding the basis for the differentiated treatment of taxpayers in the transitional rules under the bill before forming a view as to whether the bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Purpose of the bill

1.3 This bill amends various taxation laws.

1.4 Schedule 1 amends the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and the *Income Tax Assessment Act 1997* (ITAA 1997) implement changes to the treatment of living-away-from-home (LAFH) allowances and benefits by:

- treating LAFH allowances as part of an employee's assessable income rather than as fringe benefits; and
- allowing certain income tax deductions.

1.5 Schedule 2 amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to ensure that in circumstances where a representative of an incapacitated entity is a creditor of that entity, the correct provision of the GST Act is applied.

1.6 Schedule 3 to the bill amends Schedule 3 to the *Tax Laws Amendment (2012 Measures No. 2) Act 2012* to ensure that no interest is payable if an overpayment of income tax arises, or if additional tax becomes payable, due to the deduction under the pre-rules in Part 1 or under the interim rules in Part 2 of Schedule 3 to that Act.

Compatibility with human rights

1.7 Schedule 1 to the bill amends the FBTAA and the ITAA 1997 to reform the taxation treatment of living-away-from-home allowances and benefits.

1.8 The statement of compatibility acknowledges that the transitional rules in the bill provides for differentiated treatment of taxpayers, based on their residency status for income tax purposes — that is, between temporary and foreign residents, on the one hand, and permanent residents on the other.

1.9 The statement of compatibility notes that there is a body of law and practice recognising that taxation laws of a State can differentiate between the tax treatment of residents of that State and the tax treatment of non-residents. For example, treaties to prevent double taxation use residence status as a way to allocate taxing rights between

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

States. At the same time, discrimination between residents of the same State on the basis of their nationality is prohibited.

1.10 The statement of compatibility also states that some submissions to the consultation process on the exposure draft argued that the transitional rules are not compatible with international human rights conventions in so far as these prohibit discrimination on the basis of specified grounds, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

1.11 This argument appears to be based on provisions such as Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which provides that:

‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

1.12 The UN Human Rights Committee has not issued any specific guidance on the meaning of ‘other status’, preferring instead to treat it on a case by case basis. It has nevertheless indicated that that clearly definable groups linked by their common status may fall within the category of ‘other status’.

1.13 Given that the category of ‘other status’ is not closed, the committee considers that further information is required as to the basis for differentiating between taxpayers for the purposes of the transitional rules in the bill.