

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2017 - 2018

Division/Agency: Corporate and International Tax Division

Question No: 288

Topic: Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities)

Reference: Hansard page 60-61 (25 October 2017)

Senator: Katy Gallagher

Question:

Mr Raether: I am not sure whether the tax office wants to comment on that? As you say, most of the concepts that we have picked up in the amendment rely on 16 provisions in the law. I would have to take on notice whether there are existing provisions with regards to those specifics about rent and royalties.

Mr Olesen: As a general statement, if we were to find that people had some confusion and needed guidance on what was meant by those terms, we would lend whatever assistance we could by publishing some guidance to help people understand those rules.

Senator GALLAGHER: Are you looking to do that now? Would you only do that if people come to you?

Mr Olesen: Forgive me, I am not that close to the bill per se but that would be one of the drivers for us. It may well have already been identified as an issue through the consultation on the bill. It may already be on our radar. I am happy to check that.

Senator GALLAGHER: Why has the government provided clarity that passive investment companies are to be ineligible for the lower rate of the enterprise tax plan? What is the policy rationale behind it?

Mr Raether: As in the minister's press release, the policy decision made by the government to cut the tax rate for small companies was not meant to apply to passive investment companies, so the bill gives effect to that policy objective.

Senator GALLAGHER: But why? I am asking: what is the difference?

Mr Raether: The government's policy objective was not to apply it to passive investment companies, which means it goes to more active companies—that is, companies with the majority of their income from active income.

Senator GALLAGHER: I get that, but why is the government treating them differently for the purposes of the payment for the company tax rate? I get the different activity, but why are they being treated differently?

Mr Raether: It goes to a broader policy objective of supporting active businesses and jobs and growth.

Senator GALLAGHER: The current enterprise, the full enterprise tax plan, as envisaged by the government, proposes that the passive investment companies will be eligible for the 25 per cent tax rate with the full implementation of the enterprise tax plan. That raises the question: why do you deny passive investment companies a lower rate in the phasing in on the basis that they are not generating jobs and growth, but allow them to have the rate at 25 per cent at the end for entities of all sizes? I guess that is a question to you.

Senator Cormann: I will take the question on notice and I would ask the Treasurer what he might be able to add to the answer that was provided by the Treasury officer.

Senator GALLAGHER: Do you see the point I am making though? They are ruled out early because they're not generating jobs and growth but they are eligible towards the end?

Senator Cormann: The official has provided the policy rationale, but I will consult the Treasurer to see if he wants to add anything to it.

Senator GALLAGHER: Does Treasury have any evidence, modelling or analysis of the cost of the enterprise tax plan with passive investment companies made eligible? Of that \$65 billion, what proportion of that would be from passive investments companies once they are eligible for the full company tax rate in the 2023-24 financial years onwards? Do you have any knowledge of what that might be?

Ms Mrakovcic: The only modelling that we did was in relation to the overall enterprise tax plan. We haven't done any separate economy-wide modelling on any subset of options, including those targeted as small business or under a certain turnover of threshold level.

Senator GALLAGHER: Is that because it's not easy to do or it just hasn't come up, whereas now we've got legislation ruling them out?

Ms Mrakovcic: I don't think economy-wide modelling is really going to be the place where you get that kind of information.

[...]

Senator GALLAGHER: I guess I'm trying to understand it from the policy position that they're not eligible for it because they're not generating jobs of growth in the phasing in, but they are going to be eligible at the end. What is the cost to taxpayers for that, acknowledging that it's not consistent with the government's jobs and growth strategy as outlined?

[...]

Senator GALLAGHER: What is the cost of that, Minister? It's the community's money—it's taxpayers' money that is paying for this. You've acknowledged that they're ruled out because there's no overall economic benefit from giving them—

[...]

Senator Cormann: You're deliberately seeking to verbal what the officer said. I've already taken on notice the question of to what extent the Treasurer might add to the information provided. If the officer has got information about the specific numbers, I'm happy for that to be shared; otherwise, we might have to take that on notice as well.

Senator GALLAGHER: I would like to know, if you are able, the cost of allowing passive investment companies the ability to have a company tax rate of 25 per cent once the enterprise tax plan is implemented. Also, the policy rationale behind that, because it is not clear to me why, if they're excluded at the beginning, they are included at the end and given the benefit of those tax concessions or tax reductions.

Answer:

Definition of rent and royalties

The *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017* amends the *Income Tax Rates Act 1986* (the Rates Act) to insert the definition of base rate entity passive income. That definition includes rent and royalties.

The term 'royalties' is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (the ITAA 1936). The Rates Act effectively incorporates this definition. That is, for the purposes of the definition of base rate entity passive income, the term 'royalties' has the same meaning as in the ITAA 1936.

The term 'rent' is not defined in the ITAA 1936 and therefore adopts its ordinary meaning. The use of ordinary meanings is common in the tax law. A term is specifically defined in the income tax law only if, in the relevant context, it is necessary to expand or reduce the scope of ordinary meaning.

The ATO intends to release a law companion guideline to assist taxpayers self-assess whether they qualify for the lower company tax rate. The guideline will include information to assist taxpayers to work out whether an amount of assessable income they are receiving is rent or royalties for the purposes of calculating their base rate passive entity income.

Policy objective

Please refer to SBT294.

Revenue impact

Please refer to SBT297.