



## Tax Laws Amendment (Political Contributions and Gifts) Bill 2008

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## Tax Laws Amendment (Political Contributions and Gifts) Bill 2008

**Date introduced:** 27 August 2008

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** Royal Assent, but the operative provisions apply to political donations made on or after 1 July 2008.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

This Bill amends

- *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)
- the *Income Tax Assessment Act 1936* (ITAA36), and
- the *Income Tax Assessment Act 1997* (ITAA97)

to generally deny individual taxpayers a tax deduction in respect of political party membership fees paid on or after 1 July 2008. This Bill also denies a tax deduction to both individual and corporate tax payers in respect of contributions or gifts made to:

- political parties
- members of parliament (both State, Territory and Federal)
- members of a local governing body (such as a local council), and
- candidates (both party nominated and independent) for political office

on or after 1 July 2008.

Employees or office holders may continue to claim tax deductions for these amounts incurred in earning tax assessable income.

### Background

Currently, a tax deduction is available in respect of the above contributions and gifts made to political parties registered under Pt XI of the *Commonwealth Electoral Act 1918* or

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registered under relevant State or Territory legislation, under Division 30-DA ITAA97. The maximum deduction for both individuals and companies is \$1500 per annum.<sup>1</sup>

A tax deduction in respect of these amounts was limited to \$100 per annum for contributions/gifts made before 22 June 2006. Before this date the deduction was only available in respect of gifts/contributions made to parties registered under the above Commonwealth Act. This meant that gifts/contributions made to:

- independent candidates
- State/Territory political parties
- members of State/Territory parliaments, and
- all State/Territory political candidates

made before 22 June 2006 did not qualify for any tax deduction.<sup>2</sup>

#### Legislative history

Identical provisions to those in this Bill in respect of ITAA36 and ITAA97 are also in Schedule 1 of Tax Laws Amendment (2008 Measures Bill No. 1) 2008 (TLAB1). On 19 March 2008 the Senate resolved to refer these provisions to the Joint Standing Committee on Electoral Matters for inquiry and report by June 2009.<sup>3</sup> TLAB1 was negated by the Senate on 26 June 2008. However, the Committee actually tabled its report on 16 June 2008.

Readers should note that the current bill also amends the GST Act (see discussion of **items 1 - 5** in the main provisions section of this Digest). The relevant provisions of TLAB1 did not contain any similar amendments. This Bill is not quite a carbon copy of the provisions of Schedule 1 of TLAB1.

#### Basis of policy commitment

The denial of tax deductions for political gifts/contributions was announced by the then Shadow Minister for Finance, The Hon. Lindsay Tanner MP on 2 March 2007.<sup>4</sup> The

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1. Section 30-243 ITAA97.
  2. Changes increasing the available tax deduction to the \$1500 p.a. and extending the scope of this tax deduction were implemented by the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures Act 2006* (No. 65 of 2006).
  3. Senator Stephen Parry (Lib, Tasmania), Committees – Electoral matters committee reference, Senate, *Debates*, 19 March 2008, p. 1302.
  4. The Hon. Lindsay Tanner MP, Minister for Finance and Administration, ‘Labour’s \$3 billion savings plan’, *media release*, 2 March 2007.

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policy of removing the tax deductibility of political gifts/contributions was first announced by the then Leader of the opposition, the Hon. Kim Beazley MP on 3 October 2006.<sup>5</sup>

### Committee consideration

As noted above, identical provisions to those in the current Bill amending ITAA36 and ITAA97 have already been referred to the Joint Standing Committee on Electoral Matters (the JSCEM), which reported on the provisions in June 2008 (see further at p. 5 of this Digest).

### Position of significant interest groups/press commentary

It has been argued that increasing the tax deductibility threshold for political donations/contributions from \$100 to \$1500 per annum encourages participation in the democratic process. That is, making political gifts/contributions tax deductible encourages citizen's democratic participation.

However, it has also been argued that the existence of such a high threshold skews political influence to the wealthier in society who have a greater capacity to contribute and who will receive proportionately higher (tax-payer funded) subsidies for making these donations.<sup>6</sup>

One press report argued that the removal of tax deductibility for membership fees would anger many political party members, especially those in the Australian Labor Party.<sup>7</sup>

### Pros and cons

There are several reasons for the abolition of political gifts/contributions tax deductibility:

- it would have a positive financial impact, saving the government an estimated \$31.4 million between 2009–2010 and 2011–2012
- it may cause individuals to more carefully consider the direction of their political support, and
- remove any potential financial advantage (however significant) that higher income donors may receive in making a tax deductible donation.

However, there are some points in favour of retaining this tax deduction. The availability of a \$1500 tax deduction is of greater importance to individual donors than to corporate or

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5. The Hon. Kim Beazley MP, Leader of the Opposition, 'A Nation Building Role for the Public Service', *The Don Dunstan Oration*, Adelaide, 3 October 2006.

6. Norm Kelly, 'Electoral reforms a threat to democracy', *Brisbane Institute Article*, 3 August 2006.

7. Siobhain Ryan, 'Party fees to lose tax-free status', *Australian*, 15 November, 2007, p. 7.

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wealthy donors. Insofar as the absence of a tax deduction discourages a large number of smaller donors from contributing, it allows corporate and wealthier donors to make up a greater proportion of a political party's/candidate's source of funding. It may be argued that this potentially increases the influence of corporatist and wealthier individual's influence on political decision making.

This last point has to be tempered by the realisation that currently it is unlikely that smaller donors to political parties or candidates exercise much influence simply on the basis of their donations alone.

#### Coalition/Greens/Family First /Independents policy position/commitments

The [Joint Standing Committee on Electoral Matters](#) reported on the provisions of Schedule 1 of TLAB1 in June 2008.<sup>8</sup> The Coalition members of that Committee wrote a minority report recommending that:

we propose that consideration of the tax deductibility measures contained in this Bill be deferred until they can be assessed as part of the committee's comprehensive review of campaign finance.<sup>9</sup>

On this basis it is likely that the Coalition members and senators will oppose this Bill.

In relation to the Green's position, the above mentioned minority report of the Joint Standing Committee on Electoral Matters noted that:

Coalition Party members of the Committee, together with Senator Bob Brown of the Greens, have opposed this inquiry proceeding in isolation, preferring that the matters referred by the Senate in relation to the Bill, be taken up as part of the committee's broader inquiry.<sup>10</sup>

In the course of the debate on the equivalent provisions in the TLAB1 Senator Brown stated:

Let me deal with the first first. As Senator Ronaldson indicated, the Greens are very keen to get public input on tax-deductibility for election campaign spending. I understand that the government is going to be working on this over the coming months. We favour the abolition of tax-deductibility for donations for electoral purposes.<sup>11</sup>

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8. Joint Standing Committee on Electoral Matters, Advisory Report on Schedule 1 of Tax Laws Amendment (2008 Measures No.1) Bill 2008, Canberra, 16 June 2008.

9. *ibid*, p. 43.

10. *ibid*, p. 45.

11. Senator Brown, 'Second reading speech: Tax Laws Amendment (2008 Measures No. 1) Bill 2008', Senate, *Debates*, 24 June 2008, p. 3232.

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Family First has indicated its support for the abolition of tax deductibility for gifts/contributions to political parties.<sup>12</sup> The position of the independent senators on this matter is, at the time of writing, unclear.

A range of other views on this matter are in the report of the Joint Standing Committee on Electoral Matters entitled *the 2004 Federal Election – Polling day 9 October 2004*.<sup>13</sup>

## Financial implications

The following table outlines the projected financial impact of this particular measure.

Table 1: Financial impact – Abolition of tax deductibility for political donations

| Year                    | 2008–09 | 2009–10 | 2010–11 | 2011–12 |
|-------------------------|---------|---------|---------|---------|
| Financial impact<br>\$m | -       | 10.1    | 10.3    | 11.0    |

Source: Explanatory Memorandum p. 3.<sup>14</sup>

The main report of the Joint Standing Committee on Electoral Matters accepted the above savings. However, the minority report by the Coalition members of this Committee noted that one witness suggested that these estimates were unreliable.<sup>15</sup>

## Main provisions

Amendments to the GST Act

**Item 1 of Schedule 1** of the Bill amends various sections in the GST Act replacing the term ‘gift-deductible entity’ with the term ‘concessional entity’. This amendment is a consequence of the proposed repeal of the definition of ‘gift-deductible entity’ by **Item 4**, which would cause loss of access to certain concessions that may be available to gift-deductible entities in the GST Act, without this amendment.

12. Senator Steve Fielding, ‘Family first opposes political party money grab’, *media release*, SF. 68, 16 June 2006.
13. The Joint Standing Committee on Electoral Matters, *The 2004 Federal Election – Polling day: 9 October 2004*, Report of the Inquiry into the conduct of the 2004 Federal election and matters related thereto, September 2005, p. 330 and following, p. 377 and following.
14. The Hon. Wayne Swan MP, Treasurer, *Explanatory Memorandum to Tax Laws Amendment (Political Contributions and Gifts) Bill 2008*, 27 August 2008, p. 3. (hereafter Explanatory Memorandum)
15. Joint Standing Committee on Electoral Matters, *op. cit.*, p. 48.

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Currently, **section 195-1** of the GST Act defines a ‘gift-deductible entity’ as one if gifts or contributions made to it can be deductible under Division 30 of the ITAA97.

**Item 3** inserts a new definition of ‘concessional entity’ into the GST Act. This new definition includes in its meaning the above cited definition of a ‘gift-deductible entity’, but also includes:

- a political party that is registered under part XI of the *Commonwealth Electoral Act 1918*, or under a corresponding State or Territory law
- an independent candidate, and
- an independent member.

**Items 5 and 6** insert the necessary definitions into section 195-1 of the GST Act of an independent member and independent candidate. Similar definitions existing in the ITAA97 are to be repealed by this Bill (**items 19 and 20**).<sup>16</sup>

The Explanatory Memoranda notes that the proposed amendments to the GST Act ensure that the existing Goods and Services Tax (GST) treatment of political parties, independent members and independent candidates is not altered by the proposed changes to income tax law.<sup>17</sup>

Amendments to the ITAA97

**Item 9 of Schedule 1** inserts new **section 26-22** into the ITAA97. This new section prevents a tax deduction for membership fees, gifts/contributions to political parties, electoral candidates or members of an Australian legislature or local governing body.

However **proposed sub clause 26-22(2)** of **item 9** allows a deduction to be claimed where such fees, gifts or contributions are necessarily incurred in the person gaining or producing tax assessable income.

The Explanatory Memorandum notes, for example, that a compulsory levy to retain a Member of Parliament’s membership of a political party would still be tax deductible under the general tax deduction provision of **section 8-1** ITAA97.

**Item 15** repeals the whole of **Division 30-DA** ITAA97. This particular Division contains existing legislation allowing a limited tax deduction for political party membership fees and gifts/contributions to political parties.

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16 The Explanatory Memorandum states ‘these definitions are intended to have a similar scope to the definitions of ‘independent member’ and ‘independent candidate’ in Subdivision 30-DA of the ITAA 1997 that are repealed’. Explanatory Memorandum, p.9 at paragraph 1.14.

17. Explanatory Memorandum, pp. 5–6.

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**Items 17 and 18** insert new **subsections** to **sections 110-38** and **110-55(9E)** ITAA97. These are consequential amendments to ensure that political party membership fees and political gifts/contributions do not form part of the cost base of an item subject to Capital Gains Tax and thereby reduce the amount of taxable income assessable when a gift/contribution is made to a political party.

**Items 19 and 20** repeal the existing definitions of the terms independent candidate and independent member in **subsection 955-1** ITAA97. As noted above these new definitions are proposed to be placed in **subsection 195-1** of the GST Act.

The substantive definitions of these terms are currently contained in sections 30-244 and 30-245 ITAA97 which lie in Division 30DA. As noted above **item 15** proposes to repeal the whole of Division 30-DA.

The existing and proposed definitions of these terms do not appear to be different in effect, however the wording is quite different.<sup>18</sup>

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18 See footnote, 17 above.

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