Dissenting Report

Company directors

Introduction

The Tax Laws Amendment (2012 Measures No. 2) Bill 2012 and the Pay As You Go Withholding Non-compliance Tax Bill 2012 (the "PAYG Bill"), amend the Taxation Administration Act 1953 and four other Acts to extend director penalties so that directors are personally liable for a wide range of company guarantees in relation to superannuation and pay as you go (PAYG) tax withholding: even if a company is placed into administration or liquidation. The Liberal members of the Committee are concerned that the Government has not adequately addressed bi-partisan concerns previously raised during the last inquiry into the measures.

Importantly, the Bill has failed to appropriately target 'phoenix' activity, and concerns liability would apply indiscriminately to all directors, including those of charities and not-for-profits that are limited by guarantee – as many are. Some 11,700[1] companies in Australia are limited by guarantee, and it is typical of this Labor Government to saddle directors of those companies, even those where there is no illegitimate activity, with undue liability.

Questions were also raised about whether directors of a company may be liable to pay these measures if they join a board after the fact. They were not adequately answered. It is repugnant to not only the rule of law and processes of natural justice, but also (in assigning all directors indiscriminate liability) the history of company law and the legal principle of *persona ficta*. Finally, the Australian Institute of Company Directors, and many other stakeholders contend (and the

1 Mr John Colvin, AICD, Committee Hansard, Canberra, 4 June 2012, p. 2.

Liberal members of the Committee concur) that phoenix activity is not appropriately defined in the Bill.

The Consolidation Tax Cost Setting Arrangements and Related Taxation of Financial Arrangements (the "Consolidation and Arrangement changes") are retrospective tax changes. The Liberal Members of this committee are fundamentally opposed to *postfactum* law, especially taxation legislation. This Government has failed, both to the public, and to the Liberal Members of this Committee, to justify the retrospective aspect of this legislation.

Similar issues arise in The Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012 (the "MIT Bill") which amends the Income Tax (Managed Investment Trust Withholding Tax) Act 2008 to increase the managed investment trust (MIT) final withholding tax from 7.5 per cent to 15 per cent. Both the investments made, especially in infrastructure, and the reputation of Australia as a safe and stable place to will now be placed at risk because of the vacillation of the Government.

Taxpayers who made sound effort to comply with the prevailing law as it was when they entered into financial agreements are particularly affected. In submissions made to the Committee, there were instances of entities that, with these changes in place, may not have entered into the financial agreements outlined. Fundamentally, it is a function of the mismanagement and incompetence of the Government, and only serves to encourage the lack of certainty that already plagues public confidence.

The Passenger Movement Charge Amendment Bill 2012 increases the passenger movement charge (PMC) from $47 to $55 from 1 July this year; and indexes the charge to the Consumer Price Index (CPI) from 1 July next year. The rise is simply a revenue raising measure by the government, and presents an enormous cost to the tourism sector, not only directly, but also in the competitive disadvantage it presents.

The Liberal members of the committee have taken the opportunity to highlight in this dissenting report a number of serious concerns with the bills and, based on the reasons outlined, recommend they not be passed in their current form.

Indiscriminate liability

The Liberal members of the Committee hold the view adding indiscriminate liability to all of Australia's directors presents a considerable burden to business. These measures include: making directors personally liable for unpaid superannuation; extending director penalties that cannot be discharged by placing a company into administration; and making directors and associates liable for PAYG withholding non-compliance tax where a company has failed to pay.

The government has not adequately addressed the bi-partisan concerns of the House Economics Committee inquiry into the Government’s previous attempt at legislating this measure. Particularly Mr John Colvin of the Australian Institute of Company Directors noted that:

> We are disappointed that since the last time the Australian Institute of Company Directors appeared before the committee on the same issue, the government has not made significant changes to the original bill, nor has it picked up all of the recommendations of this committee, particularly the phoenixing recommendation.[2]

It is telling that the Government ignored stakeholder concerns, in pursuit of its own political agenda, and now refuses to change the legislation.

Because the measures intended to address phoenix activity have not appropriately targeted that activity, the liability would indiscriminately apply to all directors across the board. It is, unfortunately, typical of this Government to both burden all directors with liability regardless of their guilt, by improperly defining the activity that would appropriate it.

> …as we have said on numerous occasions, the problem with this bill is it is not confined to fraudulent phoenix operators. By failing to define fraudulent phoenix activity, it instead targets all of Australia's 2.2 million directors including those who volunteer their time to work for charities and community organisations. Following submissions to this committee last year, it recommended the government investigate whether it was possible to amend the bills to better target phoenix activity. Yet the government has made virtually no attempt to target phoenix activity in revising the bill.[3]

This indiscriminate proportioning of liability, and indeed the possibility of holding new directors liable, after the fact, is repugnant. This automatic liability is a perturbing move by the government if intentional, and if accidental, a glaring error.

> …[It] is particularly disappointing that this bill fails to uphold the principles of the rule of law by making new directors liable for a company's breach which occurred before they were a director. I find it strange that on the way to this committee we walked past the Magna Carta, which is regarded as one of the great documents of a democratic society and which was founded on the basis that the rule of law is fundamental to any civilised society. No person

2 Mr John Colvin, AICD, Committee Hansard, Canberra, 4 June 2012, p. 46.

3 Mr John Colvin, AICD, *Committee Hansard*, Canberra, 4 June 2012, p. 2.

> in Australia in any occupation should commence a new job or a new position only to find that within 30 days they become personally liable for a breach that occurred before they commenced work in the role, which involve acts which they, by definition, cannot have taken part in and cannot be held culpable for. We are of the view that applying automatic liability on new directors for acts of the company which occurred before they were a director is particularly offensive to the rule of law.[4]

Inherent in this proposition of automatic liability on new directors, is the dissuasion it presents when being appointed to a board under this regime. Recruiting highly skilled directors is internationally competitive, and with these arduous provisions, Australia will come-off second best.

Liberal Members of the Committee are concerned about phoenixing activity and recognise the need for legislative safeguards. The key issue is the manner in which protective action can be undertaken which is specifically directed and focused on phoenix activity, rather than broad-based and non-targeted. The Government's current Bill continues to be flawed in this regard.

Significant regulatory compliance cost

In saddling corporate Australia with red and green tape, this Government is strangling productivity, at a time when other nations are encouraging it. The imposition of such onerous directors' liability, in the opinion of the Liberal members, would see directors focused more on compliance than performance.

For Australia to remain competitive locally, and internationally, the regulations that businesses face must be efficient and effective. The Liberal members of the Committee are not convinced that the Government has done 'due diligence' with regard to productivity costs associated with the additional indiscriminate duties imposed on directors.

> We ask this committee: where is the regulatory impact statement which looks at the bill outside the context of fraudulent phoenix activity? Where is the analysis of the costs of these measures in how they may impact on companies and directors who are not involved in phoenix activity for those companies and also for the economy as a whole? [5]

The Government has failed to present the Committee, nor the public, with evidence to this effect; most likely because that analysis would be adverse.

4 Mr John Colvin, AICD, *Committee Hansard*, Canberra, 4 June 2012, p. 2.

5 Mr John Colvin, AICD, *Committee Hansard*, Canberra, 4 June 2012, p. 2.

Finally, the wider impact on the general public has not been adequately considered by the Government. Committee members are concerned the liability assigned to board members of charities will act as a disincentive, and have wider societal impacts.

> …it is critical for the committee to be aware that the bill applies to all directors of not-for-profits, charities, sporting clubs and small businesses in their own electorates. I received a text today indicating that there are some 11,700 companies limited by guarantee. Those include many charitable organisations. I have experience as a lawyer at one stage and also as director of a charity—a company limited by guarantee like many of them. [6]

Retrospective Taxation Legislation

The consolidation tax costs setting arrangements and changes to the taxation of financial arrangements contain retrospective measures. The Liberal members of the committee are fundamentally opposed to retrospective legislation, especially taxation laws.

> …legislation should not apply retrospectively except in very specific and exceptional circumstances. The application of this principle should not be dependent on the number of or the type of business or investment or tax profile of the taxpayers who may be affected by the amending legislation. So to reiterate: we do not recommend or support retrospective tax law amendments that may be disadvantageous to taxpayers for a number of reasons.
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> I will go briefly into some of those. Certainty in the law: taxpayers clearly enter into transactions on the basis of the law as it is on the day they enter into them, not the law as it may be rewritten at some time in the future after the transactions have occurred. As a result, retrospective changes that alter a taxpayer's tax liability are likely to disturb the substance of a bargain that had been struck between taxpayers who have made every effort in good faith to comply with the prevailing law at the time of the agreement. In addition, typically taxpayers undertake transactions based on what they consider to be known exposures to tax liabilities. Retrospective changes could give rise to unexpected joint and several liabilities for taxpayers.

6 Mr John Colvin, AICD, *Committee Hansard*, Canberra, 4 June 2012, p. 2.

> Financial statements: many entities have prepared and issued financial statements which in this particular case before us, in schedule 3, may include the impact of rights to future income deductions that would change tax liabilities. Subsequent changes to these statements, as a result of retrospective legislative change, would have adverse implications for investors and capital markets that have relied on those financial statements.
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> Investment decisions: taxpayers have committed to investment decisions on the basis of a particular tax profile for a particular entity. Retrospective amendments to change such a tax profile, as these measures before us do, can materially impact on the financial viability of investment decisions and the pricing of those decisions.
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> Dividend policies: taxpayers have framed dividend policies based on profit levels, which in some cases have assumed rights to future income deductions. If the deductions are now disallowed retrospectively, there is the potential for adverse impacts on dividend policies, including available (indistinct) levels.
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> Advisory costs: taxpayers have incurred significant valuation and advisory fees in relation to the identification and quantification of the law as it is and as it will no longer be if this legislation passes. So those advisory costs would be rendered redundant.[7]

Liberal Members of the Committee are opposed to retrospective tax changes as a general matter of principle: they can change the substance of bargains struck between taxpayers who have made every effort (and sometimes at considerable expense) to comply with the original law.

Furthermore, retrospective measures can expose taxpayers to penalties when taxpayers could not possibly have taken steps at the earlier time to mitigate the potential for penalties to be imposed.

Finally, these measures they may change a taxpayer's tax profile (and it is noted submissions were received to this effect) which in turn can materially impact the financial viability of investment decisions and the pricing of those decisions.

No justification for retrospectivity

The Government has not made a compelling enough case publicly, to justify the retrospective application of this legislation. Notably the Legislation Handbook states that:

[7] Mr Robert Jeremenko, The Tax Institute, *Committee Hansard*, Canberra, 4 June 2012, pp. 15-16.

> Provisions that have a retrospective operation adversely affecting rights or imposing liabilities are to be included only in exceptional circumstances and on explicit policy authority[8]

This is simply a belated attempt by the Labor Government to amend the consequences of mistakes, made back in 2010 (the Consolodation and Arrangement changes) and 2008 (the MIT Bill). Taxpayers should not be expected to pay for these consequences of Labor's incompetence and mismanagement through retrospective tax changes.

Increase in the Managed Investment Trust Withholding Tax

It is proposed that the Coalition confirm its (previously announced) decision to oppose the increase in Managed Investment Trust (MIT) withholding tax.

These Bills would double the MIT withholding tax for foreign investment from 7.5 per cent to 15 per cent and would be retrospective in that they apply to all income distributions made after 1 July 2012 irrespective of when the original investment decision was made.

Risk to Existing Investments and Government Revenue

Industry expectations are that this measure would put billions of dollars of infrastructure investments already made, and future investments, at risk.

The government asserts that this measure would raise $260 million over the next four years. But analysis conducted by the Allen Consulting Group for the Property Council, and provided to the Committee as a confidential submission, casts serious doubt over those revenue forecasts.

The analysis conducted showed that the proposed increase in the final withholding tax revenue from MITs would have a 'profound adverse impact' on the economy without raising the expected revenue.

It was also found that if there was a $1 billion drop in investment as a result of the increased tax, the net tax revenue in 2015-16 would be $35 million, due to decreased receipts – less than half the $75 million predicted by Treasury. It also found that by 2015-16 the increased tax would reduce GDP by $580 million and cost more than 4,600 jobs a year.

Mr Verwer of the Property Council also raised questions about Treasury modelling, and the potential for the increased rate to actually reduce receipts:

8 *Legislation Handbook*, Department of Prime Minister and Cabinet, 1999, p. 29.

> …on any one of our reckonings, the decline in the rate caused a huge surge in foreign investment which resulted in tax revenue. The analysis that Treasury did last time was wrong because they used the wrong assumptions.[9]

Given the serious doubts the report raises over Treasury forecasts and that time and time again billions have been added to public debt because of incorrect forecasts, the Coalition's is of the view that this is reason enough to abandon this bill.

Perceptions of sovereign risk

But the uncertainty that this government has shown in dealing with the rate of the MIT withholding tax and the other retrospective measures raises the issue of perceived sovereign risk. Certainly to investors looking at Australia, the equivocation by the Government, and the unjustified retrospective changes, do not inspire confidence.

In a speech to the Canada-United Kingdom Chamber of Commerce David Denison, President and CEO of the Canada Pension Plan Investment Board (managers of $150 billion in investment assets on behalf of 17 million Canadians) stated that:

> "In this era of fiscal restraint and additional direct and indirect taxes, we are becoming increasingly concerned that some risks associated with ownership of infrastructure are expanding. For instance, it is easy to envision the regulatory rate setting process becoming politicized instead of objective and fair. The same could occur with taxes - in fact, Australia's budget that was tabled last week effectively doubled the tax burden on our real estate and infrastructure holdings in that country. If we conclude that these kinds of risks within any country become significant enough to call into question the predictability and stability of cash flows that are at the heart of the investment rationale for infrastructure, our response will be very quick and rational – we will simply stop investing there."[10]

The government's constant chopping and changing in relation to the MIT withholding tax has yet again reduced our predictability in the eyes of international investors.

9 Mr Peter Verwer, Property Council of Australia, *Committee Hansard*, 4 June 2012, p. 29.

10 Mr David Dennison, Canada Pension Plan Investment Board, *Speech to the Canada-United Kingdom Chamber of Commerce: Winning Conditions to Foster and Attract Long-Term Investing*, London, 15 May 2012, pp. 8-9.

International competitiveness & forecasts

The doubling of the withholding tax rate would also reduce Australia's international competitiveness and reputation as an attractive and certain destination to invest in. Such a move would put Australia out of step with comparable rates in the Asia Pacific region. It would no longer 'lead the pack' when it comes to the headline rate of the tax. If passed this Bill would undermine Australia's objective of becoming a regional financial services hub in the Asia-Pacific.

Attracting more foreign investment is important to achieve stronger economic growth leading to increased government revenue without the need for the Government's tax hikes or new taxes.

Passenger Movement Charge

It is evident to the Liberal members of the committee that the Government's increase of the Passenger Movement Charge (PMC) is patent revenue raising and will effectively be a 'tax on tourism'. However, for the industry, it could not have been introduced at a worse time.

The PMC represents a $55 cost to every overseas visitor holidaying in Australia. This to an industry already facing a carbon tax and its impact on domestic airfares and travel costs, this $1 billion tax slug will make holidaying in Australia even more expensive for every overseas visitor.

The claims by the Prime Minister and other Ministers that the cost increases will be "good for tourism" are manifestly imprudent. The increase charge is universally opposed by industry. The Ministers ought to open a newspapers and read about the sector's concerns are about the government's tax hike will have, especially the deleterious effect on jobs and investment.

The Liberal members of the committee are convinced that foreign tourists considering a trip to Australia, facing the higher costs in airfares that this increase represents, will seek out other destinations without excessive fees and charges, or spend less on food and entertainment if they do travel to Australia.

It also seems illogical that while increasing a tax originally introduced to cover costs associated with boarder protection and customs, that the funding for customs officers at Australian airports will be cut. It seems that the only effect of this will be to increase delays and harm Australia's international reputation as a holiday destination.

Overall position of the industry

It is no secret that Tourism, as a sector, is suffering at present. In the draft of the chair's report into this inquiry, the Government members of the committee noted:

> It is acknowledged by the committee that the tourism sector is experiencing difficult economic times[11]

This admission was borne out in testimony during the inquiry, given by Tourism and Transport Forum:

> **Mr BUCHHOLZ:** Mr Lee, have you done some modelling with reference to the overall surplus or deficit position of the tourism sector recently?
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> **Mrs Labine-Romain:** Are you talking about the balance of trade?
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> **Mr BUCHHOLZ:** Yes.
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> **Mrs Labine-Romain:** That is work that we have a look at that whenever the satellite accounts come out, or whenever the forecasts come out, so we can see that over the last decade it has come from a net positive of $3.5 billion to a $5 billion deficit this year. So that is the difference between Australian visitors going outside—
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> **Mr BUCHHOLZ:** Sorry, from $3.5 billion to—
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> **Mrs Labine-Romain:** A $3.5 billion surplus in, I think, 2003-04 to a deficit this year of around $5 billion in 2011-12 and projecting beyond that $6 billion, $7 billion and $8 billion in the coming years.[12]

While the Government openly accepts the difficulties that the industry faces, the Government has now imposed one of the highest departure taxes in the world. The only apparent rationale for the imposition of this tax is the Government's erosion of Australia's fiscal position.

Lack of proper scrutiny

Government disingenuousness is particularly evident, when examining the introduction of this measure. In the evidence heard by the committee about the lack of consultation on the measure; Mr John Lee of the Tourism and Transport Forum was particularly incensed:

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11 Draft Advisory Report on Bills Referred on 24 May 2012, House of Representatives, Standing Committee on Economics, 14 June 2012, p. 57.

12 Mrs Labine-Romain, TTF, *Committee Hansard*, Canberra, 4 June 2012, p. 47.

> We were very disappointed about a lack of consultation for this measure. We met with the Prime Minister on 2 February and outlined very clearly that this was one of the five most worrying potential impacts for our industry. TTF also met with representatives of the Treasurer's office and the chief of staff to the Treasurer, Jim Chalmers, before the budget to suggest that if there was any suggestion that this might change then we would like to be consulted, because industry had some views about how it could be dealt with. The phone never rang. The email was never sent. We were not consulted, and industry is very angry.[13]

Hypothecation

As the bulk of the PMC is directed into consolidated revenue - as many submissions noted - and not to passenger facilitation, this increase is, for all intent and purposes, a ‘tax on tourism’. Perversely, at the time the PMC is being increased, funding of Border Protection Agencies and Customs is decreasing. Mr John King, Chairman of the Australian Tourism Export Council pointed out:

> …the tax already provides significant over-collection for the purpose for which it was hypothecated, and both the NTA and the TTF have clearly outlined that case. But we see further increases and over-collection going straight into consolidated revenue at a time when our international tourism competitiveness is at an all-time low and profit margins are very tight—and , in some cases, non-existent. It is a further erosion of our international competitiveness.[14]

This was also reinforced by Mr John Lee of the Tourism and Transport forum:

> What we cannot reconcile is the government's repeated public acknowledgement that tourism is doing it tough because of both the high dollar and the global economic uncertainty, especially in some of the regional areas of Australia. And then do they really think it would be some form of assistance to increase the PMC and at the same time cut funding to Customs, so expecting them to do more with less or, in other words, for an international visitor: 'You will pay more and wait longer'?[15]

It is striking that the PMC does not provide meaningful price signals related to the costs or risks associated with border protection, and is on a relatively narrow base.

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[13] Mr John Lee, TTF, *Committee Hansard*, Canberra, 4 June 2012, p. 45.

[14] Mr John King, ATEC, *Committee Hansard*, Canberra, 4 June 2012, p. 46.

[15] Mr John Lee, TTF, *Committee Hansard*, Canberra, 4 June 2012, p. 45.

Yet the government plans to increase the tax, without an increase in either the base, or the cost of provisioning border protection.

The Government's approach with respect to the tourism sector is at odds with its approach to other sectors:

> …you need to do something with the hypothecation. Ten cents out of every dollar going back into our sector is daylight robbery—nothing more, nothing less. We deserve at least 50 per cent hypothecation. If you are not going to vote against the tax, vote for tourism and vote to give us a chance to survive like the car industry, with $6 billion allocated to it this year alone in terms of commitments from federal ministers.[16]

Ms Caroline Wilkie of the Australian Airports Association gave similar testimony:

> **Ms Wilkie:** The AAA represents over 285 members nationally. Of those, we represent all of the international airports as well as over 200 regional airports around Australia. The main reason we are very concerned about the increase to the passenger movement charge is what this will mean about numbers of passengers going through our airport infrastructure. We believe that any increase in the passenger movement charge is unfounded. The government already overcollects on this tax, and as it is we do not have enough resources within our airports to process the passengers that we already have coming through. To now be charged even more money for the passengers to overcollect and still not have a good enough service is, quite frankly, unacceptable. To then have it indexed, despite the fact that the global economy is slowing, that tourism numbers are slowing and that we are facing potential downfalls from major source markets—I find it incredible that we are looking at an increase of this magnitude at this time, with the global economy the way it is. [17]

Indexation

The indexation of the Charge is patently ill-thought-out and it is further evidence of this being a 'cash grab' by the Government. To have the charge increase automatically, serves no other purpose than to generate additional revenue:

[16] Mr John Lee, TTF, *Committee Hansard*, Canberra, 4 June 2012, p. 53.

[17] Ms Caroline Wilkie, AAA, *Committee Hansard*, Canberra, 4 June 2012, pp. 43-4.

> As a minimum, MPs should stop the indexation. There is no other indexation on a tax. In terms of pure philosophical, hard Keynesian economics, you should reject it on that basis alone.[18]

Considering that this change will be levied on all international visitors, it is concerning that the Australian CPI may not be comparable to those visitors' home countries, or in the current economic climate, anywhere else in the world. It will only serve to make other destinations more competitive to visitors considering Australia, or for those who do come, to spend less on discretionary items or services.

Liberal Members of the Committee are particularly concerned about the manifest unfairness of the Government's indexation of the PMC.

Disproportionate impact on short-haul routes

Furthermore to the general effects of raising the PMC, there would be a disproportionate impact on short-haul markets, given the lower cost nature of services offered on these routes. The Liberal Members of the Committee are particular concerned about the potential effect on these routes, given these markets represent both the largest inbound tourist market (New Zealand), and an important emerging market (Asia). In fact, in the QANTAS submission presented to the committee, it was noted:

> … [That] the increase in the PMC will have a disproportionate impact on shorter haul international travel, especially those focussed on price sensitive leisure destinations. To this end, the tax will have a disproportionate impact on Jetstar services especially those to and from Asia and New Zealand. Although New Zealand is our single biggest inbound tourism market, the PMC is now up to one third of the cost of a Jetstar flight from Sydney to Auckland. Similarly, the impact is most likely to be felt in demand for Australian leisure based destinations like Cairns, Darwin and the Gold Coast.[19]

International Competitiveness

Tourists looking to Australia already face increasing ticket prices, coupled with the vast distance between Australia and other regional hubs, increasing fuel prices, and the domestic the effects of the Carbon Tax. The increase in the PMC represents an unnecessary impost, and will be one of the highest in the world:

[18] Mr John Lee, TTF, *Committee Hansard*, Canberra, 4 June 2012, p. 53.

[19] Mr Euan Robertson, QANTAS Submission to Committee

> **Mr BUCHHOLZ:** What countries have a lesser passenger movement charge than we do?
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> **Mrs Labine-Romain:** Most.
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> **Ms Wilkie:** Most. We have one of the highest ones.
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> **Mr BUCHHOLZ:** Most of them—really?
>
> **Mrs Labine-Romain:** Yes. We are the highest in the short haul.[20]

Furthermore, Mr King of the Tourism and Transport Forum pointed out the additional disadvantages Australian tourism operators face in the form of excessive regulation:

> As well as battling a high Australian dollar, our tourism exporters have been hit with an almost endless tsunami of government regulation, red tape, the carbon tax, inflexible and inappropriate labour laws and imposed costs, all of which are increasingly destroying our competitiveness. Australia unfortunately is now one of the most expensive and difficult countries to get to and to travel in.[21]

The Tourist market is increasingly competing with more international destinations. To make Australia less competitive harms the industry; Ms Wilkie of the Australian Airports Association:

> By way of explanation as well, there is a lot of debate along the lines of: 'Look, it's $8 a ticket. Does that make a difference?' Our international airports are travelling globally so that they can get international airlines to come to this country. When you are talking to someone, it is not about whether or not they are going to go to Sydney or Melbourne; it is about whether or not we get the aircraft or Rio gets the aircraft. When you start looking at a passenger movement charge on top of that, it does have an impact.[22]

Conclusion

The Coalition members of the Committee oppose the Bills on the basis that they unduly increase taxation, propose retrospective measures without proper

[20] Mrs Labine-Romain, TTF, *Committee Hansard*, Canberra, 4 June 2012, p. 52.

[21] Mr John King, ATEC, *Committee Hansard*, Canberra, 4 June 2012, p. 46.

[22] Ms Caroline Wilkie, AAA, *Committee Hansard*, Canberra, 4 June 2012, pp. 43-4.

justification, give rise to automatic and indiscriminate liability to directors, and put investment and tourism under pressure.

The indiscriminate and potentially automatic increase in the liability of directors under the PAYG Bill represents a perversion of natural justice. This is compounded by the fact that ‘phoenix’ activity is not adequately defined in the Bill. The liability would serve to dissuade to potential directors, and pose onerous requirements businesses especially on charities.

Liberal Members of the Committee are concerned about phoenix activity and support targeted legislative initiatives that are efficient and effective in dealing with the problem. The Government’s Bill, however, is neither efficient or effective.

We are concerned about measures altering the Consolidation and Arrangement rules and that the MIT Amendment Bill will have retrospective activity. Not only does this punish taxpayers who in good faith complied with the prevailing law, and made investment decisions based on it. It also, however, contributes to perception of sovereign risk for international investors. This is especially evident in the case of the MIT Withholding Tax and the lack of consultation surrounding it.

The increase in the PMC is nothing more than a tax grab, in an attempt to remedy Labor’s erosion of Australia’s fiscal position. Concerningly, this tax increase is forced on an industry already struggling under the weight of Government regulation, and at the hands of a slowing market. This is compounded by the fact that proportionally less of the revenue raised from the measure will be spent on passenger amenities and border protection.

Especially in the case of the MIT Bill and the PMC Bill, it seems concerning that in an attempt to raise revenue; the Government has overlooked the wider impact that reduced volume of investment may have on receipts.

Recommendation

The House does not pass the Tax Laws Amendment (2012 Measures No. 2) Bill 2012, the Pay As You Go Withholding Non-compliance Tax Bill 2012, the Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, and the Passenger Movement Charge Amendment Bill 2012 in their current form.

Mr Steven Ciobo MP, Deputy Chair

Ms Kelly O’Dwyer MP

Mr Scott Buchholz MP