

Parliament of the Commonwealth of Australia

**SENATE ECONOMICS LEGISLATION
COMMITTEE**

**CONSIDERATION OF LEGISLATION
REFERRED TO THE COMMITTEE**

A New Tax System (Tax Administration) Bill (No.2) 2000

June 2000

Commonwealth of Australia

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Senate Economics Legislation Committee

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REPORT

Reference of the Bill to the Committee

1.1 The New Tax System (Tax Administration) Bill (No.2) 2000 was introduced into the House of Representatives on 11 May 2000. Following a report by the Selection of Bills Committee, the Senate referred the Bill to this Committee on 8 June 2000 for examination and report by 22 June 2000.¹

1.2 In particular, the Committee was asked to consider the following aspects of the Bill:

- the new penalty regime;
- preparation of Business Activity Statements (BAS); and
- Pay As You Go (PAYG) proposals.

The Committee's Inquiry

1.3 The Committee invited a number of interested parties to make submissions on the Bill, in addition to advertising the inquiry on the Parliament website. The Committee received one submission to the inquiry, from the National Tax and Accountants Association.

1.4 The Committee held a public hearing on the Bill in Canberra on 19 June 2000. While the Committee invited a number of organisations to attend the hearing, all declined to appear. Consequently, the only witnesses who gave evidence at the brief public hearing were representatives of the Australian Taxation Office. The names of the witnesses who appeared at the hearing are shown in Appendix 1.

The Bill

1.5 The Bill establishes a new uniform tax penalties regime that covers all taxation laws administered by the Commissioner of Taxation.

1.6 The Bill also makes amendments to allow people other than registered tax agents to prepare or lodge business activity statements (BAS) on behalf of taxpayers and to provide advice about the new tax system.

1.7 In addition, the Bill makes a number of miscellaneous amendments to the provisions covering PAYG arrangements, as well as a number of consequential amendments to the Corporations Law as a result of the PAYG withholding arrangements.

Background

1.8 The Bill forms part of a series of measures aimed at establishing a "more cohesive approach" to tax administration.²

1 Selection of Bills Committee Report No. 8 of 2000, dated 8 June 2000.

2 Bills Digest No. 183, Parliamentary Library.

1.9 In particular, the penalty provisions follow on from the introduction in 1999 of a uniform general interest charge for all late payments of tax. Further amendment of penalties, to reflect recommendations in the Review of Business Taxation (the “Ralph Review”), is planned for 2000-20001. These efforts to streamline tax penalties stem from concern that the complexity of the existing penalty system promoted confusion and misunderstanding rather than compliance.

1.10 Similarly, the Bill’s measures in relation to the provision of BAS reflects the Commissioner’s concern about the ability of tax agents to cope with the demand for preparing and lodging BASs on behalf of taxpayers. The lodgement of a BAS is a new requirement under the new tax system (NTS). Some reports indicate that the tax industry may not be in a position to handle the expected level of requests for assistance with BASs. A particular concern is that if the tax industry is unable to meet the demand for BAS assistance, taxpayers, especially small business, may fall outside the NTS.³

Measures in the Bill

New uniform penalties regime

1.11 The general aim of the Bill is to streamline the existing tax penalties regime and to support compliance under the new tax system. The current framework is characterised by a myriad of disparate penalty provisions spread across various tax laws, resulting in duplication, gaps and different penalties for similar obligations under different laws. In contrast to the complexity of the existing set up:

The new administrative penalty regime has been designed to be easily understood by taxpayers and easily administered by the Commissioner. It is equitable in that a common penalty will apply where a taxpayer fails to satisfy the same type of obligation under different tax laws. The regime is consistent with the ATO Compliance Model and the Taxpayers’ Charter.⁴

1.12 In particular, the penalty provisions in the Bill seek to:

- Consolidate and standardise the provisions of the existing penalties framework throughout the different tax laws;
- Rectify current anomalies; and
- Support the range of new taxes being reported on the BAS.

1.13 The Bill defines the penalty provisions in relation to statements, schemes, late lodgement of documents and miscellaneous matters (eg, failure to keep records as required under any taxation law).

Provision of Business Activity Statements (BAS)

1.14 The Bill seeks to overcome the current restrictions that limit the provision of tax assistance mainly to registered tax agents. It includes measures that will allow members of a recognised professional association, and bookkeepers under the supervision of registered tax

3 Explanatory Memorandum, p. 49.

4 Explanatory Memorandum, p. 7.

agents, to provide BAS services. Payroll service bureaus will also be able to provide BAS services in relation to PAYG withholding matters.

PAYG provisions

1.15 The Bill makes a number of amendments in relation to PAYG provisions, the most significant of which will:

- Ensure that the obligation to withhold from a payment to a labour hire worker also applies to arrangements made by a chain of labour hire firms (ie, the withholding requirement cannot be circumvented by interposing another labour hire firm between a worker and the primary labour hire firm);
- Clarify the requirement to withhold from a payment for a supply of goods or services where the supplier does not quote its Australian Business Number (ABN);
- Require a payer that is withholding from a payment, because a supplier has not quoted its ABN, to issue a separate payment summary when making the payment (or as soon as practicable afterwards);
- Allow the Commissioner to relieve a particular payer or group of payers from issuing payment summaries if the circumstances warrant that relief; and
- Allow the Commissioner's withholding schedules to take into account financial supplement debts arising under the Student Financial Supplement Scheme.

Issues in Evidence

1.16 Major issues raised in evidence included:

- Possible unintended effects of S.251L(1);
- Categories of persons who may prepare business activity statements; and
- Rationalisation of penalties.

Possible unintended effects of S.251L(1)

1.17 In its submission to the Committee, the National Tax and Accountants Association (NTAA) expressed concern about the effects of proposed new S.251L(1). The Association noted that the stated intention of the amendment was to allow persons other than registered tax agents to prepare their business activity statements. However, the Association submitted that the effect of the amendment 'goes further and appears to prohibit professional accounting associations and possibly other industry associations from providing advice to their members about the GST and tax reform measures generally'.⁵

1.18 The Association expressed the view that the provision as drafted would have the unintentional effect of preventing professional and industry associations from providing general advice about tax matters where such associations charge a fee. The Association considered that membership fees might also fall into the category of fees within the interpretation of the legislation.

5 Submission, p. 1.

1.19 The NTAA recommended that paragraph (b) be omitted from proposed new S.251L(1). If this recommendation is rejected, the Association recommended that paragraph (b) be amended to make it clear that it does not apply to general taxation advice and information provided by a professional association, industry association or union to its members about Australia's tax laws, even where such an association charges a fee in addition to the membership fees charged by the member.

1.20 Mr Michael Smith, Assistant Commissioner, Small Business, Australian Taxation Office, addressed the NTAA's concerns as follows:

When those concerns were raised the government asked us to go out and consult with people who felt that they were adversely affected by what the bill was doing. That has been done and the government intends, when the bill is debated, to introduce those amendments. We actually have letters from various people mentioned in these articles which say, basically, that they are comfortable with the nature of those proposed amendments.⁶

1.21 Mr Smith emphasised that the bill considerably widens the range of people who can prepare business activity statements to meet the expected extra demand for this service.

Categories of persons who may prepare business activity statements

1.22 Committee members questioned the officials about possible risks to consumers in widening the category of people who could prepare statements. Committee members identified a number of areas of concern, including permitting bookkeepers to prepare statements. Mr Kovic of the ATO responded that bookkeepers could only work in this area under the direction of a registered tax agent. He also emphasised that bookkeepers are not allowed to do any income tax work.⁷

1.23 Committee members sought information about the number of extra people who could become involved in this activity as a result of this legislation. Mr Kovic could not provide exact figures but advised that there will be a considerable expansion of numbers:

If there are, say, 5,000 registered tax agents that are members of the Institute of Chartered Accountants—I think that is just an approximate number—and there are 25,000 members of that body, then there is an additional 20,000 people who can undertake the BAS service work.⁸

Rationalisation of penalties

1.24 Committee members sought information about the effects of the bill on tax penalties. The ATO officers made the following broad points;

- The bill consolidates the current penalty provisions in all the taxation laws into the Tax Administration Act, from 180 pages of penalties to 80 pages;
- The monetary value of some penalties decrease and others increase;

6 Evidence, p. 2.

7 Evidence, p. 6.

8 Evidence, p. 6.

- The ATO consulted with the professional tax bodies over the proposed penalties bodies who agreed that they are 'not unreasonable'.

Recommendation

The Committee recommends that the Bill be passed.

Senator the Hon Brian Gibson
Chairman

APPENDIX 1**LIST OF WITNESSES
APPEARING BEFORE THE COMMITTEE****Monday, 19 June 2000**

Committee Room 1S3, Parliament House, Canberra

Australian Taxation Office

Mr Stefan Kovic, Law Design and Development, Small Business

Mr Michael Smith, Assistant Commissioner, Small Business