

Parliament of the Commonwealth of Australia

**SENATE ECONOMICS LEGISLATION
COMMITTEE**

**CONSIDERATION OF LEGISLATION
REFERRED TO THE COMMITTEE**

Taxation Laws Amendment Bill (No.8) 1999

November 1999

Commonwealth of Australia

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Senate Economics Legislation Committee

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Senator J Woodley #*	(Queensland, AD)

for inquiry into A New Tax System (Tax Administration) Bill 1999

* for inquiry into the Taxation Laws Amendment Bill (No. 8) 1999

+ for inquiry into the Diesel and Alternative Fuels Grants Scheme (Administration and Compliance) Bill 1999

** for inquiry into the Taxation Laws Amendment Bill (No. 9) 1999

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REPORT

Background to the inquiry

1.1 Taxation Laws Amendment Bill (No.8) 1999 was introduced into the House of Representatives on 30 June 1999. Following a report by the Selection of Bills Committee, the Senate referred the Bill to this Committee on 13 October 1999 for examination and report by 29 November 1999.¹

1.2 In its report the Selection of Bills Committee requested that the Committee consider:

Potential impact on non-profit organisations of the measures in Schedule 5 of the Bill implementing the Government's response to the report on philanthropy in Australia by the Business and Community Partnership Working Group on Tax Reform. Particular reference to the adequacy and effectiveness of the proposed changes on increasing gifts and donations to non-profit organisations, including enabling greater opportunities for land conservation.

1.3 The committee secretariat contacted a number of interested parties and received three submissions to the inquiry (see Appendix 1). The Committee held a public hearing on the Bill in Canberra on 17 November 1999. A list of witnesses who gave evidence at the hearing appears in Appendix 2, and the full transcript of the hearing is available at the internet address of <http://www.aph.gov.au/hansard>.

The Bill

1.4 According to the Second Reading speech and the Explanatory Memorandum, the bill amends the income tax law and other laws to give effect to the following measures:

- amendments to the controlled foreign company (CFC) rules and capital gains tax (CGT) provisions;
- amendments to exempt post-judgement interest in personal injury compensation cases;
- corrections to the franking credit trading and dividend streaming rules;
- non-deductibility of bribes paid to foreign public officials;
- incentives for personal and corporate philanthropy;
- the rate of tax for friendly societies;
- Company Law Review amendments;
- technical amendments to the provisions dealing with excess tax offsets; and
- concessional tracing rules for company loss.

¹ Selection of Bills Committee Report No. 17 of 1999, dated 13 October 1999.

1.5 The terms nominated in the Selection of Bills Committee report confined the Committee to the consideration of the potential impact on non-profit organisations of the measures in Schedule 5.

1.6 Schedule 5 implements measures announced by the Government on 26 March 1999 in response to the report of the Business and Community Partnership Working Group on Tax Reform on Philanthropy in Australia. The \$51 million package of taxation measures are intended to encourage greater corporate and personal philanthropy in Australia by providing taxation incentives for donors.

1.7 The amendments will apply from 1 July 1999.

1.8 The proposed amendments will:

- allow an income tax deduction to certain funds, authorities and institutions and to political parties for a gift of property worth more than \$5,000, regardless of when or how the property was acquired;
- provide a capital gains tax (CGT) exemption for testamentary gifts of property to certain funds, authorities and institutions and to political parties unless the property is reacquired by the estate, a beneficiary of the estate or an associate;
- provide a CGT exemption for gifts of property made under the Cultural Gifts Program unless the property is reacquired for less than market value by the donor or an associate;
- allow concessional taxation treatment for specified private funds which will not be required to seek donations from the public but will be subject to the other requirements applying to public funds; and
- allow the apportionment of deductions for donations made under the Cultural Gifts Program over a period of up to 5 income years.²

ISSUES RAISED IN EVIDENCE

1.9 Several issues were raised in submissions and in evidence given to the Committee. These issues relate to:

- government approval of prescribed private funds;
- extension of the proposed provisions to allow the apportionment of deductions over up to 5 income years for donations under the cultural gifts program;
- lack of any provisions in the bill to encourage conservation; and
- franking of dividends.

Government approval of prescribed private funds

1.10 Schedule 5 allows deductions for gifts made to specified private funds from 1 July 1999, by including 'prescribed private funds' in the list of recipients in subsection 30-15(2) item 2.

1.11 The Explanatory Memorandum states that prescribed private funds will need to comply with most of the requirements of public funds. However, the private funds will not be required to seek and receive contributions from the public.

1.12 Subsection 995-1(1) provides a definition of a prescribed private fund as being:

... a fund that is prescribed by the regulations for the purposes of this definition other than such a fund declared by the Treasurer, in writing, not be a prescribed private fund.

1.13 Private funds seeking to be prescribed in the regulations will need approval from the Government.³

1.14 Dr McGregor-Lowndes expressed concern about the process for approving private funds. He is of the view that there should be regulations which set appropriate criteria for private funds as he is 'reluctant to have politicians approving it'.⁴ He was also concerned that the cost and difficulties involved in donors seeking government approval could stifle philanthropic endeavours.

1.15 The Australian Taxation Office representative confirmed that the requirements for a private fund match the requirements for a public fund except the requirement of seeking donations from the public. He stated that these criteria still needed to be satisfied for a fund to gain approval as a private fund.⁵

1.16 When questioned about the feasibility of the alternative approach, that is, applying administrative criteria to determine eligibility, Mr McLean, ATO, indicated this was possible. However, the Committee notes that this approach is not proposed by the legislation.

3 Explanatory Memorandum, pp 69-70.

4 Hansard, p.E19.

5 Hansard, p.E33.

Extension of entitlement to apportionment of deduction provisions

1.17 Several submissions noted that the apportionment provisions in subdivision 30-DB, which would allow deductions for gifts to be extended over up to 5 income years, applied only to gifts made under the cultural gift program.

1.18 Dr McGregor-Lowndes indicated he would like to see this provision broadened to include gifts to other entities. However, he suggested that if the proposed provision was seen to work well in the cultural gift program, then perhaps the apportionment provisions could be extended to deductions for gifts to other entities.⁶

1.19 While the Australian Conservation Foundation (ACF) welcomed the provision for apportioning deductions for gifts to cultural entities, it too suggested that the amendment 'should extend to gifts to all entities which for whatever reason have obtained tax deductible status'.⁷

1.20 Similarly, the ACF suggested that the amendment to section 118-60 should also have broader application. Section 118-60 provides for a capital gain exemption for gifts made to cultural entities.

1.21 The Committee sought information about whether there was any particular reason for the restriction of the provision to the cultural gift program. Mr Miller, ATO, responded that it 'is a tax policy matter beyond the tax office's reach'.⁸

Lack of provision for conservation purposes

1.22 The Australian Conservation Foundation expressed concern that the bill did not provide any tax incentives to assist the creation of private conservation reserves.

1.23 The ACF told the Committee that if owners of private conservation reserves could obtain status similar to primary producers, they would be able to access tax deductions or rebates for costs associated with managing the land. The ACF argues that such incentives would encourage land conservation.

Franking of dividends

1.24 The Committee received a submission from Pricewaterhouse Coopers (PWC) about concerns it has with Schedule 3—Franking of dividends. In particular, PWC is concerned about new subsections 160APHH(6) and (7) which deal with the treatment of bare trusts under the 45 day rule.

1.25 PWC notes that the purpose of the amendment is to ensure that for all purposes of determining eligibility for franking, the beneficiary of a custodial trust be treated as the shareholder, rather than the custodian. PWC suggests that the amendment may have unintended consequences.

6 Hansard, p.E21.

7 Submission No. 2, Australian Conservation Foundation, p.1.

8 Hansard, p.E33.

1.26 However, PWC also advised the Committee that the matter has been drawn to the attention of the Australian Taxation Office and that it is their understanding that an amendment to correct this anomaly is being considered.⁹

1.27 The Committee notes that this matter is not strictly within its terms of reference and that it was not raised at the Committee's public hearing. However, the Committee draws the matter to the Senate's attention.

Answers to questions on notice

1.28 At the public hearing some questions were put on notice for the Australian Taxation Office. The ATO's response to these questions is at Appendix 3 of this report.

Recommendation

1.29 The Committee recommends that the Bill be passed.

Senator the Hon Brian Gibson
Chairman

9 Submission No. 3, Pricewaterhouse Cooper.

**LABOR SENATORS' MINORITY REPORT
ON
TAXATION LAWS AMENDMENT BILL (NO.8) 1999**

Labor Senators reserve their position on this legislation.

Senator the Hon Nick Sherry

Senator George Campbell

AUSTRALIAN DEMOCRAT SENATORS' MINORITY REPORT ON TAXATION LAWS AMENDMENT BILL (NO.8) 1999

Introduction

This Bill has a potential impact on not for profit organisations. We believe these organisations perform a crucial role in improving the well being of millions of Australians in their communities and any potential impact on their operations should be scrutinised closely.

We support the general intention of the Bill, but believe there is substantial scope to go a lot further in encouraging private and corporate assistance to not-for-profit organisations."

In particular there is a lot of potential for encouraging greater land conservation through tax incentives. This would ensure that the cost burden of conservation measures can be shared with the private sector, thus increasing the effectiveness and scope of nature conservation in Australia. "The briefing paper "*Philanthropy - Sustaining the Land*" which was provided to the Committee provides a good overview of some of the possible tax measures which could be pursued.

Schedule 5 of the Bill

Schedule 5 of the Bill could be amended in a number of ways to facilitate greater encouragement and effectiveness of private involvement in charitable activities. Among the measures which could be pursued are the following:

- provisions be made to facilitate the creation of private conservation reserves.
- capital gains tax exemption be extended to gifts to all tax deductible entities.
- spreading cultural gift deductions over up to 5 income years be extended to all entities that have obtained a tax deductible status for a 'charitable' purpose.
- tax deduction for gifted property is allowed regardless of when it was purchased and how much it is valued at.
- valuation be done by the Commissioner or an independent valuer
- Parliament approve regulations for 'prescribed private funds' and that they be administered by the Commissioner.

Senator John Woodley
Participating Member

Senator Andrew Bartlett
Participating Member

APPENDIX 1**LIST OF SUBMISSIONS**

- 1 Dr Myles McGregor-Lowndes, Brisbane, Qld**
- 2 Australian Conservation Foundation, Fitzroy, Vic**
- 3 Pricewaterhouse Coopers, Sydney, NSW**

APPENDIX 2**LIST OF WITNESSES****Wednesday, 17 November 1999****Dr Myles McGregor-Lowndes****Australian Conservation Foundation**

Mr Michael Kerr, Legal Advisor

Australian Taxation Office

Mr Geoff Miller, Assistant Commissioner

Mr Jim McLean, Director, Technical Management and Government Liaison Small
Business

Mr Mick Ahern, Manager, Registration of Charities Project