

Chapter 1

Introduction

1.1 The Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009, which will implement Government commitments in respect of employee share schemes (Schedule 1), non-commercial losses (Schedule 2) and lost superannuation (Schedule 3), was introduced into parliament on 21 October 2009. On 29 October, the Senate referred Schedule 2 of the bill to the Senate Economics Legislation Committee for inquiry and report by 16 November 2009.¹

1.2 Schedule 2 of the bill aims to improve the fairness and integrity of the tax system by tightening the rules regarding the use of non-commercial business losses by high wealth individuals. The measure it contains, more commonly known as the 'hobby farms' measure, forms part of a number of 2009-10 Federal Budget initiatives.

1.3 The measure, announced in a joint press release by the Treasurer and Assistant Treasurer on 12 May 2009, will achieve its intent by closing a 'tax loophole that allows a relatively small number – around 11,000 – of mostly high wealth individuals to exploit parts of the tax system to unfairly minimise or avoid their tax obligations.'²

1.4 The Government, through the Treasury, undertook extensive consultation on the exposure draft during June and July of 2009. The 16 submissions received by the Treasury during that period of consultation can be accessed at <http://www.treasury.gov.au/contentitem.asp?ContentID=1588&NavID=037>.

1.5 Following that consultation, the government agreed to three changes: carving out of investment allowances under Division 41 of the *Income Tax Assessment Act 1997* (ITAA1997), the grandfathering of the discretions that the Commissioner of Taxation (the Commissioner) has exercised in relation to the commerciality of businesses and provision for a formal application.

1.6 If passed the proposed amendments will take effect from the date of Royal Assent and will apply to the 2009-10 income year onwards.

1 The Selection of Bills Committee (in Report No. 16 of 2009) simultaneously recommended referring the Income Tax (TFN Withholding Tax (ESS)) Bill 2009, which is related to Schedule 1 of this bill. However, as the referral of this bill asked that the Economics Legislation Committee only consider Schedule 2, it has not been considered here. The Economics Legislation Committee tabled a report on *Employee Share Schemes* on 17 August 2009.

2 The Hon. Wayne Swan MP, Treasurer of the Commonwealth of Australia, the Hon. Chris Bowen MP, Assistant Treasurer and Minister for Competition Policy and Corporate Law of the Commonwealth of Australia, 'Improving fairness and integrity in the tax system' Media Release 067, 12 May 2009.

Financial impacts of the bill

1.7 The Treasury have forecast that by tightening the access to non-commercial losses ongoing revenue will be generated; the cumulative revenue across the forward estimates is expected to be \$700 million.³ These revenue expectations are considered in more detail in Chapter 3 of this report.

Conduct of the inquiry

1.8 The committee advertised the inquiry in the national press and contacted a number of organisations inviting submissions to be lodged by 6 November 2009. The six submissions received are listed in Appendix 1.

1.9 A public hearing into Schedule 2 of the bill was held in Melbourne on 9 November. The witnesses who appeared before the committee are listed in Appendix 2.

1.10 The committee would like to thank all those who participated in the inquiry.

3 The Treasury, Budget 2009-10: Budget Paper No. 2 – Budget measures 2009-10. Part 1: Revenue Measures, May 2009, p 20.