

## Chapter 4

### Income tax concessions proposed in the bill

4.1 Tax Laws Amendment (2010 Measures No. 2) Bill 2010 contains three schedules which propose income tax concessions; Schedules 3, 4 and 5.

#### Schedule 3 – HECS—HELP benefits

4.2 Schedule 3 of the bill sets out amendments that will operate to ensure HECS–HELP benefits paid to eligible recipients in 2008–09 and later years will not be included in the recipient's income.

#### *Background*

4.3 One of the aims of the *Higher Education Support Act 2003* is to support students undertaking higher education and certain vocational education and training. One of the mechanisms through which support is provided is a loan scheme that the recipient repays over time.

4.4 The amount of a person's HECS-HELP debt is the value of the 'loan' they receive when the Government makes payment to an educational institution for their course of study. The value of the loan accumulates over time, throughout the duration of the course. The accumulated debt is also indexed.<sup>1</sup>

4.5 The law provides for compulsory repayment of a HECS-HELP debt where the income of the loan recipient has reached a certain threshold amount. Where the threshold amount has been met, the Commissioner of Taxation will make an assessment of the debt that is required to be repaid and notify the person of that amount.<sup>2</sup>

#### *The HECS-HELP benefit*

4.6 The HECS–HELP benefit was introduced to encourage graduates of certain courses to pursue employment in specific occupations. It operates to reduce eligible recipients' compulsory repayment amounts (or, in the cases where a repayment is not required due to low income, directly reduces the person's HELP debt) where that person is a graduate of a prescribed course and is working in that profession.<sup>3</sup>

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1 Division 140, *Higher Education Support Act 2003*.

2 Division 152, *Higher Education Support Act 2003*.

3 Explanatory Memorandum, Tax Laws Amendment (2010 Measures No. 2) Bill 2003, p. 59.

4.7 The proposed amendments will ensure that the value of the HECS–HELP benefit received by an eligible recipient is exempt from income tax.<sup>4</sup>

4.8 Initially the HECS–HELP benefit was only available to graduates of maths or science and early childhood education courses; however, its application was extended in the 2009–10 budget to cover certain education and nursing (including midwifery) courses.<sup>5</sup>

### ***Views on Schedule 3***

4.9 This measure, which will operate retrospectively from the 2008–09 income year, attracted little comment throughout the course of the inquiry. Comment that was made was supportive.

The AWU believes these are important reforms aimed at encouraging greater uptake of relevant skills directly relevant to industry and to the economy more broadly. The measures are aimed at addressing the growing skills gap... The measures will also promote access to higher education, in particular for those on lower income.<sup>6</sup>

### **Recommendation 5**

**4.10 The committee supports Schedule 3 of the bill and recommends its passage unchanged.**

## **Schedule 4 – Deductible gift recipients**

### ***Background***

4.11 The income tax law enables certain organisations and entities to attract public support for their operations by attaining deductible gift recipient status. Any taxpayer who makes a donation of \$2 or more to an organisation with DGR status is entitled to claim a tax deduction for the amount given.

4.12 To qualify for DGR status an organisation must fall within one of the general categories of Division 30 of the *Income Tax Assessment Act 1997* or be specifically listed within the Division.

### ***About the proposed amendments***

4.13 Schedule 4 of the bill will amend section 30-80 of the ITAA 1997 to add the Sichuan Earthquake Surviving Children's Fund and the Bali Peace Park Association

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4 Explanatory Memorandum, paragraph 3.4, p. 59.

5 Explanatory Memorandum, paragraph 3.2, p. 59.

6 The Australian Workers' Union, *Submission 2*, p. 2.

Incorporated to the specific list of eligible international affairs organisations<sup>7</sup> who have DGR status.<sup>8</sup>

4.14 The Sichuan Earthquake Surviving Children's Fund aims to raise money through donations that can be used to assist in the reconstruction of schools in the Sichuan Province of China destroyed by the earthquake on 12 May 2008.<sup>9</sup>

4.15 The Bali Peace Park Association Incorporated aims to raise funds sufficient for the acquisition of the Sari Club site in Bali, Indonesia, and establishment of a peace park on that site. It also aims to establish an annual national awareness day on the anniversary of the terrorist attack at the site. Through establishing a peace park the association aims to promote tolerance and understanding across cultures and religions whilst ensuring that the events of 12 October 2002 are not forgotten.<sup>10</sup>

4.16 These proposed amendments will have retrospective operation – the bill sets out that they will apply to the 2007–08 income year and later although special provisions will prescribe that:

- gifts to the Sichuan Earthquake Surviving Children's Fund must be made between the period 11 May 2008 and before 13 May 2010; and
- gifts to the Bali Peace Park Association must be made after 15 December 2009 and before 17 December 2011.<sup>11</sup>

4.17 Schedule 4 of the bill also proposes that the DGR status of the Yachad Accelerated Learning Project be extended to end on 30 June 2012.<sup>12</sup>

4.18 The Yachad Accelerated Learning Project Ltd<sup>13</sup> is a not-for-profit educational organisation that aims to improve literacy and numeracy outcomes of indigenous and non-indigenous students in remote, regional and rural locations within Australia.<sup>14</sup>

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7 Division 30 of the ITAA 1997 provides a general category of International Affairs (at section 30–80 of the ITAA 1997) which prescribes that any public fund declared by the Treasurer to be a developing country relief fund when certain conditions are satisfied, is a DGR.

8 Explanatory Memorandum, p. 62.

9 Explanatory Memorandum, p. 62.

10 Explanatory Memorandum, p. 62.

11 Explanatory Memorandum, p. 62.

12 Explanatory Memorandum, p. 62.

13 YALP was officially launched by the former education minister in August of 2004 after meetings with indigenous leaders and communities within the East Kimberley, North Queensland and Victoria and the provision of \$3 million in funding by the Department of Education, Science and Training for a three year pilot project.

14 Yachad Accelerated Learning Project Ltd, <http://www.yalp.org.au> .

4.19 The existing provisions of Division 30 of the ITAA 1997 provide YALP with DGR status for gifts made after 29 June 2005 and before 1 July 2008. This proposed amendment will extend that DGR status to gifts made until 30 June 2012.<sup>15</sup>

### *Committee view*

4.20 Although Schedule 4 of the bill did not attract any comment throughout the course of the inquiry, where a charity is established for a specific purpose, for example, in the case of the Bali Peace Park, the committee questions whether further inquiry should be made into the governance structures around such charities, particularly to determine what should occur where money remains after the purpose for which the charity was established has been achieved.

### **Recommendation 6**

**4.21 The committee recommends that Schedule 4 of the bill be passed without amendment.**

## **Schedule 5 – Taxation of the Global Carbon Capture and Storage Institute Limited**

### *Background*

4.22 Under the income tax law certain entities are exempted from paying income tax; in some cases this exemption is subject to special conditions.<sup>16</sup> Division 50 of the ITAA 1997 lists the exempt entities and sets out any special conditions that they must satisfy.<sup>17</sup>

### *The proposed changes*

4.23 Schedule 5 of the bill proposes an amendment to section 50-5 of the ITAA 1997 specifically to extend income tax exempt status to the Global Carbon Capture and Storage Institute Limited.

4.24 In September 2008 Prime Minister Rudd announced that a global institute to accelerate the development and deployment of carbon capture and storage technology

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15 Subsection 30–25(2) table item 2.2.34, *Income Tax Assessment Act 1997*. It is noted that there is a drafting error/typo in the bill in respect of this amendment. On page 34 of the bill, item 1, line 1 in respect of subsection 30–25(2) table item 2.2.34, the instruction is to 'Omit "1 July 2009"'. The act however refers to 1 July 2008 at subsection 30–25(2) table item 2.2.34.

16 Section 50–1, *Income Tax Assessment Act 1997*.

17 An example of an entity exempted from income tax under Division 50 is a public educational institution (section 50–5).

would be established.<sup>18</sup> The Global Carbon Capture and Storage Institute Limited,<sup>19</sup> is a part of the government's response to the environmental and economic challenges of climate change.<sup>20</sup>

4.25 When launched, the Government committed up to \$100 million in funding on an annual basis to the Institute.<sup>21</sup>

4.26 Schedule 5 of the bill proposes that the Global Carbon Capture and Storage Institute Limited be given income tax exempt status for a period of four years, commencing from 1 July 2009.<sup>22</sup> The proposed amendments provide for its income tax exemption through the addition of the Institute to the list of exempt entities in section 50–5 and section 11–5 of the ITAA 1997.

4.27 The explanatory memorandum also explains that any information and expertise developed by the Institute is to be shared generously for the 'benefit of both the Australian and global carbon capture and storage communities.'<sup>23</sup>

### ***Views on Schedule 5***

4.28 The proposed income tax exempt status of the Global Carbon Capture and Storage Institute Ltd did attract some comment during the course of the inquiry, contributors questioning its rationale.

4.29 Mr John Passant, an academic expert, questioned why the tax system is being used rather than an explicit grant:

...one of the issues that arises in terms of tax exemptions or tax deductions is that they create expenditures that are disguised. So they are not transparent and they are not analysed ... would we be better off doing it through a direct grant system where you would have a capping on the amount of expenditure, and a clearer understanding of who was getting it and the reasons for it?<sup>24</sup>

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18 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, Global Carbon Capture and Storage Initiative, Media Release 19 September 2008.

19 Established as a not-for-profit company limited by guarantee in early 2009. Explanatory Memorandum, p. 63.

20 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, Launch of Global Carbon Capture and Storage Institute, Media Release, 16 April 2009.

21 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, Launch of Global Carbon Capture and Storage Institute, Media Release, 16 April 2009.

22 If the proposed amendment is passed the Institute's tax exempt status will expire on 30 June 2013. Explanatory Memorandum, p. 63.

23 Explanatory Memorandum, p. 63.

24 Mr John Passant, Senior Lecturer, Faculty of Law, University of Canberra, *Proof Committee Hansard*, 30 April 2010, p. 2.

4.30 The Global Carbon Capture and Storage Institute Limited explained:

The goals of the organisation are, on a global level, to assist in accelerating the deployment of CCS technology. To do that, one of the objectives of the institute is to establish a diversified funding program on a global level and to be able to attract funding from global members, in particular, other governments. It was deemed that it would not be satisfactory if those members were contributing funds which were then taxed by the Australian government.<sup>25</sup>

4.31 Similarly, the Department of Resources, Energy and Tourism submitted:

In its preparatory work the Institute received advice from members that the imposition of Australian income tax on contributions is likely to be perceived as a threat to the Sovereignty of contributing nations and therefore a significant disincentive to investment.<sup>26</sup>

*Committee view*

4.32 The committee notes that the Global Carbon Capture and Storage Institute is engaged in research for the public good. While it acknowledges the point regarding the broad scope of the proposed income tax exemption, it also acknowledges the unique nature of this body which is set up to attract international funding, and that the Bill provides only for exemption during the first four years of its startup.

**Recommendation 7**

**4.33 The committee recommends that Schedule 5 of the bill be passed without amendment.**

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25 Ms Sue Steele, Chief Financial Officer, Global Carbon Capture and Storage Institute Limited, *Proof Committee Hansard*, 30 April 2010, p. 11.

26 Department of Resources, Energy and Tourism, *Submission 7*, p. 1.