TAX AVOIDANCE SCHEMES BILL 1985
(Private Senator's Bill)

Date Introduced: 22 March 1985
House: Senate
Presented by: Senator Jack Evans

Short Digest of Bill

Purpose

To declare the opinion of the Parliament concerning the extent to which legislation preventing the operation of taxation avoidance schemes can apply retrospectively; and to provide protection to people from entering into transactions which may later be affected by retrospective taxation legislation.

Background

The Bill was first introduced in the Senate on 9 May 1984 but lapsed with the dissolution of Parliament in October 1984.

Both Federal Labor and Liberal Governments have introduced legislation in the past to combat a variety of tax avoidance schemes e.g. trust stripping, bottom-of-the-harbour schemes, cherry-picker schemes etc.

The Minister for Finance, in his "Tax Proposals of the Labor Government", stated that the "Labor Party's policy on combatting tax avoidance and evasion includes a commitment to selectively introduce fully retrospective legislation against blatant tax avoidance schemes".[1] Furthermore "the amount recouped will be the tax that ought to have been paid at the time, increased to maintain its value in present-day terms".[2] The main objective of such retrospective legislation will be to deter people from entering tax avoidance schemes.

Main Provisions

This Bill will come into operation on the date of Royal Assent (clause 2).

Under clause 4, a "blatant tax avoidance scheme" is defined as "one of those highly contrived and artificial schemes generally accepted as being unambiguously inspired
by avoidance motives and having little if any legitimate commercial function".

Tax avoidance legislation will apply only to schemes entered into or commencing from 28 April 1983 (clause 5).

A person may apply to the Treasurer for a declaration that a particular scheme will not be treated as a tax avoidance scheme. The Treasurer, may, within 90 days after receipt of the application, make such a declaration or refuse the application (clause 6).

Under clause 7, the Treasurer is required to publish, in the Gazette, notice of the declaration, including a description of the essential features of the scheme.

By clause 8, the declaration is to be treated as a firm assurance that no government of the Commonwealth will propose or support legislation that will, retrospectively, alter adversely the tax law relating to that scheme. A declaration does not affect any liability in relation to a scheme under the law as in force when the scheme is entered into or commenced, including any liability under Part IVA of the Income Tax Assessment Act 1936.

The Treasurer is required, by clause 9, to formulate and publish, by regulation, guidelines to the manner in which he proposes to exercise his powers under this Bill. The Treasurer may delegate any of his powers to an officer of the Department of the Treasury (clause 10).

For further information, if required, contact:

2 April 1985

Economics and Commerce Group
LEGISLATIVE RESEARCH SERVICE

References

2. op.cit., p.5.