



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

**TAXATION LAWS
AMENDMENT BILL (NO. 7) 2003**

Second Reading

SPEECH

Wednesday, 10 September 2003

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Wednesday, 10 September 2003	Source House
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Questioner	Responder
Speaker Cox, David, MP	Question No.

Mr COX (Kingston) (5.38 pm)—The Taxation Laws Amendment Bill (No. 7) 2003 is a general tax bill dealing with 11 sets of issues. Labor will oppose only one measure—the proposal to list by regulation, rather than legislation, organisations to be given status as named deductible gift recipients. I will deal with the less controversial issues first and come back to that later. Also, my second reading amendment deals with several issues that allow some wider debate. With those comments, I move the second reading amendment standing in my name:

That all words after “That” be omitted with a view to substituting the following words:

“whilst not declining to give the Bill a second reading, the House:

(1) notes that while the Bill provides an exemption from income tax and capital gains tax for payments made by overseas funds to the victims, surviving relatives or bene-ficiaries of victims of persecution, loss or damage to property, or illness and injury resulting from per-secution or involvement in resistance during World War 2, there are also living in Australia today the victims of persecution in other countries and conflicts whose experiences have been as horrendous and who have suffered similar losses, notes that they also may receive similar payments from funds overseas by way of compensation or restitution and those payments would deserve similar tax treatment to that provided in this Bill and requests that the Government examine those situations where similar tax treatment should be applied and bring forward legislation to provide it;

(2) recognises that the Howard Government has a track record of using the power of the public purse to silence critics and that there is a substantial risk that it will place conditions under regulations contemplated by this bill on deductible gift recipients as a coercive measure; and

(3) notes concern from the Auditor-General about the risk of fraud against the Common-wealth through the Australian taxation system and condemns the Howard Govern-ment for its failure to act to protect the revenue from tax avoidance and evasion”.

Schedule 1 provides an exemption from income tax and capital gains tax for payments relating to persecution, loss or damage to property, or illness and injury resulting from persecution or involvement in resistance during World War II. Those eligible are victims, surviving relatives or beneficiaries of the victims. The payments may be in the form of income or capital, including compensation or restitution of property. The payments must come from a foreign source such as a fund set up by a government as a result of a legal settlement or established by a business or industry.

The principle underlying this tax treatment is that the payment is a transfer similar to a legal settlement. There is an integrity measure to ensure that the payments do not come from an associate which would allow the exemption to be used as a means to direct otherwise taxable foreign payments to Australian residents. A stricter antiavoidance test would be for the bill to require the government to gazette specific foreign funds from which payments would be eligible for exemption. I am not pursuing that because Treasury have advised that it would be difficult for the government to do that in a timely and accurate manner. It is indeed sad to have to contemplate, as the government has had to do, that some people might attempt to misuse a measure such as this, but if they do the tax office would of course have the option of using the general anti-avoidance provisions.

Examples of World War II funds which would benefit from this measure include: the Indemnification Commission for the Belgian Jewish Community's Assets, which was established to provide compensation for assets plundered, surrendered or abandoned; the Maror Fund—a Dutch fund established to compensate Jewish victims for persecution suffered or property lost; Compensation for Orphans of Deported Parents—a French fund which makes payments to orphans whose parents were deported from France; Compensation for Victims of Financial Spoliation—a French fund established to compensate victims and their families for property

loss resulting from anti-Semitic legislation in force during the German occupation; Holocaust Victim Assets Litigation—a legal settlement to resolve Holocaust related claims against Swiss banks; and the International Commission on Holocaust Era Insurance Claims.

Each of the funds has its own criteria for determining eligibility for payments. These could include payments for wrong or injury as a result of: persecution on the basis of religion, race, physical or mental disabilities, or sexual orientation; slave or forced labour; being refused entry to or deported from a country; the deportation of a child's parents; and illness or injury resulting from persecution or participation in resistance. Payments in respect of property losses could include: property confiscated, stolen, looted, hidden or lost; real estate, including residences, business premises and agricultural land; businesses; financial assets, including the contents of deposit boxes; precious metals, works of art and cultural property; and personal effects, including furniture, antiques and jewellery.

Labor is very pleased to support schedule 1, to ensure that there is no tax consequence as a result of these long-overdue payments in respect of the Holocaust and World War II. But we also note that World War II—and in particular Holocaust—victims are not the only group in Australia who have suffered persecution or loss of assets in circumstances of conflict or the most repugnant breaches of human rights. It is a general principle of good public policy that governments afford equitable treatment to people in like circumstances. The second reading amendment I have moved calls on the government to consider legislative changes to extend the tax treatment proposed in this bill to payments received by Australian taxpayers from overseas funds set up to compensate for persecution or loss of assets in times other than World War II. In this regard the member for Gellibrand has drawn to my attention the refusal of the Treasurer to afford similar tax treatment to those living in Australia who are in receipt of regular compensation payments from the Chilean government for persecution they were subjected to in that country. I understand that Laurie Ferguson will be commenting further on the circumstances of that particular set of issues later in the debate.

Schedule 2 provides income tax deductibility for gifts of \$2 or more to the Australian Literacy Foundation Ltd, Crime Stoppers Western Australia Ltd, New South Wales Crime Stoppers Ltd, Crime Stoppers Tasmania, Crime Stoppers Queensland Ltd, the Australian-American Education Foundation, Crime Stoppers Australia Ltd, Alcohol Education and Rehabilitation Fund Ltd and the Constitution Education Fund.

Mr Martin Ferguson—What about Tony Abbott's fund?

Mr COX—Tony Abbott's fund misses out but I am sure that if he had thought about it he might—

The DEPUTY SPEAKER (Mr Jenkins)—Order! The honourable member for Kingston will be careful and the honourable member for Batman will cease interjecting.

Mr COX—Schedule 2 also limits deductions for gifts made to the Stolen Children's Support Fund to gifts made before 4 February 2003, when that fund was dissolved. Labor will support schedule 2, as we supported this morning another list of organisations which are being given DGR status in the Taxation Laws Amendment Bill (No. 8) 2002. I note, with respect to the government's proposal to change the listing process for named organisations to one using regulation, that the government left the Taxation Laws Amendment Bill (No. 8) 2002 for a period of nine months and four days after its introduction before bringing it on for debate, even though its legislative program was not always crowded. The government is giving timeliness and administrative simplicity as its reasons for that proposed change but, as Taxation Laws Amendment Bill (No. 8) 2002 demonstrates, if there is a problem it is very much one of the government's own making and we do not accept that as the real reason for the proposed measure.

Schedule 3 provides the capacity for donors of cash to deductible gift recipients, or DGRs, to spread their deduction at their own discretion over five years, although after making an election to do that they cannot change it. The change will give identical tax treatment to donations of cash as already applies to donations of property. The purposes of this change are for equity and to encourage Australians to be more generous to all types of deductible gift recipient organisations and Labor will support it.

Schedule 4 amends the Crimes (Taxation Offences) Act 1980. The Criminal Code provides uniform interpretation for offence provisions in Commonwealth legislation. It applied to newly enacted offences from 1 January 1997 and to all offences from 15 December 2001, with at least one exception. When legislation in the Treasury portfolio was harmonised in 2001, the Crimes (Taxation Offences) Act 1980 was omitted from that

project. The explanatory memorandum claims that this was inadvertent. The specific amendments to the Crimes (Taxation Offences) Act provided in schedule 4 are to change references to 'sales tax' to 'old sales tax', convert fines into penalty units and replace the term 'purpose' with 'intention'. The use of the term 'intention' makes it clear there is an additional fault element of the offence whereas 'purpose' could be part of the physical element of result. This change is consistent with the Criminal Code. Labor will support schedule 4.

Schedule 5 provides a transitional arrangement for foreign entities with a large amount of accumulated losses going into consolidation. It will allow a foreign entity to remain outside a consolidated group for a transitional period if it would be adversely affected by restrictions on the rate at which its losses could be recouped in a consolidated group. If a group consolidates, all of the head company's eligible subsidiaries must be included in the consolidated group. Unused carry-forward losses of consolidating entities may be transferred to the head company provided they satisfy the continuity of ownership and same business tests. Consolidation maintains the existing rule that a foreign loss can only be offset against assessable foreign income of the same class. The rate at which losses can be used by the head company is determined by the joining entity's available fraction. The available fraction is determined using the joining entity's market value as a proportion of the market value of the group as a proxy for the proportion of the group's income that would have been generated by the joining entity. This is intended to ensure that the rate of loss recoupment inside a consolidated group approximates what would have occurred in the absence of consolidation. To contain the cost to revenue of allowing foreign entities to transfer excessive amounts of losses to the head company, schedule 5 will allow the foreign entity to remain outside the group until the losses are recouped, up to a maximum of three years from the time the group consolidates. During the transitional period the foreign entity is not eligible for loss transfer, asset rollover and thin capitalisation grouping concessions provided to non-resident entities. Labor will support schedule 5, as it has supported other consolidation measures.

Schedule 6 is another consolidation measure. It ensures that certain actions of a statutory or contractual nature required for the purposes of consolidation are not treated as taxable supplies. These transactions include the transfer of tax attributes, the ability to claim deductions and offsets, and the ability to make elections and declarations as well as obtaining release from obligations. Not all consolidating entities are members of the same GST group, creating difficulties as a consequence of consolidation. The intention is that entities should be afforded similar GST treatment under consolidation as they received in a preconsolidation environment. Labor will support schedule 6.

Schedule 7 provides a new set of rules for the imputation arrangements applying to life insurance companies. Life insurance companies differ from ordinary companies in that some components of their income are treated as if it is the final individual taxing point, while other income is treated as being available for distribution to shareholders. Franking credits only arise where income is attributable to shareholders. Because life insurance companies cannot determine the extent to which tax is attributable to shareholders until assessment, which they cannot do until after the end of the financial year, life insurance companies have to make an estimate of the transactions attributable to shareholders with an adjustment to the franking account after assessment. However, they are presently subject to severe penalties for overestimation. Schedule 7 removes the penalties for overestimation of franking credits and clarifies what franking credits and debits arise from an amended assessment.

Mr Hockey—Who writes this for you?

Mr COX—I do. Schedule 7 also removes the holding period for franking credits arising from receipt of franked dividends. Labor will support schedule 7.

Schedule 8 removes the possibility that some Australians serving overseas could simultaneously access both the overseas Defence Force tax exemption and the armed forces tax offset. The exemption and the offset were provided to deal with the circumstances of different types of services and were not intended to apply together to the same personnel at the same time. Labor will support schedule 8.

Schedule 9 provides an automatic capital gains tax rollover for financial service providers on transition to the financial services reform regime, when an existing statutory licence, registration or authority is replaced with an Australian financial services licence; a qualified Australian financial services licence is replaced with an Australian financial services licence; and an intangible capital gains tax asset is replaced with another intangible capital gains tax asset. The rollover will defer capital gains tax liability until a CGT event happens to the replacement asset. Labor will support schedule 9.

Schedule 10 changes the tax treatment of investments in foreign limited partnerships and other foreign hybrids such as US limited liability companies. The purpose of the tax law in this area is to provide appropriate limitation rules for losses. Australian tax law currently treats hybrids as partnerships. Tax law in the United States treats them as companies. Schedule 10 changes the Australian treatment from partnerships to that of companies. Labor will support schedule 10.

Schedule 11 provides technical amendments to eight laws in the tax and superannuation area to repeal redundant provisions, correct terminology, correct incorrect section references, and correct cross-references. Labor will support schedule 11.

I now turn to the single measure in this bill that Labor opposes. Schedule 3 provides arrangements for listing organisations by regulation that will be eligible deductible gift recipients. This would replace existing arrangements whereby DGRs are listed in legislation. As I said earlier, the government claims that this is to allow more timely listings and adjustments. Under the terms of this bill, DGR status would take effect from the day immediately after the last day for disallowance of the regulation, which would ensure that there is no revenue effect where parliament does not accept the executive's view of a particular organisation's suitability for DGR status.

The regulation could specify the date from or period during which deductibility would apply, the purpose to which the donation must be put or other conditions. In determining deductibility retrospectively the amending regulation would give effect to a public announcement by the Treasurer or a minister 60 days or less before the day on which the amending regulation is made, with the announcement having been published on the Internet. This bill contemplates explicit use of the Internet as an element of the process of legislation by press release, which is an interesting development apparently now occurring in other areas.

While government has in the past put conditions on the purposes for which deductible gift recipient status has been given, that has been done through legislation. This would all seem unexceptional if it were not for a draft bill the Treasurer has circulated dealing with charities. It contemplates changes that could be used to restrict eligibility for tax exemptions for charitable organisations that enter into public debate. There has been considerable public controversy arising from this draft legislation. A number of charities have argued that the draft legislation, if enacted, would have the effect of gagging their participation in public debate. The Treasurer says that the bill is only intended to codify 400 years of common law on the definition of a charity. The question is why it is necessary to codify such well-established common law. If people do not think that the law is reasonably clear, they can simply read the ruling put out by the tax commissioner on this subject and they will find that there is sufficient case law to know precisely what people are able to do and what they are not able to do.

The charities believe that the government may use the new law to restrict them entering into public debate on issues such as the extent of need in an area or government policy and resource allocation by arguing that these activities are more than incidental to the organisation's charitable purpose, thus denying them eligibility for tax exempt status. It is interesting to note that the Treasurer's brother and the Treasurer have each submitted opinion pieces to the *Australian Financial Review* on this subject and they seem to differ in view. I say to the Australian community: if the Treasurer's brother does not trust the Treasurer, why should you?

While governments have in the past put conditions on the purposes for which deductible gift recipient status has been given, that has been done through legislation. The regulatory power provided by this bill could make it easier for the government to act against organisations to restrict their participation in public debate. The Senate economics legislation committee inquired whether there were any safeguards in the legislation to protect deductible gift recipient organisations against the government abusing this power to make regulations. The response from Treasury was:

No, and that is replicating the current situation where the government can choose to specifically name an organisation in the legislation, in order that it receive deductible gifts, and to impose any conditions that it chooses.

The essential issue here is that under the present arrangements, using legislation, the parliament has not only the opportunity to scrutinise any conditions but also the ability to amend them. By allowing organisations to be named in regulations, parliament would be giving up the capacity to amend obnoxious conditions. The only option it would be left with would be to reject the entire regulation and in so doing it would deny the organisation proposed to be named its deductible gift recipient status. The regulatory power provided by this bill would make it easier for the government to act against a deductible gift recipient organisation if it objected to public statements made by that organisation. Labor will oppose those parts of schedule 3 that will allow the government

to make regulations to provide deductibility for gift recipients. In the committee stage of this debate I will move an amendment to delete those sections of schedule 3 that will provide that regulation making power.

In the context of the second reading amendment, I note that on 28 August the Minister for Foreign Affairs was reported in the *Australian* accusing religious leaders of ignoring their pastoral duties, overtly partisan politicking and hogging the limelight on complex political issues. That was part of the Howard government's campaign to silence their critics. They want a monopoly on public debate. Public comment that does not support their position on social and moral issues is to be stamped out. According to the Downer doctrine, political debate is for politicians and Christian or value based contributions are not legitimate. This is part of a pattern. We have seen it with Senator Alston's concerted campaign against the ABC, where criticism of bias has been coupled with cuts in funding to curb the national broadcaster's criticism of the government. Accusing ministers of religion of neglecting their pastoral duty, being politically partisan and seeking the limelight is a verbal shot across their bows.

Mr Hockey—This is the taxation laws amendment bill.

Mr COX—Yes.

Mr Hockey—How is this related?

Mr COX—Read the second reading amendment.

The DEPUTY SPEAKER (Mr Barresi)—Order! The member for Kingston will refrain from responding to interjections.

Mr COX—The financial stick is also being wielded by Treasurer Peter Costello in his draft bill, which he intends to use to gag charities, including churches, by denying them their tax exempt status if they do not toe the line. This legislation is an extension of that process, aimed at other deductible gift recipients.

People working for charities see hardship. That hardship sometimes results from failed government policies and unmet needs. It is a sad day when charities and churches are silent because it might be inconvenient for a government with the power and the inclination to retaliate against them financially. This risk to a basic element of our democracy gets bigger every day, with charities and churches delivering government programs under contract. Labor is concerned about any possible attempt by the Howard government to restrict the right of charitable organisations to participate in public debate and will closely scrutinise any legislation that is put before parliament that could have that effect. Labor will look at what safeguards can be legislated to stop the government abusing its powers and any conditions that it chooses to put on charities or other deductible gift recipients. Labor has not been able to find appropriate safeguards to put into this legislation and will oppose this regulation making power.

The DEPUTY SPEAKER—Is the amendment seconded?

Mr Laurie Ferguson—I second the amendment and reserve my right to speak.