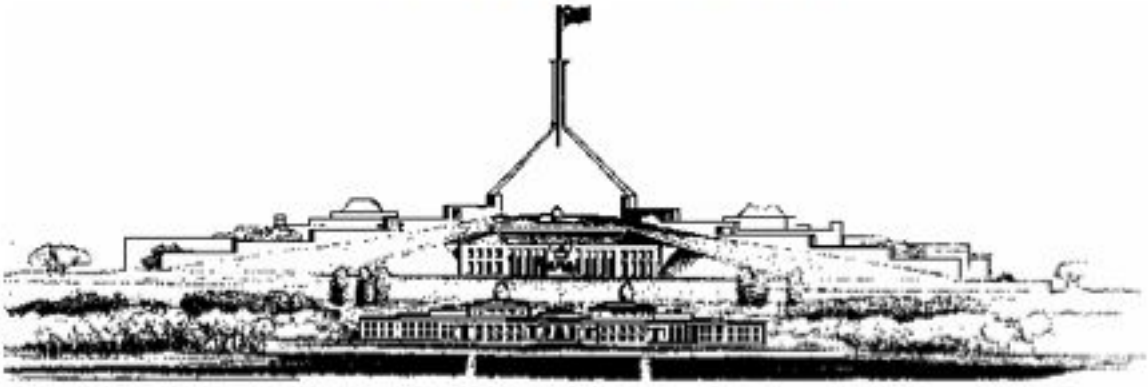
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

Main Committee

TAXATION LAWS AMENDMENT BILL (NO. 8) 2003

Second Reading

SPEECH

Wednesday, 17 September 2003

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Wednesday, 17 September 2003	**Source**	House
Page	20389	**Proof**	No
Questioner		**Responder**	
Speaker	Cox, David, MP	**Question No.**	

Mr COX (Kingston) (9.59 am)—The Taxation Laws Amendment Bill (No. 8) 2003 is almost entirely non-controversial and I will be brief in talking about it. It contains seven schedules and Labor will support all of them. The first schedule deals with the franking of non-share dividends. Non-share dividends are returns made on interests characterised under the debt-equity rules of division 974 as equity interests that are not in the form of shares. An example of these is reset preference shares.

Under existing law, dividends on shares have to be paid out of realised profits to be frankable. To ensure non-share dividends were treated in a similar manner, the imputation rules required franking of non-share dividends to be made out of available frankable profits. Available frankable profits were intended to be defined as both profits on hand and expected profits minus committed share dividends. However, expected profits were not included in the calculation. Schedule 1 would allow a company to use expected profits to fund frankable non-share dividends.

The second schedule is a set of consolidation measures dealing with cost-setting rules and franking deficit tax offsets. Parts 1 to 6 of schedule 2 amend the cost-setting rules for consolidating groups. The head company will be required to choose an effective life for certain depreciating assets brought into a consolidated group where the prime cost method was used to determine the decline in value just before the joining time. The cost base for a pre capital gains tax asset that is rolled over will be the same as the cost applicable to the originator of the rollover for the purposes of the cost-splitting rules. A new capital gains tax event—L8—will apply where there is an excess allocable cost amount on joining that cannot be allocated to reset cost based assets. An asset's entitlement to accelerated depreciation will be reserved in certain circumstances—that is, if it has been held continuously since a particular date. Unfranked dividends will be required to be paid in working out the adjustment to the cost for certain overdepreciated assets where unfranked profits are included in working out the allocable cost amount during the transitional period. Finally, an anomaly will be corrected that bases penalties for errors in cost setting on the error and not the tax associated with the error.

Part 7 of schedule 2 corrects an error in the existing consolidation regime that allowed certain tax requirements that applied to head companies not to apply to MEC groups. This measure is retrospective to 1 July 2002 to cover a gap in liability caused by that drafting error. Treasury maintain that MECs would have recognised that the requirements for Australian head companies were meant to apply to them. If anyone recognised the gap and tried to exploit it, they would be caught by this provision. Treasury know of no instances where that is the case. Senators may want to ask the Tax Commissioner a question in estimates to confirm that.

Part 8 of schedule 2 contains rules for franking deficit tax. Any joining company's excess or unapplied franking deficit tax offset will be transferred to the head company. The head company will be allowed to apply the franking deficit tax offset in accordance with the provisions of the simplified imputation system. A joining subsidiary will be prevented from applying any franking deficit tax offset whilst a member of a consolidated group, and any franking deficit tax offsets will remain with the head company upon the departure of any subsidiary from the group.

Schedule 3 provides an income tax deduction for taxpayers entering into conservation covenants with the Commonwealth, a state, a territory or a local government body. The amount of the deduction will be determined by the commissioner through the Australian Valuation Office and will be equal to the fall in the market value of the land as a result of the conservation covenant. That tax benefit may be spread over five years at the taxpayer's discretion, as is the case with gifts of property to deductible gift recipients.

Schedule 4 deals with fringe benefits tax depreciation rates for cars. The commissioner announced on 20 June 2002 that, for cars acquired after 30 June 2002, the effective life would be increased from six years and eight months to eight years for income tax depreciation purposes. Schedule 4 realigns the deemed depreciation rate used under the operating cost method for valuing car fringe benefits with the new effective life determination. The amendment applies in respect of cars acquired after 30 June 2002. The amendment will only affect car fringe

benefits valued using the operating cost method, which is beneficial for taxpayers with a very high proportion of business use. It does not affect the value of fringe benefits on cars using the statutory formula, which is used by most taxpayers. If this was going to cause the car industry any grief, I am sure that as the member for Mitsubishi I would have heard about it by now.

Schedule 5 will permit statutory bodies that are established in perpetuity by the Commonwealth parliament to be endorsed by the commissioner as deductible gift recipients, despite not having a winding-up clause. These organisations are probably collecting institutions like the War Memorial. Winding-up clauses require the assets of a deductible gift recipient to be transferred to an organisation of like purpose. Obviously, if the organisation is going to be there in perpetuity, like the War Memorial, the assets are not going to need to be transferred to an organisation of like purpose.

Schedule 6 will make it easier for primary producers to determine if an entity is eligible to issue them with farm management deposits, by replacing references to prudential supervision or regulation under a law of the Commonwealth or a state or territory with the requirement that the entity be an authorised deposit-taking institution under the Banking Act 1959. I just reflect that at times it has been difficult for some states to know what financial institutions they are supposed to be supervising prudentially, let alone for some poor farmer who is looking to purchase a farm management deposit to know whether an organisation is being prudentially supervised by anybody rational or competent.

Schedule 7 will provide rules under the simplified imputation system to allow entities that have incurred a franking deficit tax liability to offset this amount against an income tax liability. Special rules are provided for life insurance companies to ensure that a franking deficit tax liability can only be offset against that part of the company's income tax liability that is attributable to its shareholders. I hope the bill will be dealt with in an equally expeditious manner by the Senate.