



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**COMMITTEES**

**Economics Committee**

**Report**

**SPEECH**

**Monday, 18 June 2012**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

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**Questioner**  
**Speaker** Owens, Julie, MP

**Source** House  
**Proof** No  
**Responder**  
**Question No.**

**Ms OWENS** (Parramatta) (12:27): On behalf of the Standing Committee on Economics I present the committee's advisory report on the Passenger Movement Charge Amendment Bill 2012, the Tax Laws Amendment (2012 Measures No. 2) Bill 2012, the Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012 and the Pay As You Go Withholding Non-compliance Tax Bill 2012, incorporating a dissenting report, together with the minutes of proceedings and evidence received by the committee.

In accordance with standing order 39(f) the report was made a parliamentary paper.

**Ms OWENS:** by leave—The bills make a number of significant improvements to the tax laws across five areas, each of which the committee examined during the inquiry. Schedule 1 of the Tax Laws Amendment (2012 Measures No. 2) Bill 2012 and of the Pay As You Go Withholding Non-compliance Tax Bill 2012 seeks to make directors personally liable for their companies' unpaid superannuation guarantee amounts. This will prevent unscrupulous directors from phoenixing their businesses to avoid their super responsibilities. This practice has cost Australian employees hundreds of millions of dollars in lost superannuation. The committee commends both the intent and the operation of the bills in this regard.

Last year, the committee inquired into a package of bills in similar terms. The committee recommended that the government should investigate whether additional defences for directors could be inserted in the bills. This has occurred. If passed, the legislation will give new directors 30 days—that is up from the current 14 days—to conduct due diligence before adopting a company's pre-existing obligations. Directors will also not be liable for a direct penalty where they took reasonable care in a matter and applied the super legislation in a reasonable way.

The committee also recommended that the government should investigate whether the provision should only apply if an individual has been engaged in phoenixing. The bills do not have this feature, and industry argue that they should be amended along these lines. Ultimately, the committee has come to the view that such a change is not warranted. The provisions will only apply when a company has not only failed to pay a super amount but failed to notify the Australian Taxation Office of this within two months of the event. The provisions are only triggered by a consistent high level of noncompliance.

Schedule 2 of the main bill is designed to ensure that the tax treatment of financial arrangements is consistent with the TOFA tax timing rules. The provisions are to be retrospective from the commencement of other TOFA amendments on 1 July 2010, and this retrospectivity was the key issue in the inquiry. Stakeholders expressed concern that taxpayers who had chosen to adopt the new TOFA rules, rather than elect to keep prior arrangements, would be disadvantaged. However, the committee accepts that the measures restore the original policy intent and that the government had previously flagged that retrospectivity will be necessary with TOFA to restore the policy intent from time to time.

Schedule 3 aims to protect a \$6 billion revenue risk that has arisen as a result of retrospective amendments in 2010 in relation to consolidation rules. These changes allowed consolidated groups to claim deductions back to 2002 in relation to the residual tax cost-setting rule and the rights to future income rule. In 2011, revenue problems with the 2010 changes became apparent and the Board of Taxation conducted an inquiry into the matter. The bill largely reflects the Board of Taxation's report. Groups that have already received a refund or who have an ATO ruling will generally be protected from the retrospective changes. Given the transparency of the process and the amount of revenue at stake, the committee again accepts that retrospective legislation is appropriate.

The Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012 and schedule 4 of the main bill increase the tax rate on managed investment trusts for foreign investors from 7.5 per cent to 15 per cent. This is a partial reversal of the recent decreases on this tax rate from 30 per cent a few years ago. The committee is mindful that, for equity investments, the comparison rate is the company tax rate, currently set at 30 per cent. The committee noted that the industry sector was concerned about how the change would affect it. However,

the committee accepts the government's argument of the wider macroeconomic importance of Australia having a sound fiscal strategy, an important driver for the whole economy.

The Passenger Movement Charge Amendment Bill 2012 increases the charge from \$47 to \$55 from 1 July 2012 and indexes it to the consumer price index. Similar to the managed investment trust provisions, the issues revolved around an industry sector being concerned about how it would be affected by a revenue increase. Once again, however, the committee supports the provisions on a national basis because of the government's overall fiscal strategy. The committee notes that the government remains committed to the Tourism 2020 initiative and continues to support the industry through programs such as T-QUAL, infrastructure upgrades and maintaining and expanding tourism attractions.

The bills represent a responsible package aimed at securing a sustainable revenue base for Australia as well as protecting the superannuation entitlements of Australian workers. The bills should pass.

On behalf of the committee I think the organisations that assisted the committee during the inquiry through making submissions or participating in the hearing in Canberra. I also thank my colleagues on the committee for their contribution to the report. I commend the report to the House.