THE SENATE

A NEW TAX SYSTEM (CLOSELY HELD TRUSTS) BILL 1999

A NEW TAX SYSTEM (ULTIMATE BENEFICIARY NON-DISCLOSURE TAX) BILL (NO. 1) 1999

A NEW TAX SYSTEM (ULTIMATE BENEFICIARY NON-DISCLOSURE TAX) BILL (NO. 2) 1999

Second Reading

SPEECH

Monday, 28 June 1999

BY AUTHORITY OF THE SENATE
Senator MURRAY (WA) (8.45 pm)—In rising to speak on the A New Tax System (Closely Held Trusts) Bill 1999 and related bills I think I should begin, as is appropriate, by a declaration of interest. I have an interest in a family trust, as has been previously outlined, and I think that it is appropriate to disclose that with each bill which affects trusts coming through.

The Bills Digest No. 189 of 1998-99 indicates that, in 1993—which was the year that Paul Keating, the previous Prime Minister, won his first election in his own right—there were 331,000 trusts. By 1996—which was the first year that John Howard, now the Prime Minister, won his first election in his own right—the number was 427,000. Those figures indicate that the number of trusts and the nature of trusts have been with us a very long time under both Labor and coalition governments, and the problems attached to them have been with us for that same period of time.

The Bills Digest also outlines the fact that, while the number of trusts and companies have both risen, the annual growth rate for trusts has increased while the growth rate for companies has decreased relatively. They go on to say:

The Australian Taxation Office has stated that the relative rates of growth of trusts and companies could reflect the different tax treatment of trusts and companies.

I think the 'could' is a bit of a qualifier, because they do. The reason that so many Australians are in trusts is they get tax advantages as a result, and it is that area which needs serious attention. In the Ralph review preliminary report No. 2, produced, I think, by Arthur Andersen, they illustrated the fact that, in internationally comparative terms, Australia and New Zealand have a remarkably high number of trusts which operate as business entities, as opposed to the other categories of trusts, and that is because of the development in Australian law under the Labor government and continued under the coalition government of advantaging trusts in that regard. Trusts are now very much a part of many Australians' lives. Ordinary Australians invest in unit trusts, property trusts or investment trusts. There are many varieties of trusts. Of course, we all know about family trusts and the reasons for which they are constructed. But the fact is that trusts of all kinds are very heavily used by Australians.

It is the opinion of the Democrats that the A New Tax System (Closely Held Trusts) Bill 1999 is a good advance in the direction of ensuring that trusts are appropriately taxed. These days it is often shorthand to say that trusts should be taxed as companies, but it is my opinion that we should rather say that like business activities, whether in trusts, companies, partnerships or individual operations, should be taxed alike. That is probably one of the major issues—that, depending on the legal entity, business activity is in fact taxed differentially—and is something to which we hope the government will attend. The government, and everyone else, is aware that the way in which trust activities end up being taxed is at the beneficiary end and not within the entity. By and large, most trusts are not taxed at all; taxation is in the hands of the trustee or the beneficiaries, and the trust itself is a throughput mechanism. Nevertheless, I think it is still appropriate to say that business activities, regardless of the entity, should always be treated similarly.

This particular bill imposes an obligation on the trustees of closely held trusts to disclose the identity and tax file numbers of the ultimate beneficiaries of net income and tax preferred amounts. People who are not attuned to these things can sometimes skip over the meaning of that, but the ultimate beneficiary is in fact clearly defined in the closely held trust as an individual or up to 20 individuals who, between them, directly or indirectly have fixed entitlements to a 75 per cent or greater share of the income or capital of the trust. Identifying the ultimate beneficiary is in fact a great march forward in tax law, because the ultimate beneficiary in a trust has quite often, in my view, been able to slide past their tax obligation.

I notice from the financial impact statement that the Treasury calculate that this measure `is estimated to raise revenue of $30 million in each of the following financial years'. I note that the Treasury advisers are sitting in the chamber. Through you, Minister, and Mr Acting Deputy President, I say to them: I am going to guarantee to
you that your estimate of $30 million is way short of the mark, and what you are introducing will in fact pinch a lot more people than that $30 million implies. I look forward to the statistics being produced in a couple of years time. I think this is going to be one of the great underestimations of how much revenue is earned, because the fact is that, through this device, you are going to be able to pin who the ultimate beneficiaries are—they are going to have to be declared. It is always worthwhile, Minister, as a government and as a Treasury to underestimate your future revenue stream. I think you are pretty safe on this one. I think this bill goes a lot further than people have woken up to.

To continue with the nature of the bill itself, the bill does provide that, if the trustee fails to notify the tax department of the ultimate beneficiary or if there is no ultimate beneficiary—and such a thing is hard to conceive—it can provide for taxation at a penalty rate or for offences under the Income Tax Act. Those penalties and offences are outlined in the bill and include the trustee being liable to pay the tax or, if the trustee is a company, the directors being also jointly and severally liable to pay tax. I notice there are fines under section 8C of the TAA ‘not exceeding $2,000 for the first offence, increasing to $5,000 or imprisonment for a period not exceeding 12 months for subsequent offences’. So there are some quite sharp penalties for failure to disclose these things. We then notice that, within the content of the bill, the ultimate beneficiary characteristics are defined quite tightly. The various mechanisms are carried through in consequential amendments to other bills.

I do not choose to say much more, Minister, other than I think that this is quite an effective bill. I think there is lots more to come on the trusts area, and the government has indicated that in the ANTS package. It is the opinion of the Australian Democrats that this bill should be strongly supported as one of the first tranches of legislation which will tighten up an area which badly needs tightening. Accordingly, as you will have recognised from my remarks, we will support the bill.