THE SENATE

BILLS


Second Reading

SPEECH

Wednesday, 4 May 2016

BY AUTHORITY OF THE SENATE
Senator DASTYARI (New South Wales) (10:01): I rise to speak on Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015 and the three related bills on behalf the opposition. At the outset and following the report of the inquiry by the Senate Economics Legislation Committee I am pleased to indicate that the opposition will be supporting this bill.

Labor announced its intention for a new tax regime for managed investment trusts in 2010, and with the Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015, the Abbott-Turnbull government is proceeding with work started under Labor. Because this bill advances work that was commenced under the Labor government, we support its intent and many aspects of it. However, we had concerns about a number of specific provisions following our consultations with stakeholders since the bill was first tabled in the other place. We, therefore, referred the bill to the Senate Economics Legislation Committee for further scrutiny. The opposition reserved its final position on this package until the committee reported. As a consequence of the committee report, I can now inform the chamber that we will be supporting this bill without amendment.

The committee report states that while submissions were generally supportive of the new tax system for AMITs, a few stakeholders raised significant concerns, in relation to the effect of the reforms on custodians and the feasibility of the commencement date. Having noted the concerns of some stakeholders, the committee was satisfied that any unforeseen or unintended consequences that may arise during the implementation process will dealt with by the government quickly. The opposition regards this as welcome news and particularly endorses the recommendation of the committee that there be a review of the new tax system within 24 months of commencement, in order to provide an avenue through which stakeholders can also express concerns. The Committee recommended:

That a comprehensive and formal post-implementation review of the legislation and operation of the tax system for attribution managed investment trusts be undertaken by Treasury and completed by 1 July 2018.

I understand the government has agreed with this recommendation.

Managed investment trusts are an important part of Australia's financial services landscape. The introduction of a new tax system for certain managed investment trusts follows the recommendations made by the Board of Taxation in its report on the Review of the taxation arrangements applying to managed investment trusts in August 2009. The underlying taxation legislation that currently applies to managed investment trusts relates to trusts more generally. The Board of Taxation was tasked with providing options for introducing a specific tax regime for managed investment trusts, MITs, which would enable Australia to become the financial services hub of Asia.

The board concluded that the current taxation arrangements applying to trusts create a level of complexity and uncertainty for managed investment trusts that is unacceptable for an industry of its significance to the economy. This is, primarily, the result of the current trust taxation provision in division 6 of part III of the Income Tax Assessment Act 1936 (ITAA 1936) being largely developed at a time before trusts were used in Australia as widely-held, commercially operated, collective investment vehicles.

A key element of the bills before the Senate is that managed investment trusts that choose to apply the new tax system will be known as attribution managed investment trusts, or AMITs. This has important consequences for managed investment trusts where trustees choose to apply the new system, as the choice is irrevocable and will therefore apply in future income years.

The opposition welcomes the potential for changes in the tax treatment of managed investment trusts that can help grow the managed funds sector. Appropriate changes could make Australian trusts more attractive for both local investors and foreign investors. As a capital-importing nation, this is absolutely critical for Australia. The Australian finance and insurance sector employs in excess of 400,000 people. To put it in perspective, that is
Managed investment trusts pool funds to generate financial returns for investors who do not have day-to-day control over the trust. That means that typical investors are superannuation funds, life insurance companies and sovereign wealth funds. In 2010, when former Assistant Treasurer Nick Sherry was originally proposing the changes that we are considering in this bill, he said:

Many millions of Australians are investors in MITs, either directly or indirectly through their retirement savings.

In 2010, the Labor government introduced an amendment to expand the definition of a ‘managed investment trust’ in relation to withholding-tax rules. In the subsequent three years, the funds flowing into the managed investment trust sector increased by nearly 78 per cent, demonstrating that clear and well-developed policy can have excellent results. Two-thirds of the funds flowing in came from the Asia-Pacific region, yet another reminder of the role that the region plays in Australia’s success, as epitomized in the former government’s Australia in the Asian century white paper.

Former Assistant Treasurer Sherry knew from extensive discussions that Australia’s tax rules around managed investment trusts were ‘complex, uncertain and unsustainable in the modern economy’. Currently, managed investment trust income is allocated and taxed in aggregate. At the end of the financial year, members of a trust receive an allocation of the net income a trust earns relative to their stake in the trust. This amount is then added to their individual taxable income. The trustee of a trust is then taxed on any remaining net income that has not been distributed to members.

In essence, the package we are considering provides flow-through tax treatment for different types of income in a way that means investors in a trust receive broadly the same benefits they would have if they held the trust assets directly. It is a good example of an area in which government can simplify rules in a way that benefits industry, investors and the economy.

That is certainly the intention of the bill, but we have to get the detail right to make sure that the intent becomes a reality and does not create unintended consequences. According to some stakeholders consulted by the opposition, there is a risk that the current drafting of provisions relating to the treatment of trusts with different classes of membership interests creates scope for abuse of the managed investment trust withholding-tax regime by large foreign investors. The explanatory memorandum for the bill acknowledges that this is a possibility, stating:

An attribution MIT may have more than one class of membership interests if, for example, different members have exposure to different groups of assets of the attribution MIT. As a result, the tax attributes of a particular class of assets can effectively be ring-fenced to a particular class of membership interests. In this regard, it is possible for a class to have just one member.

When it comes to tax, the opposition has a strong record of closing loopholes. We introduced measures to plug loopholes in Australia’s transfer-pricing rules and anti-avoidance provisions. The Liberals, by contrast, voted against the Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013. When the current Leader of the Opposition, Bill Shorten, was Minister for Financial Services and Superannuation, he championed the Tax Laws Amendment (Cross-Border Transfer Pricing) Bill (No. 1) 2012. The Liberals, by contrast, tried to block the measure, which was designed to crack down on companies that overvalued assets in international transactions.

One of the Abbott-Turnbull government’s first actions upon returning to office was to set about dismantling the good work that Labor had done to improve the offshore banking unit regime and tackle excessive debt loading. By ditching Labor’s proposals, in effect one of the first acts of the Abbott-Turnbull government was to hand $1.1 billion back to giant multinational firms. On this side of the house, we are determined to make sure that we reduce the number of loopholes and that we do not create new ones.
Stakeholders have also raised concerns about the obligations this package places on custodians to pay withholding-tax liabilities when no actual cash distributions have taken place. It is another issue that deserves a second look. There is no requirement in the draft bill for AMIT trustees to distribute enough cash to cover tax liabilities arising from attributed income. Stakeholders have asserted that this can create unacceptable risk for custodians, as they may be faced with tax liabilities which they cannot later recover from their clients and which may inadvertently lead to fewer custodians engaging with the AMIT regime. As we started the process to create attributed managed investment trusts, we are all too aware of how keen the financial services sector is to have this new regime running. On this side of the chamber, the opposition also understands that it would be hasty and irresponsible to proceed without ensuring that this new regime has the necessary integrity and functions that are intended. That is what good tax reform requires.

Australia has come to a time when we need good economic leadership. One of the promises of Prime Minister Turnbull when he deposed Prime Minister Abbott was that he would put in place economic leadership. If you look at the economic challenges that Australia faces, you can see the need for that. Consumer sentiment has fallen; we have seen downgrades on growth since the last election; unemployment is up; and public sector construction has fallen every quarter since the election and is now near an all-time low. We have per capita Australian income down two per cent since 2013. This is not a widely recognised fact, because we tend to use GDP to measure living standards. But GDP does not divide by population and, for the country with the most rapid population growth in the advanced world, that means GDP can be a misleading measure of living standards. Simply look at disposable per capita income: it is lower now than when the Abbott government won office. We look across the ASX and we see dividend payout ratios in excess of 60 per cent—well above the ratios that you see in similar advanced countries. Only six per cent of ASX 300 firms believe Australia is a 'highly innovative' nation.

Looking globally, we face challenges such as the one of what happens when interest rates begin to rise from their 5,000-year lows. We have unprecedented levels of instability in certain parts of the world. Geopolitical instability and economic fragility demand a government with a long-term vision for tax reform, but instead we have seen the junking of the tax reform process by this government. The 'Re:think' discussion paper, brought down last year, called on community groups, regular Australians and business groups to put in their submissions. More than 800 did so, costing thousands of hours of time and millions of dollars—the secretariat alone cost over $600,000—and yet the Prime Minister has now junked all of that process. The promised tax white paper, which was supposed to be delivered within the first two years of the Abbott-Turnbull government, now looks as though it will not be delivered at all. We do not even know when the green paper—which is supposed to precede a white paper—is coming.

In place of careful and consistent tax reforms, we are instead getting ad hoc thought bubbles. The latest one, yesterday, comes from the Assistant Treasurer—the third Assistant Treasurer in just two years. Instead of cracking down on multinational tax, the Assistant Treasurer has suggested that perhaps employees should snitch on their bosses in return for a cut of the tax take. A government which has cut 4,700 jobs out of the tax office, which rejects the opposition's multinational tax plan and which does not believe in tax transparency instead suggests that we are going to garner more tax by encouraging employees to snitch on their bosses. It is indeed bizarre that a government which voted for less tax transparency last year now has plans for employees to spill tax secrets in exchange for cash.

Getting tough on multinational taxation requires robust tax laws—tax laws such as the proposal produced by the opposition, informed by work from the OECD, costed by the Parliamentary Budget Office, adding $7.2 billion to the budget bottom line over the course of the decade and grounded in good economic intuition. If you are deducting debt, you should do it based on sound economics, rather than ad hoc thresholds. That is what good multinational tax reform requires, rather than a dibber-dobber plan.

On this side of the chamber we are deeply committed to tax reform. But, as with all tax legislation that is debated in this parliament, it is absolutely incumbent on the government to be transparent about the ramifications these changes to the managed investment trust regime will have. The last thing the opposition wants is another tax loophole that can be exploited to deny the Australian community a fair share of tax.

Following the report of the Senate Economics Legislation Committee, the opposition agrees with the view of the committee that the new tax system for attribution managed investment trusts is long overdue and will modernise the tax treatment of managed investment trusts. These reforms will make Australia more competitive in the funds management industry and allow Australian funds to participate in the Asia Region Funds Passport.
I reiterate that, having noted the concerns of some stakeholders, the committee was satisfied that any unforeseen or unintended consequences that may arise during the implementation process will be dealt with by the government quickly. The opposition regards this as welcome news and particularly endorses the recommendation of the committee that there be a review of the new tax system within 24 months of commencement in order to provide an avenue through which stakeholders can also express their concerns.

With this, the opposition supports the bill.