

14 May 2008

TAX LAWS AMENDMENT (2008 MEASURES NO. 2)

BILL 2008

Second Reading

Mr BRADBURY (Lindsay) (11.02 a.m.)—I rise in support of the Tax Laws Amendment (2008 Measures No. 2) Bill 2008. In particular, I wish to comment on two of the schedules, principally schedule 1 and schedule 6, under which various organisations have been identified for listing as deductible gift recipients. Before I turn to those schedules, I would like to respond to some of the comments of the member for Bowman, who, as the member for Dobell rightly pointed out, engaged in very little discussion of the matters currently before the House in this bill and went off on a rant about more general matters which I think we could describe as a response to the government's budget.

In the member for Bowman's comments, we see further contradictions emerging from within the opposition ranks when it comes to inflation—compared to our government's determination to take the challenge of inflation head on. The member for Bowman referred to inflation, I think, as the abyss of inflation. There is an increase in the hyperbole coming into the rhetoric from those on the other side; really, the rhetoric has gone from nought to 100 in 10 seconds. If you go back and look at some of the comments that have been made previously by the members opposite, there has been a real degree of complacency when it comes to the issue of inflation.

We do not have to go back all that far, just into recent history, to see when the member for Higgins proclaimed, 'There's no life left in the inflation dragon.' We see here today, in the member for Bowman, someone strapping on the armour again, coming out to go a second round with the inflation dragon, someone on the other side who has now come to an appreciation and understanding that we are facing a considerable inflation challenge. It is an inflation challenge that is the legacy of the former government. The highest inflation level in 16 years is stripping away the value of the wages of working people in this country. That is why it is one of the No. 1 priorities of this government. No doubt there will be more opportunities to address this in the course of debate about the appropriation bills. But I will just make the very simple point that the shadow Treasurer had previously denied the existence of this problem. That is on record, and he has done it on many occasions. I quote from the

Asked if inflation was out of the target band, Mr Turnbull said ... it was not.

He had previously said that it was a fairytale; it was a myth that the Treasurer was trying to create. I saw some of the shadow Treasurer's comments last night in response to the budget. There was an alerted sense of concern about inflation, and the shadow Treasurer was indicating that the government perhaps should have gone further and made further cuts. From someone who was denying the problem of inflation just a short time ago, he has become someone who is now challenging the government, suggesting that the government has not gone far enough in inflicting those cuts that are necessary to slow overall demand. But, when asked to identify where he might have gone further, we had silence from the shadow Treasurer—a further indication of the opposition's failure to come to a unified position on

how to tackle the challenge of inflation.

In fact, yesterday I noted the comments by the opposition leader, who had previously said that the inflation crisis is a complete charade. For those of us who have been studying the comments of the Reserve Bank, there are not a lot of hand movements and gesticulations required in order to see the less than subtle messages coming from the bank—that is, that inflation is a genuine challenge that needs to be confronted. That is why I am very proud that the budget that was handed down last night by the Treasurer is one of the key armaments in this government's fight against inflation, and that is something we will have more to say about in the future.

I would like to turn my attention to the provisions of the bill, in particular schedule 1. I note that the measure outlined in schedule 1 of the bill really does bring into effect a common-sense outcome that had previously not been achieved under the tax laws. I think that there is a comment in the explanatory memorandum that goes to the very heart of the issue that is being addressed by this particular measure. I will read from point 1.5 of the EM:

There is currently no provision in the tax law that recognises the reality that the taxpayer did not receive the economic benefit from the disposal as a result of the misappropriation.

This goes to the issue of the disposal of a depreciating asset in circumstances where, by virtue of the balancing adjustment event, there may in some cases be a tax liability arising—in particular, in cases where an employee or an agent may have been involved in carrying out the disposal and, in the course of doing so, may have misappropriated the proceeds. Therefore, you have a situation where, under the tax law as it currently exists—which this amendment seeks to change—in those circumstances the holder of the depreciating asset will end up paying an amount, or have an amount included in their assessable income, by virtue of the balancing adjustment event, which will be an amount that they are required to pay notwithstanding the fact that they may not have actually received any of those proceeds as a result of the misappropriation that had occurred by the actions of their employee or agent. It is a mischief that this amendment will correct.

The other element of it is in respect of the disposal of those depreciating assets that may have been held for a partly or wholly non-taxable purpose. The relevant CGT provisions would otherwise give rise to a potential tax liability being imposed upon the holder and disposer of that depreciating asset. The amendment seeks to ensure that the economic realities of what the holder of the depreciating asset faces are actually reflected in terms of what requirements for tax to be paid are actually brought to account by the tax legislation. So it is a very sensible amendment. It is one that, I think, would not be in dispute or contest, either in this place or for the common man on the street. There is no reason why tax should otherwise be payable.

I would like to now turn my attention to schedule 6 and the various provisions that are outlined there, particularly in relation to one of the organisations that have been identified and will become deductible gift recipients as a result of this amendment: the Finding Sydney Foundation. I wish to make a few comments in relation to the good work that the Finding Sydney Foundation have been involved with. We are all very much aware of the success that they have recently had in locating the Sydney, having located the Kormoran. This is a matter that has really been brought to completion, and there is no doubt that it has been greeted with mixed emotions by most Australians and, in particular, those who have been in

some way personally affected by the going down of the Sydney. This provision allows for that particular foundation—which has done much good work, building on the back of a grant that had previously been made by the former government—to raise the funds necessary in order to achieve what has been achieved. I think most people would agree that it is sensible that this matter be resolved in this way and that deductible gift recipient status be awarded to this particular foundation.

I want to offer a couple of personal reflections on the impact of the work that the Finding Sydney Foundation have been able to achieve. There were two individuals who went down on the Sydney who lived within the area that is now my electorate. In particular, I wish to acknowledge Cook Merton James Morphett and Stoker Robert Stevenson. These gentlemen went down with the Sydney. I have not been able to locate Mr Stevenson's family, but I have had some discussions with Mr Morphett's family. I should also acknowledge that the Morphett family is one of the finest families in the district in the Penrith area. They are one of the pioneering families of the district. They were a very large family. One of the significant points that I wish to note is that, in fact, they had five sons who served this nation in its armed forces. I think that is a significant contribution that should be acknowledged, and I wish to have that acknowledged in the parliament today.

I will briefly quote from an article in one of my local papers, the Penrith City Star, where Mr Warren Morphett, the brother of Merton Morphett, reflects upon the impact of losing his brother with the going down of the Sydney and also on what the finding of the Sydney has meant for him and his family. He said:

"I'm pretty sad about the whole thing ... It shattered the family."

The article goes on:

Mr Morphett's father was the first in the family to find out that the Sydney had sunk when he received a telegram on November 28.

Mr Morphett told me that the most significant thing about finding the Sydney was that it really has brought some closure to this chapter of his family's history. It is a significant chapter in our nation's history. I want to acknowledge the Morphett family and the suffering that they have felt as a result of the contribution that their five sons have made to this country and, in particular, the fact that now there is some closure. I wish to add my voice in support of the work of the Finding Sydney Foundation because, without their involvement, this closure could never have been achieved. I know that Mr Morphett and his family are also very grateful. I also acknowledge that one of my staff members' great-grandfather, Mr Percy Willis, was also one of those Australians who went down on the Sydney. So this is a matter that I have taken a particular interest in, and I am very pleased to see that we are, by virtue of this amendment, proposing to give deductible gift recipient status to the Finding Sydney Foundation.

I wish to offer a couple of general observations on the operation of the deductible gift recipient status provisions that are outlined within division 30 of the Income Tax Assessment Act 1997. I will add to and amplify some of the comments that have been made previously in this debate by the member for Maribyrnong and the member for Isaacs in relation to the somewhat unwieldy nature of this particular division, which has grown in size considerably and in my experience and in my view has made the job for many non-profit organisations in this country very difficult when it comes to trying to assess whether

or not they are eligible for the tax concessions that are associated with deductible gift recipient status. I think it is particularly relevant to make this point in Volunteer Week.

By way of illustration I wish to point out that the particular provisions that affect the endorsement or otherwise the listing of deductible gift recipients now account for approximately 90 pages in the tax legislation. So there are 90 pages to wade through for a not-for-profit organisation wishing to determine whether or not they are entitled to endorsement or have other avenues of redress in terms of seeking listing as a deductible gift recipient status. In my experience it is becoming increasingly the case that for a non-profit organisation to obtain the benefit of endorsement they need the assistance of a lawyer. In my previous profession, in a pro bono capacity, I often provided that assistance. But the pro bono resources available in this area are quite limited, and that means a range of organisations simply do not have access to the knowledge, the expertise and the know-how to frame an application that meets the requirements for endorsement under the act.

The other point I wish to make is that the act clearly allows for two alternative paths, the first being endorsement by the commissioner, and that involves characterising your organisation or demonstrating that your organisation fits within one of the established categories in division 30. The other avenue is by way of what we are now doing: specifically identifying those organisations within the tax legislation as organisations that are deductible gift recipients.

I wish to note a trend in recent years. We now have some 226 groups that are specifically identified in the tax legislation. In this particular bill, we are now discussing inserting another 13 groups. I wish to make it abundantly clear that I am not in any way opposing the entitlement, the eligibility or the appropriateness of these particular organisations being identified as being worthy of deductible gift recipient status. What I am suggesting is that, as we have now reached a situation where some 226 individual groups have had to go through a process that has resulted in amendments to the law so that the name of their organisation fits within the tax legislation, it is no wonder that this particular division has now reached 90 pages.

In addition to that, the other alternative is to demonstrate that your organisation fits within one of the categories. There are somewhere in the vicinity of 22 categories available under which you can make an application for endorsement. Within those 22 categories there are further subcategories. On my count there are at least 40 subcategories. So the legislation sets out 20-odd categories and 40-odd subcategories and those categories are the categories under which application can be made for endorsement by the Commissioner of Taxation. I note that, in statistics released by the Commissioner of Taxation, at the end of November 2007 there were somewhere in the vicinity of 24,000 active deductible gift recipients. So clearly the categories are dealing with a large number of those applications; notwithstanding that, there has still been a considerable need to go through the process of specific listing. That process involves the Assistant Treasurer issuing a press release at the time that a decision has been taken by the government and the government subsequently bringing legislation before this House. It is a very unwieldy process, particularly when there are administrative arrangements in place that can be undertaken as an alternative.

It would be my suggestion that, if we now have in excess of 200 groups that have to be specifically identified, there is in fact a case for reviewing the categories themselves. We have not found over the last few years just one or two organisations that do not fit neatly within the 20-odd categories and 40-odd

subcategories; we now have over 200. I very much would like to see this whole issue of the not-for-profit sector and the way in which they are treated—not just for income tax exemption purposes, which is a separate issue, but for deductible gift recipient status considerations—dealt with as part of our broader consideration of simplifying the tax system. Frankly, in my experience, there are many organisations—manned, staffed by volunteers—that in the end walk away with their hands in the air and say, ‘This is just too complex, too difficult; we are not going to go through the process.’ Alternatively they put an application in, not understanding the process, and they end up having it rejected because they are not aware of what the requirements are or they are not capable of drafting that application in a way that reflects the true realities of what they are doing.

Notwithstanding that and those comments, I think it is a matter for future reform. I would very much like to see it on the government’s agenda as part of the broader approach to tax reform. But I certainly endorse the objectives and the hard work and the contributions of all of those volunteers associated with the organisations that are now being listed as part of this amendment. I support the amendment and in particular add my voice in support of schedules 1 and 6.