COMMONWEALTH OF AUSTRALIA

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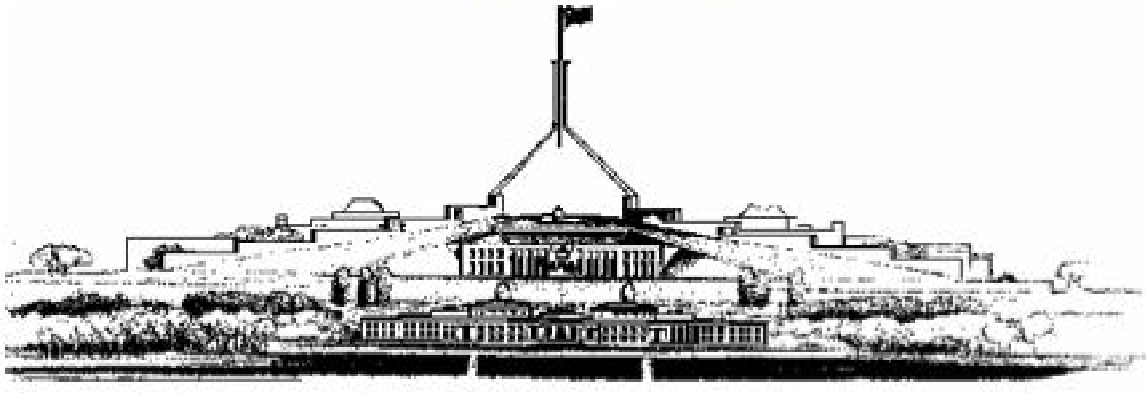

THE SENATE

TAX LAWS AMENDMENT (2008 MEASURES NO. 6) BILL 2009

Second Reading

SPEECH

Thursday, 12 March 2009

BY AUTHORITY OF THE SENATE

SPEECH

Date	Thursday, 12 March 2009	**Source**	Senate
Page	1404	**Proof**	No
Questioner		**Responder**	
Speaker	Furner, Sen Mark	**Question No.**	

Senator FURNER (Queensland) (11.03 am)—I rise here today to talk on the Tax Laws Amendment (2008 Measures No. 6) Bill 2009. This bill implements a number of improvements to tax law in Australia. As a member of the Senate Standing Committee on Economics, I see this as just another example of the work and commitment that all the members on that committee are doing to correct the measures in laws, in particular tax laws, in order to resolve matters that will free up tax laws in this country.

Through these amendments, a new schedule has been added to ensure that charities collecting donations for bushfire victims are tax deductible. That is one measure. The other major measures in the amendments include changes to the capital gains tax, to restrict capital gains tax scrip-for-scrip rollover, to the Superannuation Guarantee (Administration) Act 1992 with regard to late payment offsets and to the provisions of the Taxation Administration Act 1953 with regard to assistance-in-collection provisions, as well as minor amendments to other tax legislation. I believe tax law, although complicated at times, is imperative to Australian businesses, employees, regulators, individuals and government. Here we are today trying to make these laws better for all those groups of people. The Rudd Labor government has made a commitment, and will continue with its commitment, to care for and maintain our tax system. Each amendment to this legislation is indicative of this commitment.

In the Tax Laws Amendment (2008 Measures No. 6) Bill 2009, schedule 1 deals with capital gains tax rollovers for corporate restructures under the Income Tax Assessment Act 1997. It will modify scrip-for-scrip capital gains tax rollover provisions so that during corporate restructures the purchaser's cost base of shares reflects the tax cost of the target entity's net assets. Under the current provisions, companies can obtain unintended tax benefits through consolidation. This can cause significant disruption to the operation of capital gains. The amendments seek to prevent this type of exploitation of the scrip-for-scrip rollover. The Australian Taxation Office describes its experiences in the explanatory memorandum of the bill as follows:

… Companies are able to gain significant tax benefits by restructuring in a way that attracts the scrip for scrip roll-over rather than the exchange of shares roll-over. These tax benefits are compounded if the entity taken over becomes a member of the acquiring entity's consolidated group.

… For example, some entities have entered into schemes that involve the insertion of a new holding company above the original entity (known as 'top hat' schemes). The schemes are designed to attract a scrip for scrip roll-over. As a result, the holding company obtains a market value cost base for the shares it acquires in the original entity under the scheme even though there is no significant change in the underlying ownership of the assets.

… Where the original entity subsequently joins the holding company's consolidated group, the consolidation tax cost setting rules apply to push this market value cost base into the underlying assets of the original entity. This effectively allows the tax costs of the original entity's assets to be reset which, in turn, can lead to an increase in capital allowance deductions and a reduction in capital gains that arise on the disposal of those assets.

The amendments look to the market value cost base when shares are acquired through scrip-for-scrip rollover, which will help prevent exploitation or unintended tax benefits.

Schedule 2 deals with assistance in the collection provisions of the Taxation Administration Act 1953. The amendments look to provide consistency among partner countries and the Australian Taxation Office. Collection provisions currently enable the Commissioner of Taxation to take action on tax debts owed to another country where the debtor is an Australian resident or has assets in Australia. The amendments seek to overcome technical issues arising through current legislation. They provide new mechanisms such as reducing the liability of a debtor in certain circumstances, expanding the type of payments the commission can make to foreign entities and clarifying the foreign claims register.

Schedule 3 relates to late payment offsets for superannuation guarantee contributions. The superannuation guarantee scheme relates to the prescribed minimum superannuation contribution—currently nine per cent—payable on an employee's ordinary time earnings. This is administered by the Australian Taxation Office. When an employer neglects to pay this it is known as an SG shortfall. The amendments deal with an SG shortfall in regard to late payment offsets. Currently, if an employer does not pay the SG within the 28-day period they must lodge an SG statement on or before the 28th day of the second month after the end of the quarter. The total payments owed are known as the SG charge and are made up of the SG shortfall plus interest and administration costs. This is distributed by the Australian Taxation Office on behalf of the employees. Currently, employers who make contributions to a superannuation fund after the due date can offset the late payment against the SG charge liability. As these payments are not tax deductible and there is no time limit to making late payment, there is little incentive for an employer to make payments promptly. The amendments seek to limit the time during which an employer may defer payment of the SG and limit the amount of the interest component of the SG charge if the legislation is complied with. These particular amendments are more employer friendly and thus will have a flow-on effect to employees by ensuring prompt payment of superannuation.

Schedule 4 deals with minor amendments to a variety of legislation, updating outdated terminology and grammatical errors. This again reflects the Labor government's commitment to care for and maintain our complex tax system. Schedule 5 introduces measures to alleviate financial hardship felt during traumatic events such as the 2009 Victorian bushfires and the North Queensland floods. As it follows, subsequent to the disastrous Victorian bushfires on Black Saturday all Australians dug deep to assist in donations towards support for those fellow Australians who needed help the most. Equally, Australians dug deep for the victims of the floods in my home state of Queensland. The amended schedule 5 will allow for a new schedule to the bill to ensure that charities collecting donations for bushfire victims are tax deductible. What we are doing in this regard is specifically listing the Red Cross's and the Victorian government's 2009 Victorian bushfire appeal as a deductible gift recipient for a five-year period, and that will allow tax-deductible donations for that purpose. We are also doing more than that: we are allowing further concessions to be made and are amending the disaster relief category to allow a Treasury minister to declare a disaster for tax purposes—and it goes on. So there are some important amendments in this regard which will help to allow donations and assistance which have been given in circumstances of fire, flood and other disasters to be used for the benefit of people such as those in Victoria and North Queensland.

The Red Cross and the Victorian government have established the joint 2009 Victorian Bushfire Appeal Fund. As the Red Cross is a public benevolent institution, or PBI, any tax deductible funds being donated through the appeal fund can be used for direct relief only and not for recovery or reconstruction efforts. Donations being collected by the appeal fund are currently being transferred to a Victorian government special-purpose trust fund. The trust fund comprises both donations from the general public, through the Red Cross, and moneys being contributed by the Australian and state and territory governments and international governments.

The specific listing of the trust fund will ensure it can receive tax deductible donations for recovery and reconstruction as to communities affected by the 2009 Victorian bushfires. Currently, the requirements of the Australian disaster relief fund general DGR category require that a state of emergency be declared by a relevant state minister before the provision can be enacted. Once enacted, the Taxation Office can endorse as DGRs those public funds which are established to provide for relief, recovery and reconstruction following a disaster in Australia. Amending the tax law to allow a Treasury minister to declare a disaster situation for tax purposes will allow for situations where there is national support for victims of a disaster and where a state of emergency is not declared by the relevant state, as has occurred for the 2009 Victorian bushfires. Once these amendments have received royal assent, a Treasury minister can declare the 2009 Victorian bushfires as a disaster situation.

A remaining question is whether providing funds to the trust fund for recovery and reconstruction would jeopardise the Red Cross's tax concessional status as it would be providing for non-PBI activities. Amending the existing Australian disaster relief fund general DGR category in order to expand the scope of PBI activities when a disaster has been declared would allow PBIs and other organisations to establish a public fund for the relief, recovery and reconstruction of communities. The PBI could then either provide funds to organisations providing the assistance or undertake the assistance directly. The amendment would also ensure that PBIs seeking donations would not jeopardise their PBI status should they wish to contribute to recovery and reconstruction efforts. PBIs such as the St Vincent de Paul Society, Anglicare Victoria and the Salvation Army are accepting donations to provide emergency relief for those affected by the bushfires.

The income recovery subsidy is a Newstart-like payment which will provide financial assistance to employees, small business owners and farmers who can demonstrate a loss of income as a result of the Victorian bushfires or North Queensland floods. The payment is set at the maximum Newstart rate. Normally a payment received for lost salary, wages or income would be taxable and would be included in an income test for determining eligibility for certain tax offsets. Exempting these payments ensures that no tax will be paid on them and that they will not be included in calculating eligibility for tax offsets through the separate net income test.

These amendments put beyond doubt that tax deductions to the Victorian Bushfire Appeal fund are tax deductible. The amendments also improve the tax law by easing the requirements for deductible gift recipient status, which can be granted to organisations assisting in the event of disasters and by ensuring that public benevolent institutions such as Red Cross, Anglicare and St Vincent de Paul retain their PBI status when assisting in reconstruction efforts.

I wish to briefly comment that the Red Cross are to be commended for the work they have done in Victoria and in Queensland. I have heard about that work. The Red Cross are a magnificent organisation, deserving of the kind of support the Australian people have given them. The legislative change that the minister has circulated will help the Red Cross in their operations. Anything we can do in terms of amendments to our tax laws to help the Red Cross is of great advantage. I want to praise and thank them for the wonderful work they have done in Victoria and particularly in North Queensland, with our sisters and brothers and fellow Queenslanders who have suffered so much recently.

I was up in North Queensland recently when Cyclone Hamish was bearing down on the coast from Cairns through to Mackay. I could only think at the time that another disaster could follow the terrible flooding in North Queensland. Sure enough, by virtue of Mother Nature, the cyclone diverted itself away and dissipated into a storm. When people are digging deep into their pockets, these laws will assist in those recovery efforts to make sure that the money is going through without additional burden and taxation. I commend the bill to the chamber.