PARLIAMENT ABDICATES

By Terence Dwyer

The Taxation Laws Amendment (Foreign Income) Bill 1990 proposes an income tax on income before it is received and regardless of whether it will ever be received. (Australian Law News", Feb. 1991).

The bill thus ignores the fundamental principle that "receivability without receipt for the purpose of income tax is nothing at all".

- People can be required to pay tax on income which is not their income, and to which they may never have any rights whatsoever.
- The bill imposes tax liabilities on persons who not only may not be entitled to the income taxed, but who may not even have access to information necessary to dispute an assessment.
- Multiple assessments may be raised subject only to the unfettered discretion of the Commissioner to reduce his demands for multiple taxation – but he is under no obligation to limit the amount taxed to 100% of a foreign entity's income.
- The legislation seeks to restrict taxpayers' rights to dispute deemed liabilities by prohibiting courts from receiving evidence. This has been copied from the USA, but taxpayer protections available in the USA (such as guarantees of due process and prohibitions against searches and seizures) have not been copied.
- As a corollary, the emigration of multinationals from Australia may ultimately have an adverse effect on Australia's ability to expand exports and invisible earnings so as to service its foreign debts.
- Australia may find itself economically quarantined from world investment flows. Through this bill the Treasurer may be thwarting his own prediction that "companies with an Australian base are better placed than most to take advantage of the growth prospects in the Asia-Pacific region, and it is likely that we will see growing involvement in our region in coming years."
- The bill does not allow a general pooling of losses. Income tax, after all, is supposed to be a tax on *net* income. It is both inequitable and inefficient to levy an income tax which does not allow deductions for losses. If the decision to invest overseas is to be neutral from a tax point of view, overseas losses should be deductible against domestic income. Similarly, there should be no quarantining of deductions against foreign-source income.

COMMENT

Until annual site values are used as the main or sole source of revenue, this sort of absurdity will continue.