



The Parliament of the  
Commonwealth of Australia

Joint Committee of Public Accounts

# Report 348

An Advisory Report  
on the Tax Law  
Improvement Bill 1996

March 1997

The Parliament of the Commonwealth of Australia

Joint Committee of Public Accounts

## **REPORT 348**

**An Advisory Report on the Tax Law Improvement Bill 1996**

**March 1997**

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<sup>1</sup> Appointed 13 December 1996.

<sup>2</sup> Appointed 29 May 1996, discharged 13 December 1996.

**MEMBERSHIP OF THE SECTIONAL COMMITTEE  
ON THE TAX LAW IMPROVEMENT BILL 1996**

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## DUTIES OF THE COMMITTEE

The Joint Committee of Public Accounts is a statutory committee of the Australian Parliament, established by the *Public Accounts Committee Act 1951*.

Section 8(1) of the Act describes the Committee's duties as being to:

- examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the *Audit Act 1901*;
- examine the financial affairs of authorities of the Commonwealth to which this Act applies and of inter-governmental bodies to which this Act applies;
- examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;
- report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- report to both Houses of the Parliament, any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to the house upon that question.

The Committee is also empowered to undertake such other duties as are assigned to it by Joint Standing Orders approved by both Houses of Parliament.

## **TERMS OF REFERENCE**

On 11 December 1996 the House of Representatives Resolved that:

1. The Tax Law Improvement Bill 1996 be referred to the Joint Committee of Public Accounts for consideration and an advisory report to the House by 6 March 1997;
2. the terms of this resolution, so far as they are inconsistent with the standing and sessional orders, have effect notwithstanding anything contained in the standing and sessional orders; and
3. a message be sent to the Senate acquainting it of this reference to the Committee.

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## CHAIRMAN'S FOREWORD

This report presents the findings of the Joint Committee of Public Accounts' review of the Tax Law Improvement Bill 1996. The Bill is the second tranche of legislation designed to simplify and restructure the *Income Tax Assessment Act 1936*. The first tranche of legislation was reviewed by the JCPA in 1996 and is the subject of *Report 345*.

The defects of the 1936 Act have been known for some time. Indeed, in 1993 the Joint Committee of Public Accounts in *Report 326* - a report on the administration of tax law and the operations of the Australian Tax Office - recommended that the tax law be simplified. That task is being undertaken by the Tax Law Improvement Project (TLIP).

Complaints about the faithfulness with which the Tax Law Improvement Bill reflects the old 1936 Act focused mainly on two divisions: Division 42 dealing with plant depreciation, and Division 70 dealing with trading stock. Accordingly, most of the Committee's recommended amendments to the Bill refer to clauses within these divisions. However, for the most part, the Bill itself has been well drafted and the complaints have been few.

The greatest debate during the inquiry has centred around what has not been included in the Bill rather than what has. Time after time the Committee has received evidence from people and organisations frustrated that TLIP's narrow policy mandate has precluded it from simplifying the policy complexities that underlay the 1936 Act. As a result, real simplification of the tax law is not being achieved.

This is not the fault of TLIP which has had to work within its existing mandate. However, the Committee believes it vital that tax policy be simplified. For this reasons, the Committee has recommended to Government that TLIP's mandate be widened to allow it to review a broader range of policy simplification issues. TLIP, with an expanded mandate and a Revenue Committee of Parliament, the establishment of which was recommended in *Report 345*, could complement each other and facilitate the very necessary policy review.

The adoption of these two major recommendations- TLIP with an expanded mandate and the establishment of a Revenue Committee- will facilitate the Government's promise to allow greater private sector involvement in tax policy simplification.

The bottom line should be better tax law that is truly less complex.

*The Committee is concerned that TLIP's consultation process may be suffering in the rush to have legislation introduced into Parliament. As the Committee has already indicated, private sector involvement in the rewrite process is important and should not be compromised.*

For its own part, the Committee has not had the time to review the Bill as comprehensively as it would have liked. Accordingly, the Committee will seek greater time to review future tranches of legislation if they are referred to the JCPA by Parliament.

In conclusion I would like to thank the many witnesses who have provided written and verbal evidence to the Committee. For many, this is the third or fourth time that they have given evidence on some aspect of the rewrite project. I would like to thank also the Committee's consultant, Mr Mike Bannon of Duesburys for his expert advice. All have helped the Committee become involved in a wide and well informed debate about Australia's income tax law. The end result should be better law for all taxpayers

Alex Somlyay MP  
Chairman

## **RECOMMENDATIONS**

### **Recommendation 1**

The vacant private sector position in the Tax Law Improvement Project's (TLIP) senior management team be filled as a matter of urgency. TLIP should be given additional funding to allow a third full time equivalent private sector position in TLIP's senior management team to be filled. (paragraph 2.24)

### **Recommendation 2**

Government should expand the mandate of the Tax Law Improvement Project to allow it to consider a wider range of tax policy simplification issues than the mandate currently allows.

Such a mandate should be applied to TLIP for all future tranches of rewritten legislation. (paragraph 3.13)

### **Recommendation 3**

The provisions of income tax law identified in Subdivision 20-A of Schedule One of the Tax Law Improvement Bill 1996 be amended to codify that deductions are allowed where assessable income is refunded. (paragraph 3.22)

### **Recommendation 4**

The provisions of the income tax law identified in Clause 25-35 of Schedule One of the Tax Law Improvement Project 1996 be reviewed to allow claims for deductions for bad debts extinguished under a deed of compromise. (paragraph 3.25)

**Recommendation 5**

The provisions of income tax law identified in Division 32 of Schedule One of the Tax Law Improvement Bill 1996 and relating to deductions for entertainment expenses be reviewed and amended as a matter of priority to simplify the underlying policy and reduce the cost of compliance. (paragraph 3.29)

**Recommendation 6**

The provisions of income tax law identified in Division 34 of Schedule One of the Tax Law Improvement Bill 1996 and relating to deductions for non-compulsory uniforms be reviewed and amended as a matter of priority to simplify the underlying policy and reduce the cost of compliance. (paragraph 3.33)

**Recommendation 7**

The provisions of income tax law identified in Division 42 of Schedule One of the Tax Law Improvement Bill 1996, be reviewed and amended as a matter of priority to clarify the nexus between plant depreciation and the concept of ownership and whether such a nexus remains appropriate. (paragraph 3.38)

**Recommendation 8**

The areas of tax law identified in Clauses 42-45 and 42-65 of Schedule One of the Tax Law Improvement Bill, which require taxpayers to gain information from other parties, be reviewed and amended to require the other parties to transfer that information. (paragraph 3.41)

**Recommendation 9**

The area of income tax law identified in Subdivision 42-E of Schedule One of the Tax Law Improvement Bill should be reviewed and amended with the goal of allowing taxpayers to automatically write off plant which is fully used for business purposes when its written down value reaches a nominal amount using the diminishing value method for calculating depreciation deductions (see Clause 42-160). (paragraph 3.46)

**Recommendation 10**

The area of income tax law identified in Subdivision 42-E of Schedule One of the Tax Law Improvement Bill 1996 dealing with calculation formulae for depreciation deductions be amended so that depreciation calculations for the year of acquisition and disposal of plant be:

- (a) for the diminishing value method, equal to the opening undeducted cost multiplied by one half multiplied by the diminishing value rate; and
- (b) for the prime Cost method, equal to the Cost multiplied by one half multiplied by the Prime Cost rate. (paragraph 3.49)

**Recommendation 11**

The area of income tax law identified in Subdivision 42-L of Schedule One of the Tax Law Improvement Bill 1996 be reviewed and amended to simplify the pooling provisions, particularly as they refer to the acquisition and disposal of plant.

This recommendation be read in conjunction with Recommendation 10 above. (paragraph 3.53)

**Recommendation 12**

The income tax law be amended with the goal of avoiding the potential imposition of double taxation or double deductions arising from the timing of the derivation of income or deductions. **(paragraph 3.60)**

**Recommendation 13**

Reference to 'hire-purchase' agreements should be excised from the definition of 'quasi ownership' in Clause 42-310 of Schedule One of the Tax Law Improvement Bill 1996 until the full spectrum of lease-hire purchase equivalent arrangements can be incorporated into the quasi-owner definition at once. **(paragraph 4.10)**

**Recommendation 14**

Clause 70-10 of Schedule One of the Tax Law Improvement Bill 1996 be amended to insert the words 'in the ordinary course of a business' after the word 'held' in line 16 on page 269.

Clause 70-30 of Schedule One of the Tax Law Improvement Bill 1996 be amended to delete the words 'you had then sold it' in line 24 on page 271 and replace with the words 'just before it became trading stock, you had sold it'.

Clause 70-110 of Schedule One of the Tax Law Improvement Bill 1996 be amended to delete the words 'you had then sold it' in line 24 on page 285 and replace with the words 'just before it stopped being trading stock, you had sold it'. **(paragraph 4.14)**

**Recommendation 15**

Clause 70-30 of Schedule One of the Tax Law Improvement Bill 1996 be amended to make allowance for market value as well as cost value as the notional transfer price. This could be done on the following basis:

- (a) when an asset becomes trading stock for the first time, market value be used for all pre September 1985 assets converted into trading stock and cost value, as adjusted by CPI (when working out gains), be used for assets acquired after September 1985; and
- (b) when an item ceases to be trading stock, cost value be used at the time of transfer. **(paragraph 4.20)**

**Recommendation 16**

Clause 15-15 of Schedule One of the Tax Law Improvement Bill 1996 be amended to include a note indicating that the first part of Section 25A of the Income Tax Assessment Act 1936 remains operative. **(paragraph 4.22)**

**Recommendation 17**

Clauses in Division 15 of Schedule One of the Tax Law Improvement Bill 1996 or the Explanatory Memorandum should be amended to ensure that assessable income, where appropriate, is assessed on a cash rather than accrual basis. **(paragraph 4.26)**

**Recommendation 18**

Clauses 20-110, 20-125 and 42-80 of Schedule One of the Tax Law Improvement Bill be amended to clarify that the clauses are restricted to cars designed mainly for the transport of passengers. **(paragraph 4.29)**

**Recommendation 19**

A consequential amendment be made to the Income Tax Assessment Act 1936 to indicate that the part of subsection 65(1D) dealing with the partnership component of the definition of 'associated persons' will have continued operation following assent to the Tax Law Improvement Bill 1996. (paragraph 4.33)

**Recommendation 20**

Division 32 of Schedule One of the Tax Law Improvement Bill 1996 should be amended to include a note that deductions for expenditure envisaged by paragraph 51AE(5)(g) of the Income Tax Assessment Act 1936 are still allowable. (paragraph 4.37)

**Recommendation 21**

If recommendation 13 above is rejected, then Clause 42-208 of Schedule One of the Tax Law Improvement Bill 1996 be amended to provide greater flexibility for agreements where interest and payments are not fixed.

Clause 42-208 should also be amended to ensure that it does not rely on market value in the process of determining termination values. (paragraph 4.41)

**Recommendation 22**

A note be added to Clause 70-20 of Schedule One of the Tax Law Improvement Bill 1996 indicating that the clause gives way to the rules covering international agreements about the purchase of property in Division 13 of the Income Tax Assessment Act 1936. (paragraph 4.44)

**Recommendation 23**

The Explanatory Memorandum of the Tax Law Improvement Bill 1996 be amended to clarify that the phrase 'item' used in Clause 70-45 of Schedule of that Bill includes the plural. (paragraph 4.48)

**Recommendation 24**

Clause 70-100(7) of Schedule One of the Tax Law Improvement Bill 1996 be amended to enable the Commissioner of Taxation to allow for further time to be given to make the election. **(paragraph 4.51)**

# 1

## SETTING THE CONTEXT

### **Introduction**

**1.1** On 11 December 1996, the Tax Law Improvement Bill 1996 ('the Bill') was introduced into the House of Representatives to replace parts of the Income Tax Assessment Act 1936 ('the 1936 Act').

**1.2** After the second reading speech in the House of Representatives, the Bill was referred to the Joint Committee of Public Accounts (JCPA) for consideration with an advisory report to be presented to the House by 6 March 1997.<sup>1</sup>

### *Structure of the Bill*

**1.3** The Tax Law Improvement Bill 1996 itself is only two pages long. The bulk of the detail, including the rewritten sections of the 1936 Act and the consequential amendments and transitional provisions are contained in the 12 schedules appended to the Bill.

**1.4** For reading convenience, however, this report refers to clauses in the schedules as if they were in the Bill itself. Thus, for example, Clause 30-240 of Schedule 1 of the Bill, is referred to as Clause 30-240 of the Bill.

### *Conduct of the Review*

**1.5** Invitations for submissions on the Bill were advertised in the national press on 19 & 20 December 1996. A list of the submissions received by the Committee can be found at Appendix I and a list of exhibits at Appendix II.

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<sup>1</sup> Votes & Proceedings, No. 60, 11 December 1996, p. 1012.

1.6 The Committee held public hearings on the Bill on 18 & 19 February 1997. The hearings used a 'round table' format and were structured to encourage all participants to comment on issues of concern to them. On the first day, the Committee took evidence from the Tax Law Improvement Project's (TLIP) private sector Consultative Committee (the 'Consultative Committee'). On the second day, other interested parties gave evidence. Officers from TLIP attended on both days. A list of participants at the hearings can be found at Appendix III.

#### *JCPA Use of Consultant*

1.7 The Committee engaged Mr Michael Bannon of the firm Duesburys as a consultant. Mr Bannon provided the Committee with verbal and written advice on the evidence received at the public hearings and in submissions.

#### **The Tax Law Improvement Project**

1.8 In 1993, the JCPA conducted an extensive investigation of the administration of Australia's taxation laws, which culminated in *Report 326, An Assessment of Tax: A Report on an Inquiry into the Australian Taxation Office*.<sup>2</sup> One of the Committee's recommendations was that the Government establish a broadly based task force to redraft the 1936 Act.

1.9 The Government of the day responded to this proposal by establishing TLIP.<sup>3</sup> TLIP's task was, and is, to simplify income tax law by rewriting and restructuring the 1936 Act to make it easier to understand. TLIP's mandate is limited to improving the formulation of the existing tax law and does not extend beyond making the most minor policy changes.

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2 Joint Committee of Public Accounts, (JCPA), *Report 326, An Assessment of Tax: A Report on an Inquiry into the Australian Taxation Office*, AGPS, Canberra, 1993.

3 The Hon John Dawkins, MP, Treasurer, *Press Release*, Canberra, December 1993. TLIP is seeking an extension of time and funding to complete its task.

1.10 The Bill is the second in a series of bills designed to rewrite progressively the 1936 Act. In November 1995, the first set of Bills to begin this process were introduced into Parliament, but became null and void with the prorogation of Parliament prior to the March 1996 general election.<sup>4</sup> In June 1996 the Bills, with minor modifications, were introduced into the 38th Parliament where they are currently being debated.<sup>5</sup>

1.11 These first Bills established the framework and structure for the new Income Tax Assessment Act and included rewritten sections of the 1936 Act. The 1996 Bill continues the process of rewriting sections of the 1936 Act. The 1996 Bill, in turn, will be followed by another three legislative packages to complete the rewrite task.

#### *The JCPA's Previous Involvement in the Tax Law Improvement Project*

1.12 Since the tabling of *Report 326*, the JCPA has maintained an active interest in the tax law rewrite. As part of this continuing interest, the Committee held a public hearing in October 1995 to assess public reaction to TLIP's mandate, its then draft legislation and the timetable for implementing the rewritten legislation.<sup>6</sup>

1.13 The JCPA also reviewed the first package of Bills and tabled an associated report, *Report 345*, on 22 August 1996.<sup>7</sup> On 22 August 1996, the then Assistant Treasurer, Senator the Hon Jim Short, advised the Senate that the

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4 See *Votes & Proceedings*, No. 184, 30 November 1995, p. 2678.

5 Read a first time in the House of Representatives on 19 June 1996.  
See *Votes & Proceedings*, No. 18, 19 June 1996, p. 266.

6 See JCPA, *Report 343, Tax Law Improvement: A Watching Brief*, AGPS, Canberra, 1995.

7 JCPA, *Report 345, An Advisory Report on the Income Tax Assessment Bill 1996, the Income Tax (Transitional Provisions) Bill 1996 and the Income Tax (Consequential Amendments) Bill 1996*, AGPS, Canberra, 1996.

technical amendments recommended by the JCPA in *Report 345* would be accepted by the Government.<sup>8</sup> On 9 January 1997, the Government provided a response to all but one of the remaining recommendations made by the Committee.

1.14 The remaining recommendation called for the establishment of a Revenue Committee of Parliament to make recommendations to Government about minor tax policy issues. The Committee believed that this task was best undertaken by the JCPA, but that it could alternatively be undertaken by a separate joint select or standing committee. As of 5 March 1997, the Committee still awaits a formal government response to this recommendation.

### Structure of the Report

#### *Chapter Outline*

1.15 Chapter 2 reviews the process for implementing the new legislation and comments on the need for greater private sector representation in TLIP's senior management.

1.16 In Chapter 3, the Committee identifies aspects of income tax law covered in the Bill that need simplification, but which are beyond TLIP's limited policy mandate to improve. The Committee recommends an expansion of TLIP's mandate and early Government policy initiatives to resolve these identified problems.

1.17 In Chapter 4, the Committee has identified amendments to the Bill that it believes are within TLIP's mandate and should be implemented.

1.18 In the final chapter, the Committee stresses the need for a commitment by all involved to ensure that the rewrite project and broader policy consideration is conducted expeditiously.

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8 Senator the Hon Jim Short, *Statement by the Assistant Treasurer, The Hon Jim Short: Tax Law Improvement Project*, tabled in the Senate, 22 August 1996.

*Issues in Report 345 Not Re-Opened in this Report*

1.19 A number of the issues, concerns and debates that arose during the Committee's consideration of the first package of legislation apply equally to the 1996 Bill. Such issues include, *inter alia*, the legal status of diagrams; the continuing application of case law to rewritten sections of the 1936 Act; the potential for a reduction in the costs of compliance; and the need to ensure that Rulings by the Commissioner of Taxation ('the Commissioner') will be rewritten promptly.

1.20 In this report, the Committee has chosen, as a general rule, not to comment again on issues that it discussed in *Report 345*. However, the Committee has re-examined these matters, in the context of the 1996 Bill, if they have had a particular bearing on individual clauses.

1.21 While this report can be read in isolation, the Committee recommends that it be read in conjunction with *Report 345*. This will allow readers to obtain a more comprehensive understanding of the Committee's opinion on TLIP's legislation as a whole.

# 2

## THE REWRITE PROCESS

### Implementation

#### *Introduction*

2.1 TLIP believes that the 1936 Act is too large and complex to replace with a single Bill, or 'big bang' and hopes to introduce the new law by instalments ('progressive' or 'phased' replacement). TLIP expects that there will be five tranches of legislation before the 1936 Act is fully rewritten.

2.2 During its review of the first tranche of legislation, an alternative implementation approach called 'warehousing' was canvassed in detail. Warehousing envisages progressive enactment of the replacement Bills, but a simultaneous commencement date for them all.

2.3 In *Report 343* and *Report 345*, the JCPA recommended the phased implementation of the tranches of rewritten legislation.

2.4 During this present review, another option was discussed called 'tandem' implementation. Tandem implementation envisages taxpayers being able to rely on either the 1936 Act or the Income Tax Assessment Act 1996 until the 1936 Act is fully rewritten.<sup>1</sup> Tandem implementation was also discussed in *Report 345* as the 'fall back' option.<sup>2</sup>

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1 See Joint Bodies, *Submission*, p. S241 (Vol. 2 of Submissions).

2 JCPA, *Report 345*, pp. 43-45

*Tandem Implementation: For and Against*

2.5 Support for the tandem implementation option has arisen out of concern at difficulties associated with phased implementation. Critics of phased implementation point to the fact that approximately one third of the Bill is required to detail the transitional and consequential amendments required to bring the rest of the Bill into operation.<sup>3</sup> It is very difficult to assess the impact of these transitional and consequential amendments until the Bill is enacted - in other words, until it is too late and the changes have become law. It is also difficult to see how the pieces of rewritten law will be integrated into the whole - for example, the trading stock provisions which are rewritten and the capital gains tax provisions which are still to be rewritten.

2.6 The risk is compounded because there are no established procedures to make prompt technical amendments to correct unintended errors. Several witnesses argue that this problem is becoming more pressing as each tranche of legislation will need a greater number of consequential and transitional amendments.<sup>4</sup> For this reason, taxpayers should have the option to revert to the 1936 Act if technical errors lead to unintended consequences or make the rewritten law unworkable.

2.7 On the other hand, TLIP argues that allowing the tandem option would increase compliance and administrative costs for taxpayers. Taxpayers (or their agents) would need to work out and compare their liabilities under both sets of law; the ATO would have to administer both sets of law and there would need to be two sets of 'business as usual' legislative amendments.<sup>5</sup> As the Australian Taxation Studies Program expressed it:

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3 See Various, *Transcript*, pp. 74-75 (18 February 1997); Joint Bodies, *Submission*, pp. S203-04 (Vol. 2 of Submissions); cgtTAXnet, *Submission*, p. S134 (Vol. 1 of Submissions).

4 Joint Bodies, *Transcript*, pp. 84-85, 86, 87, 91-93, 94, 141-42 (19 February 1997).

5 TLIP, *Transcript*, pp. 99 (19 February 1997); TLIP, *Submission*, pp. S393-98.

*The submission that the two parcels of legislation should operate in tandem is, with the greatest respect, just straight silly. It would not do anything to make things simple, it would prolong transition, it would create a new set of coordination problems and it would create a great deal of extra compliance costs.<sup>6</sup>*

2.8 Finally, TLIP argues that a tandem approach would not reduce the volume of consequential and transitional amendments

#### *The Committee's Conclusions*

2.9 The Committee also baulks at the number of consequential and transitional amendments in the Bill and is conscious of the risk of unintended errors.

2.10 However, on balance, the Committee does not believe that the tandem approach is the answer for the reasons outlined in *Report 345*.<sup>7</sup> A tandem approach will lead to unnecessary confusion for taxpayers preparing their own tax returns and will have a particularly heavy impact on small businesses and tax agents who will have to prepare and weigh up two potential returns before sending one in. In particular, the tandem approach will lead to confusion as two sets of amendments would be necessary for each change in law.

2.11 As the Committee concluded in *Report 345*, tax law is complex enough with one set of operative provisions. Having two sets of operative provisions to contend with would be even worse, and ultimately only delay the transition to the new law. For these reasons, the Committee reaffirms its support for the phased implementation of the rewritten law.

2.12 In the final analysis, the Committee accepts that the transition from the old to the new law will require additional effort from taxpayers, tax professionals and the Australian Taxation Office (ATO) whichever implementation

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6 Australian Taxation Studies Program (ATAX), *Submission*, p. S267 (Vol. 2 of Submissions).

7 JCPA, *Report 345*, p. 45.

method is used. The 1936 Act is a lengthy Act and complex transition and consequential provisions are an unfortunate necessity under any implementation method.

#### *Correcting Technical Errors*

2.13 Taxpayers will have more confidence in the implementation of the rewritten tax law if they are convinced that technical errors will be corrected quickly.

2.14 Part of the difficulty with correcting technical errors is that technical correction legislation has not often received a high priority in governments' legislative programs. One advantage of phased implementation, in fact, is that corrections can be made quickly in the next tranche of legislation, without the need to rely on a separate technical amendment Bill.

2.15 During the review of the first tranche of legislation, TLIP gave the JCPA a commitment to rectify promptly any technical errors identified in the rewritten law.<sup>8</sup> The Committee acknowledges the need to address technical errors promptly and has no reason to doubt TLIP's commitment.

#### *The Rewrite Timetable*

2.16 There has been extensive consultation on draft versions of parts of the Bill from July 1995 and all of the Bill since July 1996. Nonetheless, critics have argued that TLIP has introduced changes into the Bill before Parliament that were not included in the final exposure draft version. There is argument over the significance of these late changes and whether there should have been more time to debate them.<sup>9</sup>

2.17 There will always be a balance to strike between allowing as much consultation as possible and ensuring that the legislation is implemented reasonably promptly. TLIP will need to strike an appropriate balance for the next tranche of legislation in particular, which rewrites *inter alia* the contentious capital gains tax provisions.

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8 JCPA, *Report 345*, p. 52.

9 See ATAX, *Submission*, p. S267 (Vol. 2 of Submissions).

2.18 For its own part, the Committee has not had time to review the Bill as comprehensively as it would have liked. The Committee will seek greater time to consider future tranches of legislation if they are referred to the Committee by the House.

2.19 The Committee notes that the bulk of the Bill has received general support. Most criticisms of the Bill itself focus on only two of the 16 Divisions - Division 42, dealing with plant depreciation & hire purchase agreements, and Division 70 dealing with trading stock. Accordingly, the issue of consultation has not been so critical for this Bill. However, TLIP may simply need to allow greater time for consultation for the more complex and controversial parts of the tax law that are currently being redrafted.

2.20 Ultimately, the confidence of all parties in the consultative process is vital if support for the project is to be maintained and the Government will need to schedule sufficient time for parliamentary debate and review of the next tranche of legislation.

#### Private Sector Representation in TLIP

2.21 TLIP's senior management team includes two positions for private sector practitioners. The purpose of having these positions is to bring private sector experience and advice within TLIP. The positions play an important role, particularly as the Committee notes a perception held in parts of the private sector that TLIP tends to take a pro-revenue stance when interpreting and rewriting ambiguous sections of the 1986 Act.

2.22 Although both positions have been filled in the past, a vacancy has existed for one of the positions since December 1995. The Committee is concerned at the delay in refilling this position and believes that a replacement needs to be appointed promptly.

2.23 A stronger private sector presence in TLIP's senior management will help provide valuable private sector insights and perspectives and also reassure the private sector about TLIP's impartiality. The Committee believes that, even with

both the above positions filled, there will still remain a need for greater private sector involvement in TLIP's senior management. Accordingly, the Committee makes the following recommendation.

2.24 Recommendation 1

*The vacant private sector position in the Tax Law Improvement Project's (TLIP) senior management team be filled as a matter of urgency. TLIP should be given additional funding to allow a third full time equivalent private sector position in TLIP's senior management team to be filled.*

2.25 The Committee believes that the position that is currently vacant would be most appropriately filled by a tax expert with a legal background.

2.26 By providing funding for the third full time equivalent position, rather than nominating a specific person, TLIP would be able to employ specialists on short term contracts as different parts of the 1936 Act are rewritten.

# 3

## POLICY REFORMS

*'The Federal Coalition has three concerns with how this process has developed. First, with only minor exceptions, participants in the tax law simplification project have not been allowed to advise on policy. They have been limited to undertaking a rewriting exercise. Second, they have not been consulted on new tax bills before they enter the parliament and whether they confirm with the principles of tax simplification. Third, they are under resourced, particularly with respect to the time required for private sector participants to fully participate in the reform process' (Coalition Policy Statement, 1996).*

### The Need for Policy Simplification

#### *'Big P', 'Medium P' and 'Small P' Policy Change*

3.1 The Committee acknowledges the widespread demand for a review of tax policy at both the Commonwealth and State level. Such a review might examine issues such as vertical fiscal imbalance, the need for a consumption tax and the entire range of taxes that are levied on entities and individuals in their commercial and private activities. Review of revenue policy on this scale is not a matter for this Committee to decide.

3.2 Demands for less fundamental reviews of the revenue base call on the Commonwealth to conduct a comprehensive review of the full body of income tax law as it is expressed in legislation, case law, rulings by the Commissioner of Taxation and administrative practices. Such policy is referred to as 'medium p' policy change. The Committee has broad sympathy with calls for a review of this type.

3.3 Finally, there are submissions to review and simplify some of the policy underpinning the divisions, subdivisions and sections of the income tax legislation. It is the inadequacy of the capacity to review, and where necessary change, current tax policy at this level, known as 'small p' policy, that TLIP's rewrite process and the JCPA's reviews are highlighting.

#### *TLIP's Policy Mandate*

3.4 TLIP's role is to restructure, renumber and rewrite in plain language Australia's income tax law. TLIP does not have a mandate to make policy change.

3.5 However, during the rewriting process TLIP has, at times been able to make limited small policy changes with the approval of the Assistant Treasurer. Such changes have only been made where they have had no significant revenue impacts and where the changes help to clarify the operation of the law or bring the operation of the law into line with commercial or actual practice.<sup>1</sup>

3.6 However, the Committee has received considerable evidence that unclear or unworkable sections of the 1936 Act are being perpetuated in the Bill because changing them is beyond TLIP's very limited mandate to make policy changes.

3.7 Similar concerns were raised when the Committee was reviewing TLIP's early work in October 1995 when witnesses questioned whether it was possible to substantially simplify and improve income tax law without also reviewing the underlying income tax policy.<sup>2</sup> The issue was raised again when the Committee reviewed the Income Tax Assessment Bill 1996. Such concerns are likely to persist.

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1 Policy changes are indicated in the Bill's Explanatory Memorandum.

2 JCPA, *Report 343*, pp. 6-7.

3.8 In *Report 345*, the Committee identified areas of income tax policy that required urgent review<sup>3</sup>. In this report the Committee has gone further and, in this chapter, recommended an expansion of TLIP's mandate and made recommendations for Government to review particular policy issues.

*JCPA Comment on TLIP's Mandate*

3.9 In *Report 326*, which provided the genesis for the rewrite project, the JCPA recommended that the 1936 Act be rewritten in order to simplify it. The previous and current governments have chosen to interpret 'simplification' in a narrow sense.

3.10 In both *Report 343* and *Report 345*, the JCPA accepted the limitations of TLIP's restricted policy mandate. However, the Committee is now convinced that the simplification mandate, as currently interpreted, is not broad enough.

3.11 The Committee concedes that there is an immediate and pressing need to reduce the complexity of the 1936 Act.<sup>4</sup> This reason alone is sufficient justification for the rewrite project. However, the Committee believes that TLIP should be given an expanded mandate to give it greater latitude to contemplate 'small p' policy issues.

3.12 Of course, TLIP would still have to refer any broader policy simplification recommendations back to Government for final approval. However, with a broader mandate, TLIP could at least consider a greater range of the 'small p policy' simplification issues that are of such concern to the private sector and which currently have to be excluded from the rewrite. Accordingly, the Committee makes the following recommendation.

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3 JCPA, *Report 345*, pp. 58-59.

4 JCPA *Report 345*, p. 65.

**3.13 Recommendation 2**

*Government should expand the mandate of the Tax Law Improvement Project to allow it to consider a wider range of tax policy simplification issues than the mandate currently allows.*

*Such a mandate should be applied to TLIP for all future tranches of rewritten legislation.*

*Parliament's Role in Policy Review*

**3.14** As mentioned, the Committee considers that the case for urgent simplification of income tax policy ('small p' policy) is overwhelming and should be a Government priority. The Committee is also aware of, and shares, the general frustration that progress on simplifying this level of income tax policy is occurring so slowly.

**3.15** In *Report 345*, the Committee responded to the lack of progress on tax policy reform of any magnitude - be it through TLIP or through any other process - by recommending that a Revenue Committee of Parliament be established. Such a Committee would be concerned with tax policy simplification issues that are beyond TLIP's mandate to consider. Preferably, the JCPA should be given additional resources by the Government to undertake such a function. Failing that, the JCPA recommended that a joint standing or a joint select committee on revenue be established to undertake the task.

**3.16** The JCPA believes that the arguments for a Revenue Committee of Parliament remain equally valid. For this reason, the Committee continues to press the Government for a response to the recommendation. In fact, the Committee believes that a Revenue Committee could complement TLIP's activities - if TLIP were given an expanded mandate - by coordinating and assisting the consideration of 'small p' policy issues.

*Policy Review not to Delay Passage of the Tax Law Improvement Bill 1996*

3.17 The Committee has made two kinds of recommendation in this report. The first are recommendations identifying areas of the Bill that require underlying small 'p' policy simplification or clarification by the Government. These recommendations are contained in this chapter. These recommendations are for simplification that is beyond TLIP's current mandate to implement unilaterally and will take time, with appropriate consultation, to resolve. They should receive urgent attention by Government, but their resolution should not delay passage of the Bill.

3.18 The second type of recommendations seek amendments to clauses in the Bill which, in the Committee's view, are with one exception, within TLIP's mandate to address. These recommendations seek specific changes to the Bill and, the Committee believes, should be addressed before the Bill is passed. They are addressed in the following chapter.

### **Specific Policy Issues**

#### *Introduction*

The remainder of this chapter details those areas of tax policy that the Committee's considerations have highlighted as needing urgent simplification. Some of these recommendations are quite specific, others call for wider review. All need attention.

#### *Subdivision 20-A: Deductions for Assessable Income Refunded*

3.19 Subdivision 20-A of the Bill deals with recoupment of deductible expenses and treats amounts of recouped deductible expenditure as assessable income.

3.20 As the Corporate Tax Association and Business Council of Australia ('CTA & BCA') point out, however, the converse is not legislated for: that is, that deductions should be allowed where assessable income is required to be refunded.<sup>5</sup> While deductions are generally allowed in practice, it should be codified in the law.

3.21 The Committee recognises that such codification would be a precedent, but, a fair and reasonable precedent. Accordingly, the Committee makes the following recommendation.

3.22 **Recommendation 3**

*The provisions of income tax law identified in Subdivision 20-A of Schedule One of the Tax Law Improvement Bill 1996 be amended to codify that deductions are allowed where assessable income is refunded.*

*Clause 25-35: Bad Debts*

3.23 Clause 25-35 of the Bill allows taxpayers to deduct a debt (or part of a debt) that is written off as a bad debt. Current tax law, however, does not allow taxpayers to deduct debts which are clearly bad debts, but which cannot be claimed as a deduction because they have technically ceased to exist, such as under a deed of compromise between a debtor and creditor.<sup>6</sup>

3.24 This appears an unjust limitation of the law as it stands, although clearly beyond TLIP's mandate to amend. Accordingly, the Committee makes the following recommendation.

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5 Corporate Tax Association and Business Council of Australia (CTA & BCA), *Submission*, p. S67 (Vol. 1 of Submissions).

6 cgtTAXnet, *Submission*, p. S136 (Vol. 1 of Submissions). See also *Point v FCT* 70, ATC 4021.

3.25 Recommendation 4

*The provisions of the income tax law identified in Clause 25-35 of Schedule One of the Tax Law Improvement Project 1996 be reviewed to allow claims for deductions for bad debts extinguished under a deed of compromise.*

*Division 32: Entertainment Expenses*

3.26 There is widespread agreement that TLIP has successfully and faithfully simplified the structure and words of the entertainment provisions in the 1936 Act. While TLIP has simplified the provisions, there is equally widespread agreement that the underlying policy remains unnecessarily complex. As the Joint Bodies expressed it:

*By international standards, Australia's entertainment deduction rules are a joke... the rewrite of these farcical rules... does nothing to ease the task of compliance...<sup>7</sup>*

3.27 In November 1996, the Small Business Deregulation Task Force reported on its terms of reference to review the compliance and paper burden on small business and report to Government on revenue neutral measures that could be taken to reduce that burden.<sup>8</sup> In its report, the Task Force recommended, *inter alia*, the introduction of a simplified formula for assessing deductibility of meal expenses for income tax purposes. The Government's response to the Task Force report in general, and this recommendation in particular, will affect the provisions of Division 32.

3.28 The Committee fully supports the Task Force's recommendation. Ultimately, however, it does not go far enough and the Committee looks forward to an *ab initio* redraft of the entertainment expenses provisions. Accordingly, the Committee makes the following recommendation.

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7 Joint Bodies, *Submission*, p. S227 (Vol. 2 of Submissions).

8 Small Business Deregulation Task Force, *Time for Business: Report of the Small Business Deregulation Task Force*, November 1996.

**3.29 Recommendation 5**

*The provisions of income tax law identified in Division 32 of Schedule One of the Tax Law Improvement Bill 1996 and relating to deductions for entertainment expenses be reviewed and amended as a matter of priority to simplify the underlying policy and reduce the cost of compliance.*

*Division 34: Non-Compulsory Uniforms*

**3.30** Division 34 of the Bill details the conditions for claiming deductions for the costs of non-compulsory uniforms.

**3.31** As with Division 32, there is support for TLIP's rewrite of the existing law, but frustration at TLIP's inability to simplify the underlying policy.

**3.32** In the Committee's view, the provisions in Division 34 highlight the failings of the current income tax law. The efforts necessary to comply with the deduction rules for non-compulsory uniforms provide a perfect illustration of the reason why tax compliance costs are so high. The provisions in Division 34 are an example of, as described by the CTA & BCA, 'mind numbing exactitude'.<sup>9</sup> Accordingly, the Committee makes the following recommendation.

**3.33 Recommendation 6**

*The provisions of income tax law identified in Division 34 of Schedule One of the Tax Law Improvement Bill 1996 and relating to deductions for non-compulsory uniforms be reviewed and amended as a matter of priority to simplify the underlying policy and reduce the cost of compliance.*

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<sup>9</sup> CTA & BCA, *Submission*, p. S67 (Vol. 1 of Submissions).

*Division 42: Depreciation of Plant and Ownership*

3.34 To claim a plant depreciation deduction under the 1936 Act, the plant must be owned by a taxpayer. Under this principle, lessors rather than lessees can claim plant depreciation. Ownership is not a defined term in either the 1936 Act or the Bill.

3.35 The rewritten sections of the 1936 Act on plant depreciation are in Division 42 of the new Bill. Most commentators on this division question whether 'ownership' remains an appropriate basis for deciding plant depreciation entitlements. This is because it can be difficult to determine who is the true owner of plant, for taxation purposes, in some of the more complex forms of lease and hire purchase type agreements now entered into.

3.36 The CTA & BCA; the Taxation Institute of Australia, the Institute of Chartered Accountants & the Australian Society of Certified Practising Accountants ('the Joint Bodies') and Matrix Finance all seek simplification and legislative clarification of the nexus between ownership and plant depreciation rights.<sup>10</sup> Of particular concern is the treatment of tenant fixtures, chattel mortgages and the joint ownership of assets by tenants in common or joint venturers.

3.37 The weight of evidence presented to the Committee, both in submissions and at the public hearings, suggests that the concept of ownership and the nexus between ownership and the entitlement to plant depreciation needs comprehensive review. Accordingly, the Committee makes the following recommendation.

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10 CTA & BCA, *Submission*, pp. S61-65. (Vol. 1 of Submissions); Taxation Institute, Institute of Chartered Accountants & the Australian Society of Certified Practising Accountants ('the Joint Bodies'), *Submission*, pp. S143-48 (Vol. 1 of Submissions); Joint Bodies, *Submission*, nn 230-31 (Vol. 2 of Submissions).

**3.38 Recommendation 7**

*The provisions of income tax law identified in Division 42 of Schedule One of the Tax Law Improvement Bill 1996, be reviewed and amended as a matter of priority to clarify the nexus between plant depreciation and the concept of ownership and whether such a nexus remains appropriate.*

*Subdivisions 42-A & 42-B: Expenditure Claims by Other People*

3.39 Clause 42-45 (Subdivision 42-A) of the Bill requires a taxpayer to be aware of deductions claimed by previous owners of property in relation to land care, water conservation and research & development. Clause 42-65 (Subdivision 42-B) of the Bill requires a taxpayer to establish a 'notional depreciation' for a leased vehicle, which, in turn, requires the taxpayer to know the cost of the car in the hands of the lessor.

3.40 In practical terms, obtaining such information from other parties can be difficult and goes against the principle of self assessment.<sup>11</sup> Accordingly, the Committee makes the following recommendation.

**3.41 Recommendation 8**

*The areas of tax law identified in Clauses 42-45 and 42-65 of Schedule One of the Tax Law Improvement Bill, which require taxpayers to gain information from other parties, be reviewed and amended to require the other parties to transfer that information.*

*Subdivision 42-E: A De-Minimus Rule*

3.42 Both the CTA & BCA and the Joint Bodies seek a de-minimus rule drafted into the Bill to allow taxpayers to automatically write off plant when its written down value reaches a nominal amount when being depreciated under the

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11 See CTA & BCA, *Submission*, p. S65-66, S67 (Vol. 1 of Submissions).

diminishing value (DV) method for calculating depreciation deductions (see Clause 42-160). This, it is argued, will reduce the cost to taxpayers of administering deductions for plant depreciation.<sup>12</sup>

3.43 It has been pointed out to the Committee that taxpayers using the DV method for plant that is used for both business and private purposes would find it difficult to calculate when the nominal written-down value had been reached. It has also been pointed out that taxpayers concerned with the administrative burden of using the DV method for plant of low value could have chosen to depreciate their plant using the prime cost method instead.

3.44 Finally, the inclusion of a de-minimus rule would have a revenue impact, although only in the first year of implementation. This latter point ensures that a policy decision from Government is required before a de-minimus rule could be introduced.

3.45 The Committee has weighed these considerations. However, on balance, it believes that a de-minimus rule for plant that is fully used for a business purpose would reduce compliance costs for taxpayers. This, after all, is one of the goals of the rewrite process. As the current law allows a full write off deduction for plant costing less than \$300, this would be an appropriate threshold amount for the de-minimus rule. Accordingly, the Committee makes the following recommendation.

**3.46 Recommendation 9**

*The area of income tax law identified in Subdivision 42-E of Schedule One of the Tax Law Improvement Bill should be reviewed and amended with the goal of allowing taxpayers to automatically write off plant which is fully used for business purposes when its written down value reaches a nominal amount using the diminishing value method for calculating depreciation deductions (see Clause 42-160).*

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12 CTA & BCA, *Submission*, p. S65 (Vol. 1 of Submissions); Joint Bodies, *Submission*, p. S152 (Vol. 1 of Submissions).

*Subdivision 42-E: Acquisition and Disposal Dates*

3.47 The formulae for the calculation of depreciation deductions, in Division 42-E of the Bill are based on a day to day time apportionment. The CTA & BCA argue that this requires a degree of exactitude that has no overall economic benefit and requires costly record keeping when calculating depreciation for plant in the year of the plant's acquisition and disposal. They argue that taxpayers should be able to claim one half year's depreciation in the year of the acquisition and disposal of plant, regardless of the actual date during the income year on which the plant was acquired or disposed of.<sup>13</sup>

3.48 Such a recommendation is unlikely to have revenue implications, except possibly during the first year of introduction, and would reduce unnecessary compliance costs. Accordingly, the Committee makes the following recommendation.

**3.49 Recommendation 10**

*The area of income tax law identified in Subdivision 42-E of Schedule One of the Tax Law Improvement Bill 1996 dealing with calculation formulae for depreciation deductions be amended so that depreciation calculations for the year of acquisition and disposal of plant be:*

- (a) *for the diminishing value method, equal to the opening undeducted cost multiplied by one half multiplied by the diminishing value rate; and*
- (b) *for the prime Cost method, equal to the Cost multiplied by one half multiplied by the Prime Cost rate.*

*The calculation methods used in the Bill remain unaltered for taxpayers seeking to depreciate plant over a full income year.*

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13 CTA & BCA, *Submission*, p. S64 (Vol. 1 of Submissions).

*Subdivision 42-L: Pooling Provisions*

3.50 The 1936 Act provides that units which share a common characteristic (ie, the same depreciation rate) may be allocated to a 'pool' and then depreciated as a pool. These provisions are designed to assist large taxpayers. However, Telstra and the CTA & BCA argue that the strict rules associated with the pooling provisions in the 1936 Act and replicated in Subdivision 42-L of the Bill, offer 'little or no practical advantage to taxpayers'.<sup>14</sup> The Committee notes comments by Telstra that the current pooling provisions do not assist in reducing the tax compliance burden as they were designed to.<sup>15</sup>

3.51 In particular, the CTA & BCA argue that the principle of pro-rating on a daily basis to calculate tax depreciation on acquisitions is unworkable for pooled stock. Telstra points out that this has been recognised by the ATO which allows Telstra to claim a full year's depreciation on additions acquired in the first half of the year of income and no depreciation for assets acquired in the second half of the year. The CTA & BCA argue that assets should be pooled on the basis of a one-half of a year's depreciation in the year of acquisition rather than on the daily basis as currently required (see the recommendation concerning Subdivision 42-E above).<sup>16</sup>

3.52 It seems pointless to perpetuate law that is recognised by all, including the ATO, as being too complicated to be practical - especially when the pooling provisions are intended to make compliance less complex. Accordingly, the Committee makes the following recommendation.

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14 CTA & BCA, *Submission*, p. S92 (Vol. 1 of Submissions).

15 see CTA & CTA, *Submission*, p. S106 (Vol. 1 of Submissions).

16 CTA & BCA, *Submission*, pp. S92-93 (Vol. 1 of Submissions).

**3.53 Recommendation 11**

*The area of income tax law identified in Subdivision 42-L of Schedule One of the Tax Law Improvement Bill 1996 be reviewed and amended to simplify the pooling provisions, particularly as they refer to the acquisition and disposal of plant.*

*This recommendation be read in conjunction with Recommendation 10 above.*

***Clause 70-40: Double Taxation and the Value of Trading Stock at the Start of an Income Year***

3.54 The tax system generally provides a four year time limit, after which the Commissioner of Taxation cannot reassess a taxpayer's tax position to correct any errors. However, if the error can affect the tax position of subsequent years, then the Commissioner of Taxation may amend the tax positions of those later years.

3.55 The taxation treatment of the difference in value between opening and closing stock values has lead the Courts, at different times to find taxpayers liable to pay double taxation or no taxation at all.<sup>17</sup>

3.56 Clause 70-40 specifies that the value of stock on hand at the start of a year (the opening stock value) is the same amount that was taken into account as the previous year's closing stock value. The Government made a policy decision to avoid the problem described above, as it affects the value of opening stock, by deeming that, if a closing value cannot be amended, the next year's opening value will still be that as recorded as the closing value.

3.57 The CTA & BCA argue that this policy decision, while welcome in the case of the value of opening stock, needs to be broadened to cover all instances where the Courts can interpret the 1936 Act as allowing double deductions and double taxation as they arise from the timing of the derivation of income or deductions.<sup>18</sup>

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17 *Country Magazine* (1968) 117 CLR 162; *Henderson* (1978) 119 CLR 612. Taxpayers could also gain a double deduction.

18 CTA & BCA, *Submission*, pp. S59, S70-77 (Vol. 1 of Submissions).

3.58 TLIP concedes that the 1936 Act does allow the Courts to find that taxpayers should pay what amounts to double deductions and double taxation in this way. While agreeing that this needs to be reviewed, TLIP argue that it is beyond their mandate to correct.<sup>19</sup>

3.59 Given agreement that this area of law needs reviewing, the Committee makes the following recommendation.

**3.60 Recommendation 12**

*The income tax law be amended with the goal of avoiding the potential imposition of double taxation or double deductions arising from the timing of the derivation of income or deductions.*

3.61 The next chapter reviews amendments that the Committee believes should be reflected in the Bill before assent is granted.

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19 TLIP, *Submission*, pp. S331-32 (Vol. 2 of Submissions).

# 4

## AMENDMENTS TO THE TAX LAW IMPROVEMENT BILL

### Introduction

4.1 In the previous chapter, the Committee identified a number of 'small p' policy simplification issues that need urgent attention, but which were beyond TLIP's mandate to address. The Committee argued that consideration of those issues should not delay passage of the Bill.

4.2 This chapter identifies amendments to the Bill that the Committee believes should be made before the Bill becomes law. The Committee believes that it is within TLIP's mandate to incorporate the amendments, with the exception of the recommendation concerning the notional transfer price to be used when assets become trading stock for the first time (Clause 70-30), which will require a policy decision.

4.3 Given the limited time available to the Committee and the number of suggested changes brought to its attention, the Committee has only indicated the amendments it wishes made. However, Appendix IV lists all the clause by clause criticisms of the 1996 Bill. The Committee asked TLIP to respond to each criticism and references to these responses are also listed in Appendix IV.

## Recommended Major Changes

### *Clause 42-310: Excision of Hire Purchase from the Definition of Quasi Owner*

4.4 There are now a range of financial products and financial arrangements that blur the distinction between leases and hire purchase type agreements, making it difficult to determine who is entitled to claim plant depreciation (as an owner).

4.5 However, Subdivision 42-I of the Bill incorporates long standing administrative practice by legislating that taxpayers holding plant under hire purchase agreements can depreciate the plant.<sup>1</sup>

4.6 Matrix Finance is concerned that there are a range of transactions that fall outside the narrow definition of hire purchase agreement which, nonetheless, the Commissioner of Taxation treats as being as being hire purchase equivalent transactions- where the end user claims plant depreciation (such as leases with a fair market value purchase option at the end of the lease).<sup>2</sup>

4.7 Matrix Finance argues that, therefore, the hire purchase definition in the Bill does not encompass the full range of hire purchase equivalent transactions or even reflect current administrative practice. Hire purchase financing is being inappropriately singled out in the Bill from economically equivalent transactions such as chattel mortgage finance.<sup>3</sup>

4.8 These concerns represent a specialised example of the difficulties associated with the nexus between plant depreciation and ownership that are described in the previous chapter.

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1 Clause 995-1(1) defines 'hire purchase agreements' (Item 60, Part 2, Schedule 6, Tax Law Improvement Bill 1996). Clause 42-310 of the Bill defines taxpayers who hold plant under a hire purchase agreement as, amongst others, 'quasi-owners'.

2 Matrix Finance, *Transcript*, p118 (19 February 1997).

3 Matrix Finance, *Submission*, pp. S14-17; Joint Bodies, *Submission*, pp S232-33 (Vol. 2 of Submissions).

4.9 The Committee has considerable sympathy with the problem identified by Matrix Finance. At the very least, the definition of hire purchase needs to be amended to reflect current administrative practice for hire-purchase equivalent transactions. More appropriate is a review of the full gamut of lease/hire purchase arrangements before one type of transaction is singled out for inclusion in the Bill. This will obviously require further work by TLIP and could not be expected to be completed before passage of the Bill. The Committee, accordingly, makes the following recommendation.

**4.10 Recommendation 13**

*Reference to 'hire-purchase' agreements should be excised from the definition of 'quasi ownership' in Clause 42-310 of Schedule One of the Tax Law Improvement Bill 1996 until the full spectrum of lease-hire purchase equivalent arrangements can be incorporated into the quasi-owner definition at once.*

4.11 Excising hire purchase agreements from the quasi owner definition should not have any consequences for taxpayers with hire purchase agreements as the agreements remain within the scope of the definition of 'owner', for depreciation purposes, as presently interpreted.

***Clauses 70-10, 70-30 & 70-110: The Meaning of Trading Stock***

4.12 Under s. 6(1) of the 1936 Act, trading stock included anything 'acquired or purchased for the purpose of manufacture, sale or exchange'. Under Clause 70-10 of the Bill, trading stock will include anything that is *held* for the purpose of sale (emphases added).

4.13 Witnesses are concerned that the definition will now include all capital assets that taxpayers may wish to sell.<sup>4</sup> TLIP does not agree with this interpretation, but has indicated a willingness to meet private sector concerns. Accordingly, the Committee makes the following recommendation.

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4 Joint Bodies, *Submission*, pp. 206-08 (Vol. 2 of Submissions); Consultative Committee, *Submission*, p. S251 (Vol. 2 of Submissions).

**4.14 Recommendation 14**

*Clause 70-10 of Schedule One of the Tax Law Improvement Bill 1996 be amended to insert the words 'in the ordinary course of a business' after the word 'held' in line 16 on page 269.*

*Clause 70-30 of Schedule One of the Tax Law Improvement Bill 1996 be amended to delete the words 'you had then sold it' in line 24 on page 271 and replace with the words 'just before it became trading stock, you had sold it'.*

*Clause 70-110 of Schedule One of the Tax Law Improvement Bill 1996 be amended to delete the words 'you had then sold it' in line 24 on page 285 and replace with the words 'just before it stopped being trading stock, you had sold it'.*

*Clause 70-30: Starting to Hold as Trading Stock an Item you Already Own.*

**4.15** Clause 70-30 states that cost price, rather than market value, will be used as the notional transfer price when an asset becomes trading stock for the first time.

**4.16** The Explanatory Memorandum indicates that there has been extensive debate about how to value the notional transfer price and that the Government has made a policy decision that cost value be used.<sup>5</sup>

**4.17** TLIP has advised the Committee that the Government decided that all changes of use should be treated as occurring at cost, rather than market value, because:

- overall, cost produces a more favourable outcome for taxpayers, as the most common change of use is a taxpayer taking trading stock for personal use;
- it prevents taxation of unrealised gains; and
- during TLIP's consultations on the issue, there was strong support for cost, especially from the Consultative Committee.<sup>6</sup>

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<sup>5</sup> Tax Law Improvement Bill 1996, *Explanatory Memorandum*, p. 164.

<sup>6</sup> TLIP, *Submission*, pp. S328-29 (Vol. 2 of Submissions).

4.18 The CTA & BCA and cgtTAXnet, however, have highlighted some of the inequities of using cost values only, particularly for those wishing to convert real property that has been held for many years, or shares held as long term investments into trading stock.<sup>7</sup> Commentators are also convinced that the conversion of assets to trading stock occurs more frequently than appreciated by TLIP.

4.19 The Committee believes that tax inequities should not be ignored. Admittedly, in the examples above, the assets can be sold at market value by selling the asset to another entity before that entity converts the asset into trading stock. In the Committee's view, however, this is putting a taxpayer to unfair expense and effort simply to circumvent an inequitable provision. Accordingly, the Committee makes the following recommendation.

4.20 Recommendation 15

*Clause 70-30 of Schedule One of the Tax Law Improvement Bill 1996 be amended to make allowance for market value as well as cost value as the notional transfer price. This could be done on the following basis:*

- (a) *when an asset becomes trading stock for the first time, market value be used for all pre September 1985 assets converted into trading stock and cost value, as adjusted by CPI (when working out gains), be used for assets acquired after September 1985; and*
- (b) *when an item ceases to be trading stock, cost value be used at the time of transfer.*

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<sup>7</sup> CTA & BCA, *Submission*, pp. S59-60 (Vol. 1 of Submissions); cgtTAXnet, *Submission*, pp. 137-139 (Vol. 1 of Submissions).

## Recommended Technical Amendments

### *Division 15: Profit Making Undertaking or Plan*

4.21 Division 15 of the Bill rewrites parts of s. 25A(1) and s. 26 of the 1936 Act, which rule that certain profits are to be considered assessable income. The Joint Bodies are concerned that neither the EM nor the division itself acknowledge that parts of s. 25A of the 1936 Act remain operative. To avoid any confusion for taxpayers, the Committee makes the following recommendation.

#### 4.22 Recommendation 16

*Clause 15-15 of Schedule One of the Tax Law Improvement Bill 1996 be amended to include a note indicating that the first part of Section 25A of the Income Tax Assessment Act 1936 remains operative.*

### *Division 15: Accruals v Cash*

4.23 Clauses in Division 15 of the Bill include as assessable income certain amounts a taxpayer *receives* (present tense). This contrasts with similar provisions in the 1936 Act which refer to assessable income that have been *received* (past tense).

4.24 The effect of these clauses is that income may, in some of the cases outlined in Division 15, be inappropriately taxed on an accruals basis rather than a cash basis.

4.25 The Committee does not believe that tax in these cases should be assessed on a receivable rather than a cash basis. Accordingly, the Committee makes the following recommendation.

#### 4.26 Recommendation 17

*Clauses in Division 15 of Schedule One of the Tax Law Improvement Bill 1996 or the Explanatory Memorandum should be amended to ensure that assessable income, where appropriate, is assessed on a cash rather than accrual basis.*

*Subdivision 20-B: The Definition of 'Car'*

4.27 The CTA & BCA argue that applying the definition of 'car' to the rewrite of the leased motor vehicle provisions (Clauses 20-110 and 20-125) and the motor vehicle depreciation limit provisions (Clause 42-80) has expanded the scope of the provisions to include panel vans and utilities, an issue conceded by TLIP.<sup>8</sup>

4.28 The Committee, accordingly, makes the following recommendation.

4.29 Recommendation 18

*Clauses 20-110, 20-125 and 42-80 of Schedule One of the Tax Law Improvement Bill be amended to clarify that the clauses are restricted to cars designed mainly for the transport of passengers.*

*Clause 26-35: Reducing Deductions for Amounts Paid to Related Entities*

4.30 Clause 26-35 of the Bill is intended to reflect s. 65 of the 1936 Act. Section 65 broadly limits the amount of claimed deductions allowable for payments made by a taxpayer to an 'associated person'. An associated person can be an individual taxpayer or a partnership. cgtTAXnet has observed that the definition in Clause 26-35, is defined more narrowly than s. 65 because Clause 26-35 does not cover any situation in which a partnership is the entity claiming the deduction (which s. 65 does).<sup>9</sup>

4.31 TLIP has indicated that its intention was to defer rewriting those aspects of s. 65 that apply only to partnerships or companies until those areas of the 1936 Act are rewritten. Thus the partnership component of the definition of 'associated persons' would be rewritten at a later time.<sup>10</sup>

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8 See: CTA & BCA, *Submission*, pp. S65-66 (Vol. 1 of Submissions); TLIP, *Transcript*, pp. 22-23 (18 February 1997).

9 cgtTAXnet, *Submission*, pp. S136-37 (Vol. 1 of Submissions).

10 TLIP, *Submission*, pp. S353-54 (Vol. 2 of Submissions).

4.32 The Committee accepts this rationale but notes that the 1936 Act needs to be amended to ensure the continued operation of this part of ss. 65(1D). The Committee accordingly makes the following recommendation.

4.33 **Recommendation 19**

*A consequential amendment be made to the Income Tax Assessment Act 1936 to indicate that the part of subsection 65(1D) dealing with the partnership component of the definition of 'associated persons' will have continued operation following assent to the Tax Law Improvement Bill 1996.*

*Division 32-A: Entertainment, Meals and Overnight Business Travel*

4.34 As a rule, deductions are not given for entertainment expenses. However, paragraph 51AE(5)(g) of the 1936 Act allows deductions that only involve the entertainment of the recipient and would be deductible under the general deduction provisions if the recipient had incurred them (such as receiving a deduction for meals paid for while travelling overnight on business). This paragraph has not been preserved in the Bill.

4.35 However, the Joint Bodies argue that Clause 32-10 of the Bill, which defines 'entertainment', does not preclude meals eaten by a taxpayer while travelling overnight on business from being caught within the definition of entertainment.<sup>11</sup> If such meals come within the definition of entertainment, then deductions cannot be made for them.

4.36 TLIP argues that it is not necessary to rewrite paragraph 51AE(5)(g) of the 1936 Act because a Public Ruling recognises that such meals are not entertainment and that deductions can be claimed.<sup>12</sup> Nonetheless, the Committee agrees that dropping a legislative provision because one is relying on a Ruling represents a weakening of the law. Accordingly, the Committee makes the following recommendation.

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11 Joint Bodies, *Submission*, pp. S227-28 (Vol. 2 of Submissions).

12 TLIP, *Transcript*, pp. 35-37 (18 February 1997).

4.37 Recommendation 20

*Division 32 of Schedule One of the Tax Law Improvement Bill 1996 should be amended to include a note that deductions for expenditure envisaged by paragraph 51AE(5)(g) of the Income Tax Assessment Act 1936 are still allowable.*

*Clause 42-208: Balancing Adjustments for Hire Purchase*

4.38 Clause 42-208 of the Bill contains a formula for calculating the termination value to be imputed to a quasi owner in certain circumstances for plant ceasing to be held under a hire purchase agreement.

4.39 Matrix Finance has identified some technical errors and associated unintended consequences of this clause.<sup>13</sup> TLIP has conceded a number of Matrix's concerns.<sup>14</sup>

4.40 Accordingly, the Committee makes the following recommendation (which should become redundant if recommendation 13 above is accepted).

4.41 Recommendation 21

*If recommendation 13 above is rejected, then Clause 42-208 of Schedule One of the Tax Law Improvement Bill 1996 be amended to provide greater flexibility for agreements where interest and payments are not fixed.*

*Clause 42-208 should also be amended to ensure that it does not rely on market value in the process of determining termination values.*

*If Recommendation 13 is accepted, then this recommendation becomes redundant.*

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13 Matrix Finance, *Submission*, pp. S46-54 (Vol 1 of Submissions).

14 TLIP, *Transcript*, pp. 124-27 (19 February 1997).

*Clause 70-20: Interaction with Division 13 of the 1936 Act*

4.42 Clause 70-20 of the Bill provides, in broad terms, that if you buy stock in a non-arm's length transaction for more than its market value, this is treated as a purchase at market value.

4.43 However, the clause does not indicate how it interacts with rules covering international agreements about the purchase of property in Division 13 of the 1936 Act. This point has been raised by the CTA & BCA.<sup>15</sup> Accordingly, the Committee makes the following recommendation.

**4.44 Recommendation 22**

*A note be added to Clause 70-20 of Schedule One of the Tax Law Improvement Bill 1996 indicating that the clause gives way to the rules covering international agreements about the purchase of property in Division 13 of the Income Tax Assessment Act 1936.*

*Clause 70-45: Phrase 'Item' includes the Plural*

4.45 Clause 70-45 of the Bill requires taxpayers to value 'each item' of trading stock on hand at the end of an income year.

4.46 The CTA & BCA are concerned that, in practice, it may not be practical to value some stock on a per item basis, even though the ATO takes a realistic approach to valuing large quantities of stock.<sup>16</sup>

4.47 Nonetheless, one of the purposes of the rewrite process is to provide legislative clarity and the Committee makes the following recommendation.

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15 CTA & BCA, *Submission*, pp. S79-80 (Vol. 1 of Submissions).

16 CTA & BCA, *Submission*, pp. S60-61 (Vol. 1 of Submissions).

**4.48 Recommendation 23**

*The Explanatory Memorandum of the Tax Law Improvement Bill 1996 be amended to clarify that the phrase 'item' used in Clause 70-45 of Schedule of that Bill includes the plural.*

*Clause 70-100(7): Extension of Time for Election*

**4.49** Clause 70-100 of the Bill details what happens if a partial change of interests in trading stock causes that stock to be held by a different entity.

**4.50** The CTA & BCA argue that Clause 70-100(7) does not permit the Commissioner of Taxation to allow taxpayers an extension of time before they make an election treat an item as disposed of at closing value.<sup>17</sup> The Committee believes there should be a rule allowing the Commissioner to extend election times and, accordingly, makes the following recommendation.

**4.51 Recommendation 24**

*Clause 70-100(7) of Schedule One of the Tax Law Improvement Bill 1996 be amended to enable the Commissioner of Taxation to allow for further time to be given to make the election.*

**4.52** A challenge to governments to undertake a wider review of tax policy is discussed in the following chapter.

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<sup>17</sup> CTA & BCA, *Submission*, p. S83 (Vol. 1 of Submissions).

# 5

## CONCLUSION

### *Support for TLIP*

5.1 The major professional and industry bodies, while supporting the rewrite process in principle, have expressed concern with the way it is being undertaken in practice. The Committee is concerned at the strength of the criticism by these organisations of some aspects of TLIP's work. On the other hand, the Committee also notes the strong support that TLIP has received from the Australian Taxation Studies Program at the University of New South Wales and the Australasian Tax Teachers Association.<sup>1</sup> On balance, the Committee continues to support TLIP's work- providing that the Government accepts the Committee's recommendations. The three main reasons for the Committee's support are:

- because there is an urgent need to reduce the almost unworkable complexity of the 1936 Act;
- because a more clearly written and structured income tax Act will greatly facilitate the review of the underlying tax policy; and
- because the new law will be understandable to all who need to use it, thereby, leading to a long term reduction in compliance costs.

5.2 Completion of TLIP's rewrite process is the most efficient way of simplifying the 1936 Act quickly, so that the law can, once again, be understood by business and tax professionals. Just as importantly, the next generation of tax professionals will be able to start their training and careers with a clearer and useable Act.

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1 ATAX, *Submission*, pp. S266-67 (Vol. 2 of Submissions); Australasian Tax Teachers Association, *Submission*, pp. S268-71 (Vol. 2 of Submissions).

*Need for Policy Reform*

5.3 However, it is apparent to the Committee that the private sector is increasingly frustrated with TLIP's inability to simplify minor policy complexities in the 1936 Act. The Committee is reminded of its original recommendation in *Report 326* that the 1936 Act be simplified. TLIP's rewrite is only going half way to meeting that goal. It is for this reason that the Committee has now recommended that TLIP's mandate to consider policy be expanded and why the Committee continues to recommend that a Revenue Committee of Parliament be established and private representation in TLIP's senior management be increased. It is only with a review of the underlying policy that the income tax law can be truly simplified.

*A Renewed Challenge to Governments*

5.4 The Committee is left concluding on its closing comments in *Report 345*. There is a need for an even wider review of tax policy. It ultimately requires more than just a rewrite of the existing law and a greater involvement of Parliament in the process. It requires a commitment by Commonwealth and state governments to comprehensively review tax policy. The criticisms of the current tax law and processes are likely to grow until such a commitment is given and real progress on reform made.

5.5 Only then will compliance costs come down and the burdens of administering and complying with the tax law be reduced.

Alex Somlyay MP  
Chairman  
5 March 1997

# I

## APPENDIX I - SUBMISSIONS

1. Australian Hotels Association
2. Matrix Finance Group
3. Deloitte Touche Tohmatsu
4. Corporate Tax Association
5. Geoff Petersson, cgtTAXnet
6. The Taxation Institute of Australia, The Institute of Chartered Accountants and The Australian Society of Certified Practising Accountants
7. Price Waterhouse
8. The Taxation Institute of Australia, The Institute of Chartered Accountants and The Australian Society of Certified Practising Accountants
9. Corporate Tax Association
10. The University of New South Wales
11. Australian Tax Teachers Association
12. Tax Law Improvement Project (Australian Taxation Office)
13. Tax Law Improvement Project (Australian Taxation Office)
14. KPMG
15. Australian Hotels Association

# III

## APPENDIX II - EXHIBITS

1. Tax Law Improvement Project - Section 15AC Acts Interpretation Act, Clause 1-3 Income Tax Assessment Bill 1996.
2. Coalition Parties Policy Statement, 'How Labor has Failed', 1996.



## **APPENDIX III - WITNESSES APPEARING AT PUBLIC HEARINGS**

**Sydney, Tuesday 18 February 1997**

### *Tax Law Improvement Project*

Mr Brian Nolan  
Project Director

Mr Gavin Back  
Assistant Commissioner of Taxation

Mr Michael Bradshaw  
Technical Officer

Ms Helen Duffy  
Project Officer

Ms Elizabeth Gamin  
Project Officer

Mr Simon Gaylard  
Private Sector Representative

Miss Margaret Haly  
Assistant Commissioner

Mr Benjamin Kelly  
Technical Officer

Mr Gregory Pinder  
Technical Officer

Mr Tom Reid  
Office of the Parliamentary Counsel

*Tax Law Improvement Project Consultative Committee*

Mr Stan Droder  
Chairman

Mr Bob Bryant  
Member

Mrs Margaret Gibson  
Member

Professor Richard Krever  
Member

Mr Ian Langford-Brown  
Member

Ms Joycelyn Morton  
Member

Mr Eric Risstrom  
Member

Mr David Russell, QC  
Member

Sydney, Wednesday 19 February 1997

*Tax Law Improvement Project*

Mr Brian Nolan  
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Assistant Commissioner of Taxation

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Ms Elizabeth Gamin  
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Miss Margaret Haly  
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Mr Benjamin Kelly  
Technical Officer

Mr David Mennie  
Project Member

Mr Gregory Pinder  
Technical Officer

Mr Tom Reid  
Office of the Parliamentary Counsel

*Corporate Tax Association and Business Council of Australia*

Mr Bob Bryant  
Executive Director  
Corporate Tax Association

Mr Ian Phillips  
Consultant  
Corporate Tax Association

Mr Martin Soutter  
Assistant Director  
Business Council of Australia

*Australian Hotels Association*

Miss Denita Harris  
Manager  
Corporate and Industrial Relations

Mr Michael Quinn  
Tax Adviser

*Matrix Finance Group*

Mr Scott Tyne  
Director

Mr Jack Thomas  
Partner  
Deloitte Touche Tohmatsu

*Taxation Institute of Australia, Institute of Chartered Accountants in Australia, Australian Society of Certified Practising Accountants*

Ms Annamaria Carey  
Taxation Technical Director  
Taxation Institute of Australia

Mr Ian Langford-Brown  
Director of Taxation  
Institute of Chartered Accountants in Australia

Mr Geoffrey Lehmann  
Partner  
Price Waterhouse

Ms Joycelyn  
Australian Society of Certified Practising Accountants

# IV

## APPENDIX IV - CLAUSE BY CLAUSE COMMENTS

### Introduction

The central column of this appendix provides references to comments, criticisms and proposed amendments to specific clauses of the Tax Law Improvement Bill 1996 that have been made in submissions and at the public hearings. The Committee asked TLIP to respond to each issue and a reference to their responses is given in the right hand column.

The following abbreviations are used in the appendix:

- AHA - Australian Hotels Association
- ATTA - Australian Tax Teachers Association
- CC - Consultative Committee
- CGT - Capital Gains Tax
- CTA - Corporate Tax Association
- CTA & BCA - Corporate Tax Association and Business Council of Australia
- Deloitte - Deloitte Touche Tohmatsu
- Div - Division
- EM - The Explanatory Memorandum to the Tax Law Improvement Bill 1996
- ITAB - Income Tax Assessment Bill 1996
- Joint Bodies - Taxation Institute of Australia, Institute of Chartered Accountants and Australian Society of Certified Practicing Accountants
- KPMG - KPMG Chartered Accountants

- Matrix - Matrix Finance Group
- *Sub* - Submission
- The 1936 Act - *Income Tax Assessment Act 1936*
- TLIB - Tax Law Improvement Bill 1996
- TLIP - Tax Law Improvement Project
- *Trans* - Transcript

Clause	Comments	TLIP Response
2	<p>Recommend a "tandem approach". (Joint Bodies, <i>Sub</i>, pp. S197 &amp; 241; <i>Trans</i>, pp. 140-143 &amp; 147-148) (CTA &amp; BCA, <i>Trans</i>, pp. 84-85 &amp; 94) (Prof. Grbich response, <i>Sub</i>, p. 265) (ATTA, response, <i>Sub</i>, pp. S268-270)</p> <p>"Warehousing" is the appropriate option. (CTA, <i>Sub</i>, pp. S261-2) (CTA &amp; BCA, <i>Trans</i>, pp. 84-86 &amp; 89-91) (ATTA response, <i>Sub</i>, p. S270)</p> <p>Progressive delivery is the most appropriate option. (Prof. Grbich, <i>Sub</i>, p. 265) (ATTA, <i>Sub</i>, pp. S269-270) (CC response, <i>Trans</i>, p. 11)</p> <p>TLIP has an element of retrospectivity. (Deloitte, <i>Sub</i>, p. S56) (Joint Bodies, <i>Sub</i>, pp. S194 &amp; S199) (CTA, <i>Sub</i>, p. S261) (CC, <i>Trans</i>, p. 8) (CTA &amp; BCA, <i>Trans</i>, pp. 84 &amp; 89)</p>	<p>Disagree <i>Sub</i>, pp. S392-398; <i>Trans</i>, pp. 81-82, 98-99, 143-144 &amp; 146-147</p> <p>Disagree <i>Sub</i>, p. S396; <i>Trans</i>, pp. 88, 91-94 &amp; 96</p> <p>Agree <i>Sub</i>, pp. S392-398; <i>Trans</i>, p. 7</p> <p>Explanation <i>Trans</i>, p. 88</p>
Division 15	Items of income may now be subject to an effective alternate CGT regime with different rules. (Joint Bodies, <i>Sub</i> , pp. S195 & S210-212; <i>Trans</i> , pp. 152-153)	Disagree <i>Sub</i> , pp. S370-371
15-10	<p>Tax basis may change from cash to accrual, and consequently the EM contains a misstatement of the law. (Joint Bodies, <i>Sub</i>, pp. S196 &amp; S212-214; <i>Trans</i>, pp. 153 &amp; 155-163)</p> <p>The words "in or" have been omitted from this section. This changes the meaning and is not referred to in the EM. (Joint Bodies, <i>Sub</i>, p. S372)</p>	<p>Explanation <i>Sub</i>, pp. S370-371; <i>Trans</i>, pp. 156-163</p> <p>Explanation <i>Sub</i>, p. S372</p>

15-15	Failure to rewrite subsections 25(A)(2)-(12) of the 1936 Act is unfortunate. (Joint Bodies, <i>Sub</i> , pp. S214-215)	Explanation <i>Sub</i> , p. S373
	Second limb appears to be stripped of its association with the first limb. (Joint Bodies, <i>Sub</i> , p. S215) (CC, <i>Trans</i> , pp. 14-17)	Explanation <i>Sub</i> , p. S373; <i>Trans</i> , p. 19
	Is this section necessary? (CC, <i>Sub</i> , p. S244)	Explanation <i>Sub</i> , p. S400
	Scope may have widened. (CC, <i>Sub</i> , p. S244)	Explanation <i>Sub</i> , p. S400
	Should substitute the word "scheme" for the word "plan" in the EM. (CC, <i>Sub</i> , p. S244; <i>Trans</i> , pp. 14-15)	Agree <i>Sub</i> , p. S400; Explanation <i>Trans</i> , pp. 18-19
	A third limb has been left out of the section. (CC, <i>Trans</i> , p. 29)	Explanation <i>Trans</i> , p. 30
15-20	Confusing and poorly drafted. (Joint Bodies, <i>Sub</i> , pp. S195 & S216-218; <i>Trans</i> , pp. 155-156)	Explanation <i>Sub</i> , p. S375; <i>Trans</i> , p. 156
	Tax basis may change from cash to accrual. (Joint Bodies, <i>Trans</i> , pp. 153 & 155-163)	Explanation <i>Trans</i> , pp. 156-163
15-25	May apply to a payment made by a guarantor under a lease who has used the lessee's premises for the purpose of producing assessable income. (Joint Bodies, <i>Sub</i> , p. 218)	Explanation <i>Sub</i> , p. S376
15-30	Broader than the section it replaces. (Joint Bodies, <i>Sub</i> , pp. S218-219)	Disagree <i>Sub</i> , p. S377
	Appears to change the basis of taxation from cash to accruals basis. (CC, <i>Trans</i> , p. 29-33) (Joint Bodies, <i>Sub</i> , p. S220; <i>Trans</i> , pp. 153 & 155-163)	Explanation <i>Trans</i> , pp. 30-34 & 156-163
Division 20-A	The compliance costs for the alternative methods need to be fully considered. (CC, <i>Sub</i> , p. S245)	Explanation <i>Sub</i> , pp. S401-402
	Makes amendments to ITAB- unacceptably costly and unproductive. (Joint Bodies, <i>Sub</i> , p. S221)	Explanation <i>Sub</i> , pp. S378-379
	Amount received as a recoupment of prior deductible expenditure will now be included in assessable income in some cases. (Joint Bodies, <i>Sub</i> , pp. S196 & 222-226) (CC, <i>Sub</i> ,	Explanation <i>Sub</i> , pp. S378-379

	<p>pp. S244-245; <i>Trans</i>, pp. 21-22)</p> <p>Taxpayers may prefer, and be better off under, the existing "reduction of deductions" treatment of recoupments. (Joint Bodies, <i>Sub</i>, p. S222)</p> <p>The proposed change to an "assessing approach" may particularly disadvantage taxpayers with undeductible prior year losses. (Joint Bodies, <i>Sub</i>, p. S222)</p> <p>The EM should have contained a detailed explanation of the effect of 20-A on each of the deductions that it covers. (Joint Bodies, <i>Sub</i>, p. S222)</p> <p>The interpretation of "you have deducted or can deduct the whole of the loss or outgoing for an earlier income year" is not adequately explained in the EM. There may also be practical difficulties in applying what is thought to be the best interpretation. (CC, <i>Sub</i>, p. S245)</p> <p>The converse of the recoupment provisions should be inserted. (CTA &amp; BCA, <i>Sub</i>, p. S67)</p> <p>Does not deal with s. 51AH of the 1936 Act. If it is not altered to operate on the same basis there will continue to be different methods of treatment. (CC, <i>Sub</i>, p. S244)</p> <p>Election expenses and tax related expenses are likely to affect non-business situations. (CC, <i>Sub</i>, p. S245)</p>	<p>Explanation <i>Sub</i>, p. S379</p> <p>Explanation <i>Sub</i>, pp. S378-379</p> <p>Explanation <i>Sub</i>, pp. S378 &amp; 380</p> <p>Agree <i>Sub</i>, pp. S401-402</p>
Division 20-B	<p>Problems with the definition of "car". (CTA &amp; BCA, <i>Sub</i>, p. S66; <i>Trans</i>, pp. 87 &amp; 95) (CC, <i>Sub</i>, p. S260; <i>Trans</i>, p. 22)</p> <p>Sale of previously leased motor vehicles should be dealt with under CGT. (CTA &amp; BCA, <i>Sub</i>, pp. S66-67 &amp; S102-103)</p> <p>The same complications and difficulties will continue to arise. (Joint Bodies, <i>Sub</i>, pp. S157, S196 &amp; S229)</p>	<p>Agree <i>Sub</i>, pp. S345-346; <i>Trans</i>, pp. 22-23</p> <p>Beyond mandate <i>Sub</i>, pp. S345-346</p> <p>Beyond mandate <i>Sub</i>, p. S357</p>
20-20	20-20(3)(b) - Interpretation of this section should be stated in EM. Compliance cost statement may be necessary. (CC, <i>Sub</i> , p. S245)	

20-25	Concept of recoupment appears substantially enlarged. (Joint Bodies, <i>Sub</i> , pp. S196 & S222-223; <i>Trans</i> , pp. 163-164)	Explanation <i>Sub</i> , pp. S378-379
20-110	Appears to be an internal inconsistency. (Joint Bodies, <i>Sub</i> , pp. S157-158)	Explanation <i>Sub</i> , pp. S357-359
20-120	Purchasers of a previously leased car are required to know the cost to the previous lessor. Theoretically, at least, this is beyond the capacity of the taxpayer. (CTA & BCA, <i>Sub</i> , p. S101)	Disagree <i>Sub</i> , p. S344
20-160	Could include examples of what is meant by "reasonable". (Joint Bodies, <i>Sub</i> , p. S158)	Explanation <i>Sub</i> , pp. S357-358 & S360
	"objective tests" are in fact discretions. (Joint Bodies, <i>Sub</i> , p. S229)	Disagree <i>Sub</i> , p. S384
25-5	25-5(1)(a) - Does change in wording affect meaning? (Joint Bodies, <i>Sub</i> , p. S235)	Explanation <i>Sub</i> , p. S386
	Change term "an entity" to "another entity". (Joint Bodies, <i>Sub</i> , p. S235)	Explanation <i>Sub</i> , p. S386
	Does omission of section 69(7) of the 1936 Act, affect meaning? (Joint Bodies, <i>Sub</i> , p. S235)	Explanation <i>Sub</i> , pp. S386-387
	"Period of the loan" does not have the normal meaning and may need definition. (CC, <i>Sub</i> , p. S246)	
25-20	25-20 is much broader than s. 68 as it allows a deduction for the cost of surrendering a lease. This change is welcomed. (Joint Bodies, <i>Sub</i> , p. S236)	Explanation <i>Sub</i> , p. S388
25-35	Does s. 25-35 have a greater flexibility than s. 68? (cgtTAXnet, <i>Sub</i> , pp. S135-136)	Explanation <i>Sub</i> , p. S349
	Should address where a bad debt cannot be claimed as a deduction because it has technically ceased to exist. (cgtTAXnet, <i>Sub</i> , p. S136)	Explanation <i>Sub</i> , p. S350
	Company bad debt provisions should have been rewritten. (cgtTAXnet, <i>Sub</i> , p. S136)	Explanation <i>Sub</i> , pp. S351-352
25-40	EM could explain circumstances in which it is appropriate for taxpayers to lodge a notification with the Commissioner. (Joint	Explanation <i>Sub</i> , p. S388

	Bodies, <i>Sub</i> , p. S237)	
25-55	Amount should be greater than \$42. (Joint Bodies, <i>Sub</i> , p. S238)	Explanation <i>Sub</i> , p. S389
25-75	Clubs should not pay a lower rate of tax than hotels (AHA, <i>Sub</i> , pp. S1-2; <i>Trans</i> , pp. 111-113)  25-75(2)(c) - Confusing and inconsistent with 25-75(1). (CC, <i>Sub</i> , p. S245)	Beyond mandate <i>Sub</i> , pp. S273 & S418-420; <i>Trans</i> , pp. 110-111  Explanation <i>Sub</i> , p. S403
26-35	May not extend to payments by partners. (cgTAXnet, <i>Sub</i> , p. S137)  Discretion should be eliminated. (cgTAXnet, <i>Sub</i> , p. S137)	Agree <i>Sub</i> , p. S354  Disagree <i>Sub</i> , p. S354
Division 32	Should be wholly re-thought and re-drafted. (CTA & BCA, <i>Sub</i> , pp. S67-68) (Joint Bodies, <i>Sub</i> , pp. S196 & S227-228) (CC, <i>Trans</i> , pp. 23-25)  The law should clarify the deductibility of meals while travelling on business. (Joint Bodies, <i>Sub</i> , pp. S382-383) (CC, <i>Trans</i> , pp. 34 & 36-37)	Beyond mandate <i>Sub</i> , p. S365; <i>Trans</i> , pp. 23-25  Explanation <i>Sub</i> , pp. S381-382; <i>Trans</i> , pp. 35-37
32-20	Definition of "provide" results in interpretation change. (CC, <i>Sub</i> , p. S248)	Explanation <i>Sub</i> , pp. S404-405
32-30	Employee facilities - TLIB denies some deductions allowed under the old law. (CC, <i>Sub</i> , p. S248)	Explanation <i>Sub</i> , p. S404
32-75	The scope is broadened by replacing the defined term "agreement" with the defined term "arrangement". (Joint Bodies, <i>Sub</i> , p. S227-228)	Disagree <i>Sub</i> , pp. S381-382
Division 34	Should be wholly re-thought and re-drafted. (CTA & BCA, <i>Sub</i> , pp. S67-68) (Joint Bodies, <i>Sub</i> , pp. S196 & S227-228) (CC, <i>Trans</i> , pp. 26-27)  Should be excised from TLIB. (KPMG, <i>Sub</i> , pp. S415-416)	Beyond mandate <i>Sub</i> , p. S366  Beyond mandate see <i>Sub</i> , p. S366
34-10	The four express heads of expenditure found in the 1936 Act are omitted. (CC, <i>Sub</i> , p. S249)	Explanation <i>Sub</i> , p. S406
34-15	Definition of "associate" has changed. Act should also define this term. (CTA & BCA,	Explanation <i>Sub</i> , pp. S347-

	<i>Sub</i> , p. S104A) (CC, <i>Sub</i> , p. S249)	348, S406-407
34-20	34-20(2) - The definition of "protective clothing" is wider. (CC, <i>Sub</i> , p. S248; <i>Trans</i> , p. 26)	Explanation <i>Sub</i> , p. S 403
Division 42	Scope of depreciation should be extended to "interests in plant". (CTA & BCA, <i>Sub</i> , p. S63)  Claiming of depreciation deductions on a day-by-day basis is cumbersome and costly. (CTA & BCA, <i>Sub</i> , p. S64)	
Division 42-L	"Pooling" offers little or no practical advantage. Provisions should be revamped (CTA & BCA, <i>Sub</i> , p. S92) (Joint Bodies, <i>Sub</i> , pp. S151-152)  Method to avoid the burden of re-unitising assets when calculating the balancing charge on disposal. (CTA & BCA, <i>Sub</i> , p. S93)	Beyond mandate <i>Sub</i> , p. S300
42-15	Should have addressed deductibility of tenants fixtures for depreciation (CTA & BCA, <i>Sub</i> , pp. S61-63) (Joint Bodies, <i>Sub</i> , pp. S197 & S230) (CC, <i>Trans</i> , pp. 37, 40-43 & 49)  Should allow deductibility of leased fixtures. (Joint Bodies, <i>Sub</i> , pp. S145-146)  Laws concerning entitlement to depreciation on plant and those governing allowances for capital expenditure on buildings should be contained in a single code. (Joint Bodies, <i>Sub</i> , pp. S141-142 & S144)  Failing removal of the ownership test, legislative force should be given to the administrative practice of allowing plant depreciation to taxpayers who may not be the legal owners. (Joint Bodies, <i>Sub</i> , p. S145; CTA & BCA, <i>Sub</i> , pp. 62-63)  In a bare trust situation, the law should allow the beneficial owner depreciation deductions. (Joint Bodies, <i>Sub</i> , p. S147) (CTA & BCA, <i>Sub</i> , pp. S62-63)  Definition of hire purchase is likely to constrain "other established administrative practices" as to what constitutes a lease and what is a hire purchase. (Joint Bodies, <i>Sub</i> ,	Beyond mandate <i>Sub</i> , pp. S274-275; <i>Trans</i> , pp. 38-43, 48-49  Beyond mandate <i>Sub</i> , pp. S274-275  Beyond mandate <i>Sub</i> , p. S275  Explanation <i>Sub</i> p. S276  Beyond mandate <i>Sub</i> , p. S277  Disagree <i>Sub</i> , p. S277

	<p>p. S148)</p> <p>The concept of "quasi owner", as it relates to hire purchase agreements, should be excised from the legislation. (Matrix, <i>Sub</i>, pp. S7-9 &amp; S14-19; <i>Trans</i>, pp. 115-121, 130 &amp; 135)</p> <p>Legal ownership should not be a prerequisite to the granting of depreciation. (Joint Bodies, <i>Sub</i>, pp. S141-142, (CC, <i>Trans</i>, pp. 37, 40-43 &amp; 49)</p> <p>Provisions may operate retrospectively. (Matrix, <i>Sub</i>, pp. S7-9 &amp; S20-23)</p>	<p>Disagree <i>Sub</i>, p. S278; <i>Trans</i>, pp. 124-128 &amp; 132-133</p> <p>Beyond mandate <i>Sub</i>, p. S 274; <i>Trans</i>, pp. 38-43 &amp; 48-49</p> <p>Agree <i>Sub</i>, p. S278</p>
42-18	Definition of "plant" should be included. (Joint Bodies, <i>Sub</i> , pp. S148-149)	Explanation <i>Sub</i> , p. S279
42-19	Definition of a "unit" of plant should be included. (Joint Bodies, <i>Sub</i> , p. S149)	Disagree <i>Sub</i> , p. S279
42-30	Persons who cease to hold plant under a hire purchase agreement and do not become its owner should not be required to do a balancing adjustment calculation. (Deloitte, <i>Sub</i> , p. S55) (Matrix, <i>Sub</i> , p. S8)	Disagree <i>Sub</i> , p. S280
42-40	Should signpost choices and specify how they should be documented. (Joint Bodies, <i>Sub</i> , pp. S152, S233-234)	Disagree <i>Sub</i> , p. S280
42-45	Incapable of appropriate application by the taxpayer in a self assessment environment.(CTA & BCA, <i>Sub</i> , pp. S63-64)	Explanation <i>Sub</i> , p. S281
42-65	<p>Capital costs incurred after the acquisition of plant should be specifically included in the term "cost". (CTA &amp; BCA, <i>Sub</i>, p. S63)</p> <p>Item 6 in the table must be amended to reflect the true economic cost to the reversionary owner. (Matrix, <i>Sub</i>, pp. S7-9 &amp; S24-25) (Joint Bodies, <i>Sub</i>, p. S156)</p>	<p>Disagree <i>Sub</i>, p. S284</p> <p>Explanation <i>Sub</i>, p. S285</p>
42-80	Car depreciation limit should not apply to utilities and panel vans. (CTA & BCA, <i>Sub</i> , p. S65)	Agree <i>Sub</i> , p. S293
42-90	<p>TLIB should provide guidelines on when the Commissioner may limit the cost of plant. (Joint Bodies, <i>Sub</i>, p. S150)</p> <p>Provisions are incapable of appropriate application by the taxpayer in a self assessment environment. (CTA &amp; BCA, <i>Sub</i>,</p>	<p>Explanation <i>Sub</i>, p. S 286</p> <p>Explanation <i>Sub</i>, p. S286</p>

	<p>pp. S63-64)</p> <p>42-90(4) - Criteria make should include "double-dipping". (Joint Bodies, <i>Sub</i>, p. S230)</p> <p>42-90(4)(d) - How is the method of financing relevant? (Joint Bodies, <i>Sub</i>, pp. S158 &amp; S230) (CC, <i>Trans</i>, p. 38)</p>	<p>Explanation <i>Sub</i>, p. S286</p> <p>Explanation <i>Sub</i>, pp. S287-S318 &amp; S361; <i>Trans</i>, pp. 43-44</p>
42-105	Removes option of making a reasonable estimate of the life of plant given particular circumstances. (Joint Bodies, <i>Sub</i> , pp. S149 & S233) (CC, <i>Trans</i> , pp. 44-45 & 48)	Explanation <i>Sub</i> , p. S290; <i>Trans</i> , pp. 45-48
42-130	<p>A de-minimus rule would allow taxpayers to automatically write off plant when its written down value reaches a nominal amount (eg. \$50, \$300) when using the DV method of depreciation. (Joint Bodies, <i>Sub</i>, p. S152) (CTA &amp; BCA, <i>Sub</i>, p. S65)</p> <p>\$300 limit is too low. (CC, <i>Trans</i>, pp. 44-45)</p>	<p>Beyond mandate <i>Sub</i>, p. S292</p> <p>Disagree <i>Trans</i>, p. 45</p>
42-135	<p>Cars and motor cycles should not be singled out. (see s. 42-125). (CTA &amp; BCA, <i>Sub</i>, p. S65)</p> <p>Depreciation rates for utilities, panel vans and similar vans should not be different from heavier vehicles. (CTA &amp; BCA, <i>Sub</i>, p. S65)</p>	Beyond mandate <i>Sub</i> , p. S293
42-150	Should extend the concession to employee amenities. (Joint Bodies, <i>Sub</i> , p. S152)	Beyond mandate <i>Sub</i> , p. S294
42-160 & 42-165	Assets should be pooled on acquisition. Assets could be pooled on a half yearly rather than a daily basis. (CTA & BCA, <i>Sub</i> , p. S92)	Beyond mandate <i>Sub</i> , p. S295
42-208	There is a flaw in the termination formula (Deloitte, <i>Sub</i> , pp. S55-56) (Matrix, <i>Sub</i> , pp. S79-9 & S26-45; <i>Trans</i> , pp. 118 & 129-131)	Agree <i>Sub</i> , p. S297; <i>Trans</i> , pp. 127 & 133
42-310	It is not clear whether, in the case of a lease agreement, the depreciation remains deductible to the financier as opposed to the "quasi-owner". (Joint Bodies, <i>Sub</i> , p. S232)	
42-320	In some circumstances, status of quasi ownership may depend on the tax exempt	Explanation

	status of an authority from time to time. (CC, <i>Sub</i> , p. S260)	<i>Sub</i> , p. S297
42-330 & 42-335	Provisions relating to roll-over relief where plant is transferred because of a change in ownership should be reviewed from a policy perspective. (Joint Bodies, <i>Sub</i> , pp. S150-151)	
42-355	Term "pool percentage" requires definition. (CTA & BCA, <i>Sub</i> , p. S93)	Disagree <i>Sub</i> , p. S301
42-365	42-365(e) - Seems superfluous. Provision may be better handled under a section dealing with prohibition of double counting of capital allowances. (CTA & BCA, <i>Sub</i> , p. S93)	Disagree <i>Sub</i> , p. S301
42-395	Administrative burden defeats the objective of pooling. (CTA & BCA, <i>Sub</i> , p. S93)	Explanation <i>Sub</i> , p. S300
50-1	Definitions of "ordinary income", "statutory income" and "exempt income" are circular. (CC, <i>Sub</i> , p. S243)	
50-5 50-10 50-30 50-40 50-45	TLIB be amended to change the words "society, association or club" where ever they appear and replace them with the word "company" (as defined in the income tax law). (KPMG, <i>Sub</i> , p. S413-414)	
Div 50 - Div 55	Alterations could be acknowledged in the EM. (CC, <i>Sub</i> , p. S246)	
70-10	Definition of trading stock should expressly refer to "anything (or an interest in anything)". (CTA & BCA, <i>Sub</i> , p. S79)	Disagree <i>Sub</i> , p. S323
	Trading stock rules appear to apply to almost all sales, including those of taxpayers not carrying on a business. A radical change. (Joint Bodies, <i>Sub</i> , pp. S195 & S205-209) (CC, <i>Trans</i> , pp. 51-55 & 70)	Agree - see <i>Sub</i> , pp. S367-368; Explanation <i>Trans</i> , p. 55
	Definition of "trading stock" should include "held for sale in the course of a business" or similar. (CC, <i>Trans</i> , pp. 52) (CTA & BCA, <i>Trans</i> , pp. 100-105) (Joint Bodies, <i>Trans</i> , p. 152)	Agree - <i>Sub</i> , pp. S367-368, S409 & S412; <i>Trans</i> , pp. 55, 66 & 100-105
	Definition of trading stock should be amended to include a part interest in trading stock. (CTA & BCA, <i>Sub</i> , p. S83)	
70-15	70-15(2) and (3) appear to deny a deduction for trading stock that is acquired but fails to	Explanation <i>Sub</i> , pp. S324-

	<p>become "on hand" thorough an intervening loss. This does not arise under the 1936 Act. (CTA &amp; BCA, <i>Sub</i>, p. S79)</p> <p>Raises questions of the application of this section to unincorporated joint ventures where the joint venturers acquire trading stock as tenants in common in specified shares. (CTA &amp; BCA, <i>Sub</i>, p. S79)</p> <p>Items gifted or bequeathed which become trading stock will be treated as acquired for no cost (should be market value at the time it becomes trading stock). (Joint Bodies, <i>Sub</i>, p. S208) (CC, <i>Sub</i>, p. S252; <i>Trans</i>, pp. 55-57 &amp; 62)</p>	<p>325</p> <p>Explanation <i>Sub</i>, p. S324</p> <p>Agree <i>Sub</i>, p. S367-368, S408-410; <i>Trans</i>, pp. 56-59, 62 &amp; 67</p>
70-20	<p>Arm's length rules should be more explicit. (Joint Bodies, <i>Sub</i>, p. S150) (CTA &amp; BCA, <i>Sub</i>, pp. S79-80)</p> <p>The <i>market value</i> may be different from the <i>arm's length value</i> used in the existing law. (CC, <i>Sub</i>, p. S252)</p>	<p>Disagree <i>Sub</i>, p. S326</p> <p>Disagree <i>Sub</i>, p. S410</p>
70-25	Does not explain the treatment of trading stock received under other circumstances. (CTA & BCA, <i>Sub</i> , p. S80)	Explanation <i>Sub</i> , p. S327
70-30	<p>Undoes the allowable deduction for the accrued value of trading stock afforded to taxpayers in <i>Whitfords Beach</i> ie: the ability to use market value. (CTA &amp; BCA, <i>Sub</i>, p. S80) (Joint Bodies, <i>Sub</i>, pp. S208-209) (cgTAXnet, <i>Sub</i>, pp. S137-139) (CC, <i>Sub</i>, pp. S251 &amp; S254-256.)</p> <p>Should have the option of choosing cost or market value. (CTA &amp; BCA, <i>Sub</i>, pp. S59-60) (CC, <i>Sub</i>, pp. S251 &amp; S254-256; <i>Trans</i>, p. 53)</p> <p>These deeming provisions also need to be integrated with the capital allowance and CGT sections of the 1936 Act, and, eventually the 1995 Act. (CTA &amp; BCA, <i>Sub</i>, p. S80)</p> <p>Possible change of meaning from substitution of <i>held</i> for <i>acquired</i>. Change may encompass transactions such as share investment or property subdivision. (cgTAXnet, <i>Sub</i>, p. S139) (CC, <i>Sub</i>, p. S251 &amp; S254-256; <i>Trans</i>, p. 8) (CTA, <i>Sub</i>, p. S262)</p> <p>An anomalous result benefiting some</p>	<p>Beyond mandate <i>Sub</i>, pp. S328-329, S355-356, S369, S411-412</p> <p>Beyond mandate <i>Sub</i>, pp. S328-329 &amp; S408-410</p> <p>Explanation <i>Sub</i>, pp. S328-329</p> <p>Explanation <i>Sub</i>, pp. S355-356</p> <p>Explanation</p>

	taxpayers. (Joint Bodies, <i>Sub</i> , p. S209)  Concern about the definition of "cost" linking up with the definition in the depreciation rules. (Joint Bodies, <i>Trans</i> , p. 152)	Sub, pp. S367 & S369
70-35	Determination of the value of trading stock on hand will usually involve a degree of estimation. (CTA & BCA, <i>Sub</i> , p. S80)	Disagree <i>Sub</i> , p. S330
70-40	A clear departure from the 1936 Act. It is most likely to operate to the disadvantage of taxpayers. Is only acceptable if the principle found in the <i>Country Magazine</i> case is reversed. (CTA & BCA, <i>Sub</i> , pp. S59 & S80-81; <i>Trans</i> , pp. 106-107) (CC, <i>Trans</i> , p. 67)  70-40(2) - The converse situation to that addressed in this subsection is not recognised. (CTA & BCA, <i>Sub</i> , p. S81) (CC, <i>Trans</i> , pp. 67-68)	Beyond mandate <i>Sub</i> , pp. S331-332  Explanation <i>Sub</i> , pp. S331-332; <i>Trans</i> , pp. 67-68
70-45	Valuation of each "item" of trading stock is onerous. (CTA & BCA, <i>Sub</i> , pp. S60-61)  Terms "elect" and "choose" are not defined and it is not clear whether they have the same or different meanings. (CTA & BCA, <i>Sub</i> , p. S81)  The words "you must elect" are inappropriate. (CTA & BCA, <i>Sub</i> , p. S81)  70-45(1)(a) - "cost" should be defined as meaning "cost price". (CTA & BCA, <i>Sub</i> , p. S82)  70-45(2) - It is presumed that in item 1 to the table, "company" should bear its defined meaning. (CTA & BCA, <i>Sub</i> , p. S82)  Does s. 46(7A) of the 1936 Act have any continuing utility? (CTA & BCA, <i>Sub</i> , p. S82)  TLIB should provide that the taxpayer is deemed to have elected which value of trading stock will be used when the taxpayer lodges a tax return. (CC, <i>Sub</i> , pp. S251-252)	Disagree <i>Sub</i> , pp. S321-322  Explanation <i>Sub</i> , p. S333  Disagree <i>Sub</i> , p. S333  Explanation <i>Sub</i> , pp. S333-334  Explanation <i>Sub</i> , pp. S333-334  Explanation <i>Sub</i> , pp. S333-334  Explanation <i>Sub</i> , p. S410
70-50	The heading to this section forms part of the operative provision and is misleading. (CTA & BCA, <i>Sub</i> , p. S82)  Need to ensure this section can operate	Disagree <i>Sub</i> , p. S335  Explanation

	<p>where a percentage of items of a common class will never be sold, but precisely which items will be unsaleable cannot be ascertained. (CTA &amp; BCA, <i>Sub</i>, p. S82)</p> <p>The valuation of each "item" of obsolete trading stock is onerous. (CTA &amp; BCA, <i>Sub</i>, pp. S60-61)</p>	<i>Sub</i> , pp. S335-336
70-85	Post CGT, is this extended definition necessary? (CTA & BCA, <i>Sub</i> , p. S82)	Beyond mandate <i>Sub</i> , p. S337
70-90	This section should be amended to make it clear that it applied to disposals <i>to another person</i> . (CC, <i>Sub</i> , p. S254; <i>Trans</i> , pp. 50-51)	Explanation <i>Sub</i> , p. S408-410
70-95	Entity acquiring trading stock upon a sale not in the ordinary course of business is unable to recognise that fact, and to establish what market value has been included in the assessable income of the vendor under section 70-90. Suggest that ss. 70-90 and 70-95 be applied only where the parties are not at arms length. (CTA & BCA, <i>Sub</i> , p. S82)	Disagree <i>Sub</i> , p. S338
70-100	<p>Obligation for joint venturers to make common elections, seriously impedes their freedom not to be bound by the actions of another. (CTA &amp; BCA, <i>Sub</i>, p. S83)</p> <p>Does an "election" imply more formality than an "agreement"? (CTA &amp; BCA, <i>Sub</i>, p. S83)</p> <p>70-100(6)(d) - the words "chose in action" are preferred to a "thing in action". (CTA &amp; BCA, <i>Sub</i>, p. S83)</p> <p>70-100(7) - reduces the flexibility of the 1936 Act which allowed the Commissioner to give further time. (CTA &amp; BCA, <i>Sub</i>, p. S83)</p> <p>70-100(9) states the obvious. (CTA &amp; BCA, <i>Sub</i>, p. S83)</p>	Explanation <i>Sub</i> , pp. S339-340  Explanation <i>Sub</i> , pp. S339-340  Explanation <i>Sub</i> , pp. S339-340  Agree <i>Sub</i> , pp. S339-340  Explanation <i>Sub</i> , pp. S339-340
70-105	The term "elect" should be defined. (CTA & BCA, <i>Sub</i> , p. S83)	Explanation <i>Sub</i> , p. S341
70-110	<p>The deemed sale should take place at cost. (CTA &amp; BCA, <i>Sub</i>, pp. S59-60)</p> <p>The deemed re-acquisition referred to in subsection 70-110(6) must be in such terms as to ensure that the deemed outlay</p>	Explanation <i>Sub</i> , p. S342  Explanation <i>Sub</i> , p. S342

	constitute "Construction Expenditure" for the purposes of Division 35 of the 1995 Act where the trading stock in question is a building or other asset coming within that Division that has previously been elected as trading stock by the taxpayer. (CTA & BCA, <i>Sub</i> , p. S84)	
385-E	The concession for "bovine brucellosis" has changed - reducing the concession from 10 to 5 years. (Joint Bodies, <i>Sub</i> , pp. S239-240)	Explanation <i>Sub</i> , p. S391
385-100	385-100(1)(a)(iii) - Should define "drought or flood" or who is an accepted person in relation to the declaration that an area is a drought or flood affected area. (Joint Bodies, <i>Sub</i> , p. S159)	Disagree <i>Sub</i> , pp. S363-364
385-105	In the case of "bovine tuberculosis" the formula for apportioning profit over 10 years has changed. (Joint Bodies, <i>Sub</i> , p. S240)	Disagree <i>Sub</i> , p. S391
385-110	If you make the deferment election, how does this provision work for replacement animals you breed? (Joint Bodies, <i>Sub</i> , p. S159)	Explanation <i>Sub</i> , pp. S363-364
385-125	In the case of "bovine tuberculosis" the formula for apportioning the profit over 10 years has changed. (Joint Bodies, <i>Sub</i> , p. S240)	Disagree <i>Sub</i> , p. S391
385-135	385-135(2) adds nothing to the section. (Joint Bodies, <i>Sub</i> , p. S159)	Explanation <i>Sub</i> , pp. S363-364
385-150	Should add that the election is to be made "before or at the same time as the income tax return...". (Joint Bodies, <i>Sub</i> , p. S159)	Disagree <i>Sub</i> , pp. S363-364
385-160 & 385-163	385-160(1)&(2) and 385-163(3) - In relation to a trustee making an election if a dissentitling event has happened, there appears to be a change of a policy nature which has not been highlighted. (Joint Bodies, <i>Sub</i> , pp. S159 & S239)	Explanation <i>Sub</i> , pp. S363-364, S390-391
385-505	Amend to excise any requirement that the grapevine be owned by the person who has incurred the capital expenditure in relation to the establishment of the grapevine. (KPMG, <i>Sub</i> , pp. S416-417)	
995-1	Difficult to locate definitions. (Joint Bodies, <i>Sub</i> , p. S203)	
	Definition of "associate" has broadened, and	Explanation

	<p>this is not mentioned in the EM (Joint Bodies, <i>Sub</i>, p. S229)</p> <p>A "car" should be defined as "a motor car or a station wagon". (CTA &amp; BCA, <i>Sub</i>, p. S65)</p> <p>The term "choice" should be defined. (Joint Bodies, <i>Sub</i>, pp. S153 &amp; S233)</p> <p>The definition of "cost" only relevantly deals with the cost of livestock [as opposed to other forms of trading stock]. (cgTAXnet, <i>Sub</i>, p. S139)</p> <p>The word "elect" should be replaced with "choice". (CTA &amp; BCA, <i>Sub</i>, p. S61)</p> <p>The term "hire purchase agreement" appears sufficiently broad so as to include a "lease agreement". (Joint Bodies, <i>Sub</i>, p. S232)</p> <p>It is important that the proposed definition of "hire purchase agreement" not change the existing boundaries between leases and hire purchase arrangements. (Joint Bodies, <i>Sub</i>, p. S148)</p> <p>Section 995-1 "hire purchase agreement", Paragraph (b): Is it appropriate to refer to the purchaser of property by instalments as the "hirer" rather than say as the "purchaser"? (Joint Bodies, <i>Sub</i>, p. S158)</p> <p>The definition of "live stock" should expressly refer to "anything (or an interest in anything)". (CTA &amp; BCA, <i>Sub</i>, p. S79)</p> <p>Definition of "related entity" only includes natural persons and does not cover any situation in which a partnership is the entity claiming a deduction. (cgTAXnet, <i>Sub</i>, p. S137)</p> <p>The definition of "royalty" has not been rewritten. (Joint Bodies, <i>Sub</i>, p. S218)</p> <p>The definition of "trading stock" should be included under this section. (CTA &amp; BCA, <i>Sub</i>, p. S79)</p>	<p><i>Sub</i>, pp. S384-385</p> <p>Explanation <i>Sub</i>, pp. S345-346</p> <p>Disagree <i>Sub</i>, p. S280</p> <p></p> <p>Explanation <i>Sub</i>, pp. S303, S319 &amp; S362</p> <p>Disagree <i>Sub</i>, p. S323</p> <p></p> <p>Explanation <i>Sub</i>, p. S375</p> <p>Disagree <i>Sub</i>, p. S323</p>
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