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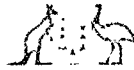
Joint Committee of Public Accounts and Audit

REPORT 356

An Advisory Report on the
Tax Law Improvement Bill (No. 2) 1997

March 1998

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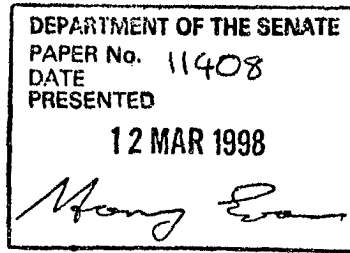


INSTITUTE OF
CHARTERED ACCOUNTANTS

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Joint Committee of Public Accounts and Audit

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**MEMBERSHIP OF THE SECTIONAL
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IMPROVEMENT BILL (NO.2) 1997**

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DUTIES OF THE COMMITTEE

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

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

- (a) to examine the accounts of the receipts and expenditure of the Commonwealth, including the financial statements given to the Auditor-General under subsections 49(1) and 55(2) of the *Financial Management and Accountability Act 1997*;
- (b) to examine the financial affairs of authorities of the Commonwealth to which this Act applies and of intergovernmental bodies to which this Act applies;
- (c) to examine all reports of the Auditor-General (including reports of the results of performance audits) that are tabled in each House of the Parliament;
- (d) to report to both Houses of the Parliament, with any comment it thinks fit, on any items or matters in those accounts, statements and reports, or any circumstances connected with them, that the Committee thinks should be drawn to the attention of the Parliament;
- (e) to report to both Houses of the Parliament any alteration that the Committee thinks desirable in:
 - (i) the form of the public accounts or in the method of keeping them; or
 - (ii) the mode of receipt, control, issue or payment of public moneys;
- (f) to inquire into any question connected with the public accounts which is referred to the Committee by either House of the Parliament, and to report to that House on that question;
- (g) to consider:
 - (i) the operations of the Audit Office;
 - (ii) the resources of the Audit Office, including funding, staff and information technology;
 - (iii) reports of the Independent Auditor on operations of the Audit Office;

- (h) to report to both Houses of the Parliament on any matter arising out of the Committee's consideration of the matters listed in paragraph (g), or on any other matter relating to the Auditor-General's functions and powers, that the Committee considers should be drawn to the attention of the Parliament;
- (i) to report to both Houses of the Parliament on the performance of the Audit Office at any time;
- (j) to consider draft estimates for the Audit Office submitted under section 53 of the *Auditor-General Act 1997*;
- (k) to consider the level of fees determined by the Auditor-General under subsection 14(1) of the *Auditor-General Act 1997*;
- (l) to make recommendations to both Houses of Parliament, and to the Minister who administers the *Auditor-General Act 1997*, on draft estimates referred to in paragraph (j);
- (m) to determine the audit priorities of the Parliament and to advise the Auditor-General of those priorities;
- (n) to determine the audit priorities of the Parliament for audits of the Audit Office and to advise the Independent Auditor of those priorities; and
- (o) any other duties given to the Committee by this Act, by any other law or by Joint Standing Orders approved by both Houses of the Parliament.

TERMS OF REFERENCE

On 27 November 1997 the House of Representatives resolved:

1.1 That:

- (a) the Tax Law Improvement Bill (No. 2) 1997 be referred to the Joint Committee of Public Accounts for consideration and an advisory report to the House by 12 March 1998; and
- (b) 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.

1.2 That a message be sent to the Senate acquainting it of this reference to the Committee.

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LIST OF ABBREVIATIONS

ASCPAs	Australian Society of Certified Practising Accountants
ATO	Australian Taxation Office
CGT	Capital Gains Tax
Consultative Committee	Tax Law Improvement Project's Private Sector Consultative Committee
CTA	Corporate Tax Association of Australia Incorporated
EM	The Explanatory Memorandum to the Tax Law Improvement Bill (No. 2) 1997
JCPA	Joint Committee of Public Accounts
JCPAA	Joint Committee of Public Accounts and Audit
Tax Office	Australian Taxation Office
The Bill	Tax Law Improvement Bill (No. 2) 1997
The three tax professional bodies	Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants and the Taxation Institute of Australia
The 1936 Act	<i>Income Tax Assessment Act 1936</i>
The 1997 Act	<i>Income Tax Assessment Act 1997</i>
TLIP	Tax Law Improvement Project

CHAIRMAN'S FOREWORD

This report presents the findings of the Joint Committee of Public Accounts and Audit's review of the Tax Law Improvement Bill (No. 2) 1997 (the Bill). The Bill, which contains the important capital gains tax provisions, is the third tranche of legislation designed to simplify and restructure the *Income Tax Assessment Act 1936* (the 1936 Act).

The task of rewriting the legislation is being undertaken by the Tax Law Improvement Project (TLIP) and commenced as a result of a recommendation in the Committee's *Report 326*, tabled in November 1993. The Committee has continued its interest in the rewrite of the 1936 Act through its review of previous tranches of legislation. The Committee's findings have been presented in *Report 345* and *Report 348*.

Because of its long term involvement in the rewrite process, the Committee has been able to recognise recurrent themes in the evidence it has received.

Firstly, the Committee has acknowledged, and attempted to rectify by way of recommendation, the frustration of stakeholders with the inability of TLIP to address issues of a small 'p' policy nature. Although the Committee's recommendation that TLIP's mandate be broadened to encompass small policy issues has not been met, there is now a mechanism by which such issues can be addressed. The Committee welcomes the initiative of Government in this matter.

A second recurrent theme is the continuing perception among some stakeholders that TLIP defers to an Australian Taxation Office view when translating the existing law into new law. The Committee has discussed this issue in the report.

In addressing matters which may have policy implications, the Committee hopes that the newly introduced process of reviewing small policy issues will be effective. If individual stakeholders feel strongly on a particular matter, there are various other avenues to seek redress. This is entirely appropriate and forms a keystone of our system of government.

A third recurrent theme, and one which appears to have had a critical impact on this review, relates to the time available to review the Bill.

The Bill contains the important and complex capital gains tax provisions, but unfortunately the time allowed for stakeholders to respond to exposure drafts of the legislation has been truncated, and the time for the Committee to review the Bill after its introduction has been short. As well, there is evidence of undue haste in preparing the Bill because it was incomplete when introduced, and one division and several transitional provisions have yet to be released.

These factors have led witnesses to express a lack of confidence in their ability to review the Bill and identify unintended consequences. They have called for the implementation of the Bill to be delayed or for a no-detriment clause to be added.

The Committee in reviewing the Bill has found itself in a similar position to the stakeholders. The incompleteness of the Bill and the short time for review has prevented the Committee reviewing the legislation with the thoroughness it would like.

Nevertheless, the Committee acknowledges the imperative to maintain momentum in the progressive introduction of clearer law to replace the 1936 Act. The Committee is encouraged by the fact that witnesses have commented favourably on the clarity of the Bill. The Committee has therefore not agreed with calls to delay the Bill because taxpayers should not be denied recourse to legislation which is designed to be clearer and which should reduce compliance costs.

The Committee has also not supported the introduction of a no-detriment clause. This is because it would prevent closing off the existing law. The Committee believes it is more appropriate for taxpayers to rely on the existing section 1-3 and the traditional avenues of legislative amendment to protect against unintended consequences.

The Committee in reviewing the individual clauses of the Bill has made a number of recommendations which relate to policy issues which are outside TLIP's mandate, and to major technical issues which are sufficiently weighty to require substantial review. Such a review may be beyond TLIP's capacity to undertake or is sufficiently broad in scope to impinge on policy matters.

The Committee has also made a number of recommendations of a minor nature which the Committee believes are not policy issues and therefore are clearly within TLIP's mandate.

In conclusion and on behalf of the Committee, I would like to thank all those who have contributed to this review. Many have provided submissions to the Committee at short notice, and also have appeared as witnesses at the Committee's public hearings in Sydney and Melbourne. The Committee notes that many of these contributors have been involved with the Committee's previous reviews of new tax legislation.

The Committee believes that the outcome of the tax law rewrite project is, and will continue to be, better law for taxpayers.



Bob Charles MP
Chairman

RECOMMENDATIONS

Recommendation 1

When the Joint Committee of Public Accounts and Audit is to be asked to review future Tax Law Improvement Project bills, the Tax Law Improvement Project should have responded formally to the submissions from stakeholders arising from exposure drafts by the time the bill is tabled in Parliament. **(Paragraph 2.45)**

Recommendation 2

The resources available to the Tax Law Improvement Project should be reviewed and, if necessary and within reason, augmented to allow it to complete its task and consult fully with those who have an interest in the tax law rewrite process. **(Paragraph 2.46)**

Recommendation 3

Introduction of proposed Subdivision 118-F and Divisions 123 and 138 should be delayed pending review by the Joint Committee of Public Accounts and Audit. Following this review, these Divisions should be introduced as amendments to the Tax Law Improvement Bill (No. 2) 1997. **(Paragraph 2.60)**

Recommendation 4

When the Joint Committee of Public Accounts and Audit is asked to review future Tax Law Improvement Project legislation, all of the proposed legislation and associated consequential and transitional provisions should be introduced into the Parliament together and the Committee is given adequate time for a thorough review. **(Paragraph 2.61)**

Recommendation 5

In correcting unintended consequences introduced by the Tax Law Improvement Bill (No. 2) 1997, the correction should be made retrospective to the commencement of the 1998-99 year of income, irrespective of whether the error had adversely affected the taxpayer or revenue. This principle should remain in force for the first two years of the operation of the provisions of the *Tax Law Improvement Act (No.2) 1997*. **(Paragraph 2.99)**

Recommendation 6

The Tax Law Improvement Bill (No. 2) 1997 should be amended to ensure that a payment made to the holder of a unit or interest in a trust, out of income previously taxed to the trustee of the trust, is not subject to clause 104-70. **(Paragraph 3.14)**

Recommendation 7

Clause 104-230 should be amended as a matter of urgency so that the known deficiencies which relate to the operation of the provision are rectified. **(Paragraph 3.29)**

Recommendation 8

The capital gains tax provisions relating to compensation payments should be reviewed, and amended as a matter of priority, to determine the underlying policy and reduce the uncertainty in the law. **(Paragraph 3.37)**

Recommendation 9

The Tax Law Improvement Bill (No. 2) 1997 should be amended to ensure that double taxation cannot arise where an amount is assessable under the ordinary income tax provisions, but not as a result of a CGT event. **(Paragraph 3.47)**

Recommendation 10

The Government should review the operation of the provisions of the Tax Law Improvement Bill (No. 2) 1997 which deal with intellectual property, having regard to the issues raised in paragraphs 3.72-3.75. **(Paragraph 3.77)**

Recommendation 11

Division 104 should include additional cross referencing to provisions which specifically relate to each CGT event. Alternatively, the Explanatory Memorandum should be amended to include a list of relevant provisions for each CGT event. **(Paragraph 4.9)**

Recommendation 12

Subclause 104-10(2) should be clarified, by way of amendment or the addition of guide material, to ensure that the provision will not apply to the mere change of trustee of a trust. **(Paragraph 4.14)**

Recommendation 13

Guide material, by way of signposting or note, should be inserted into clause 104-20 to make it clear that the provision also applies to the part disposal of a CGT asset. **(Paragraph 4.17)**

Recommendation 14

The operation of clause 104-70 should be clarified in regards to multiple payments, either by amending the provision or by including relevant examples. **(Paragraph 4.22)**

Recommendation 15

- (a) Clause 112-20 should be amended to clarify that it applies where all of the expenditure incurred cannot be valued; and
- (b) The table in clause 112-45 should be amended to include references to the CGT event number for each situation. **(Paragraph 4.29)**

Recommendation 16

- (a) The heading above clauses 118-40 to 118-60 should be amended to reflect the content of all of the provisions;
- (b) Clause 118-145 should be amended to ensure that the existing use of a dwelling for income producing purposes will not affect the determination of the six year period; and
- (c) The words 'or common potential beneficiary' should be removed from the definition of 'related business' in subclause 118-250(4). **(Paragraph 4.41)**

Recommendation 17

The Tax Law Improvement Bill (No. 2) 1997 should be amended to incorporate the suggestions made in paragraphs 4.42-4.74. **(Paragraph 4.76)**

SETTING THE CONTEXT

Introduction

1.1 In 1993, the then Government established the Tax Law Improvement Project (TLIP) to rewrite the *Income Tax Assessment Act 1936* ('the 1936 Act'). Since that time there has been progressive replacement of the 1936 Act.

1.2 During 1996, attention turned to the rewrite of the capital gains tax (CGT) provisions. TLIP received a major submission from the professional bodies and in 1997 released two exposure drafts of the proposed CGT legislation and invited comment. Subsequently, on 27 November 1997, the Tax Law Improvement Bill (No. 2) 1997 (the Bill) was introduced into the House of Representatives.

1.3 After the second reading speech in the House of Representatives, the Bill was referred to the then Joint Committee of Public Accounts (JCPA) for consideration, with an advisory report to be presented to the House by 12 March 1998.¹

1.4 On 1 January 1998, following amendment to the Public Accounts Committee Act 1951, the JCPA became the Joint Committee of Public Accounts and Audit (JCPAA) and subsequently resolved to resume the review.

Structure of the Bill

1.5 The Tax Law Improvement Bill (No. 2) 1997 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 9 schedules appended to the Bill.

1 Votes and Proceedings, No. 133, 27 November 1997, p. 2534.

1.6 When tabled in November, the Bill and associated provisions were incomplete. Additional material in the form of proposed Government amendments was released on 8 January 1998 and 13 February 1998.

1.7 For reading convenience, this report refers to clauses in the schedules as if they were in the Bill itself. Thus, for example, clause 104-130 of Schedule 1 of the Bill, is referred to as clause 104-130 of the Bill.

Conduct of the review

1.8 Invitations for submissions on the Bill were advertised in the national press on 29 November and 3 December 1997. A list of the submissions received by the Committee can be found at Appendix I and a list of exhibits at Appendix II.

1.9 The Committee held initial public hearings on the Bill on 28 and 29 January 1998. 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 TLIP and TLIP's private sector Consultative Committee (the Consultative Committee). On the second day, other interested parties gave evidence. Officers from TLIP attended on both days.

1.10 The Committee also held a half day public hearing on 18 February 1998 to enable discussion of the material released as Government amendments. A round table format was again used and the witnesses who attended the first hearings were invited a second time.

1.11 A list of participants at the hearings can be found at Appendix III.

The Tax Law Improvement Project

1.12 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*.² One of the Committee's recommendations was that the Government establish a broadly based task force to redraft the 1936 Act.

1.13 The Government of the day responded to this proposal by establishing TLIP.³ 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.

1.14 The Bill is the third instalment 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.⁴ In June 1996 the Bills, with minor modifications, were introduced into the 38th Parliament and received Royal Assent on 17 April 1997.

1.15 This first instalment established the Income Tax Assessment Act 1997 as the main income tax law with a clearer structure, written in plain language.

1.16 A second instalment was introduced to the Parliament on 11 December 1996 and received Royal Assent on 8 July 1997. It contained provisions about assessable income, various deductions and other areas of the law.

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.

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

1.17 The Bill continues the process of rewriting sections of the 1936 Act and will be followed, in turn, by other legislative packages to complete the task. The main feature of this Bill is a rewrite of the rules concerning capital gains and losses, known as the CGT provisions.

The JCPA's previous involvement in the Tax Law Improvement Project

1.18 Since the tabling of *Report 326* in November 1993, 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.⁵

1.19 The JCPA also reviewed the first two packages of Bills, tabling its findings in *Report 345* on 22 August 1996,⁶ and *Report 348* on 6 March 1997.⁷

1.20 The Government's responses to the Committee's reports were tabled in Parliament on 22 August 1996⁸ and 4 December 1997.⁹

1.21 The Government accepted all eleven recommendations in *Report 345*. Of the twenty-four recommendations in *Report 348*, the Government advised that fourteen had been accepted and the remaining ten would be 'considered in the Budget context.'

-
- 5 See JCPA, *Report 343, Tax Law Improvement: A Watching Brief*, AGPS, Canberra, 1995.
- 6 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.
- 7 JCPA, *Report 348, An Advisory Report on the Tax Law Improvement Bill 1996*, AGPS, Canberra, 1997.
- 8 Senator the Hon Jim Short, *Statement by the Assistant Treasurer, The Hon Jim Short: Tax Law Improvement Project*, Senate Journals, No. 28, 22 August 1996, p. 518.
- 9 Hon Peter Reith, *Government Response to Report 348 from the Joint Committee of Public Accounts Advisory report on the Tax Law Improvement Bill 1996, Votes and Proceedings*, No. 137, 4 December 1997, p. 2651.

Structure of the Report

Report outline

1.22 In Chapter 2, the Committee discusses general issues that have arisen during the present review. These include two aspects of the Government responses to JCPA reviews of previous TLIP Bills, the processes involved in the rewrite project (for example, the consultation between TLIP and stakeholders), and issues arising from the timing of the introduction of the Bill and its proposed application date of 1 July 1998.

1.23 Some of these issues have been commented upon in previous JCPA reports but, because they have attracted continued concern from witnesses, the Committee considers that revisiting these issues is warranted.

1.24 In Chapter 3, the Committee has discussed policy issues and matters of a major technical nature which may overlap policy areas. As such, the suggestions made by the Committee may extend beyond TLIP's mandate in which case they should be considered by the Government. In Chapter 4, the Committee has identified amendments to the Bill that it believes are within TLIP's mandate and should be implemented.

1.25 The submissions and evidence provided by witnesses contain a substantial number of comments on the Bill and suggested amendments. The Committee has not discussed many of these suggestions in the body of this report, but they have been put to the TLIP team and responses sought. All of the issues have been collated in Appendix IV together with TLIP's responses. Appendix V comprises information provided by TLIP detailing the changes in the Bill which it considers to have benefited taxpayers.

1.26 While this report can be read in isolation, the Committee recommends that it be read in conjunction with *Report 345* and *Report 348* as this will permit a more comprehensive understanding of the Committee's opinion on the rewrite legislation as a whole.

GENERAL ISSUES

Government responses to previous reports

2.1 As mentioned in Chapter 1, the Committee has reviewed the first two tranches of the rewrite legislation and in *Report 345* and *Report 348* made a series of recommendations aimed at improving the rewrite process and the legislation. Government responses to these recommendations were tabled on 22 August 1996 and 4 December 1997 respectively.¹

2.2 Of particular interest to the Committee has been the outcomes of two of its recommendations, relating to increasing the private sector representation on TLIP, and increasing the mandate of TLIP to enable it to address minor policy issues that arise during the rewrite process.

Increasing private sector representation on the Tax Law Improvement Project

2.3 Recommendation 1 of *Report 348* called for TLIP to 'be given additional funding to allow a third full time equivalent private sector position in TLIP's senior management team to be filled.'

2.4 The Committee had noted a perception among stakeholders that TLIP had taken a pro-revenue stance when interpreting contentious aspects of the legislation. The additional private sector position was to provide valuable private sector insights and perspective and also to reassure

1 *Senate Journals* No. 28, p. 518; *Votes and Proceedings*, No. 137, p. 2651.

stakeholders about TLIP's impartiality.² (The issue of TLIP's impartiality is explored further, later in this chapter.)

2.5 The Government response to *Report 348*, tabled in December 1997, indicated acceptance of the Committee's Recommendation No. 1. At the Committee's first public hearing in January 1998 to review the Bill, TLIP advised that there were now four private sector representatives assisting with the rewrite process. Two specialists had been appointed because of their expertise in particular areas and there were two generalists who had a roving commission to comment on all aspects of TLIP's work.³

2.6 The Consultative Committee welcomed the increase in private sector representation and, while noting that most had only been working with TLIP for a few months, expressed confidence in the representatives who had been selected.⁴

2.7 The private sector representative who had been with TLIP since the Committee's inquiry into the first TLIP bill in 1996 stated that he had received a good hearing on the issues he had raised. He considered that following discussion of these matters the appropriate decisions had been made.⁵

2.8 The Committee is pleased that the outcome of its recommendation to increase private sector representation on TLIP has been positive and will enhance TLIP's ability to address complex issues in future tranches of the rewritten tax law.

Increasing the Tax Law Improvement Project's mandate

2.9 TLIP's mandate is to rewrite tax law in a clearer form. There is limited scope to change underlying tax policy. Minor changes to policy have been made when the law is ambiguous and can be clarified, where compliance costs can be

2 Joint Committee of Public Accounts, *Report 348, An Advisory Report on the Tax Law Improvement Bill 1996*, AGPS Canberra, pp. 10-11.

3 TLIP, *Transcript*, p. 28 (28 January 1998).

4 Consultative Committee, *Transcript*, p. 24 (28 January 1998).

5 TLIP, *Transcript*, p. 119 (29 January 1998).

reduced, and where there are no apparent losers as a result of the changes.⁶

2.10 TLIP explained that when it considered a minor matter could be addressed, confirmation would first be sought from Treasury's tax policy division to ensure that there were no unforeseen policy implications. A proposal would then be put to the Assistant Treasurer and approval sought from the Government.⁷

2.11 The inability of TLIP to address more significant concerns which impinge on tax policy has been an ongoing frustration to stakeholders and, following previous reviews, the Committee had recommended there be a process to enable small 'p' policy issues to be addressed.

2.12 In *Report 345*, the Committee recommended that either the JCPA or a Joint Standing Committee on Revenue be established to address this issue.⁸ In *Report 348*, the Committee recommended an extension of TLIP's mandate 'to allow it to consider a wider range of tax policy simplification issues'.⁹

2.13 With respect to both recommendations, the Government has responded that 'a process is to be established to deal with the minor policy issues that arise directly from the simplification project'.¹⁰

2.14 The Consultative Committee advised the Committee that it was heartened by the Assistant Treasurer's advice that he would 'positively support a process to review small 'p' issues'. Indeed, the Consultative Committee had been asked by the Assistant Treasurer to provide a prioritised list of issues for consideration.¹¹

6 TLIP, *Transcript*, pp. 12, 37 (28 January 1998).

7 TLIP, *Transcript*, p. 36 (28 January 1998).

8 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, Recommendation 11, p. 64.

9 JCPA, *Report 348*, Recommendation 2, p. 15.

10 *Votes and Proceedings*, No. 137, pp. 389 and 2651.

11 Consultative Committee, *Transcript*, p. 9 (28 January 1998).

2.15 TLIP confirmed that it was maintaining a compendium of issues raised by stakeholders which it could not address because they were policy issues. The Assistant Treasurer was advised of these issues of concern.¹²

2.16 A less positive response was provided by witnesses representing the Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia and the Taxation Institute of Australia (the three tax professional bodies).

2.17 The Committee was advised that the three tax professional bodies were 'far from satisfied that there is a mechanism in place that will permit technical and small 'p' policy issues not so far addressed to be brought forward', and that the process was 'very hazy and fuzzy'.¹³ At the February public hearing, the three tax professional bodies expressed concern that they were not part of the process.¹⁴ However, TLIP advised that the Consultative Committee intended to canvass with the professional bodies issues which could be raised.¹⁵

2.18 The Committee observes that those closer to the rewrite project, such as the Consultative Committee, seem to be satisfied with the mechanism for addressing the small 'p' policy issues, while those further from the centre have concerns.

2.19 The Committee notes that the Government first indicated that a mechanism would be established to address small 'p' changes when it tabled its response to *Report 345* in August 1996. However, the Assistant Treasurer's advice to the Consultative Committee was in December 1997.¹⁶

2.20 The Committee is disappointed with the delay and is concerned that up until the commencement of the inquiry, there had been no release of the details of the process. During the course of the inquiry, the Committee wrote to the Assistant Treasurer seeking more information. The Assistant Treasurer subsequently wrote to the Committee providing

12 TLIP, *Transcript*, pp. 14, 40 (28 January 1998).

13 Tax professional bodies, *Transcript*, pp. 123, 144 (29 January 1998).

14 Tax professional bodies, *Transcript*, p. 200 (18 February 1998).

15 TLIP, *Transcript*, p. 200 (18 February 1998).

16 Consultative Committee, *Transcript*, p. 9 (28 January 1998).

additional information on the process to address small policy changes.

2.21 The Assistant Treasurer advised that while the Government did not intend to expand TLIP's mandate, TLIP's Consultative Committee would have a central role in the process. The Consultative Committee would provide a list of minor policy change ideas for consideration where policy guidance was needed. The Assistant Treasurer noted that the Consultative Committee had responded positively to his proposal and had begun to compile a priority list for the first package of issues to be discussed.¹⁷

2.22 A supplementary submission from TLIP provided details of the process:

- the Consultative Committee would forward issues to the Assistant Treasurer for consideration and response;
- the numbers of issues would comprise only half a dozen at any one time to ensure the process remained manageable;
- the issues would cover situations where policy guidance is needed to clarify the law's intent or to achieve improved compliance or savings;
- the issues would accord with the principles of equity, neutrality and efficiency and be consistent with other approaches of the tax law and TLIP's objectives of less complex law; and
- more substantive policy issues would not be included as they were issues for the Executive and the Parliament.¹⁸

2.23 The Committee is pleased that after some time a process is now in place to address the minor policy concerns of stakeholders arising from the rewrite project. The Committee has received a copy of the compendium of issues which has been compiled by TLIP and notes that this comprises about 330 pages of which 19 relate to the CGT area. These 19 pages raise 157 issues and the Committee believes that a majority of these would fall within the scope of the Assistant Treasurer's proposed consultation process.

17 Assistant Treasurer, Senator the Hon Rod Kemp, *Correspondence*, 17 February 1998.

18 TLIP, *Submission*, pp. S472-3 (Vol. 2 of Submissions).

2.24 The Committee notes, however, that the number of issues to be discussed remains limited to about twelve a year,¹⁹ and so it remains to be seen whether the process introduced by the Assistant Treasurer will have addressed the concerns of stakeholders or added to their frustration.

2.25 The Committee maintains an interest in this issue and will revisit the matter if future tranches of rewrite legislation are referred to it for review.

Constitutionality of the legislation

2.26 In *Report 345*, the Committee discussed the concerns that the rewritten legislation was unconstitutional, in particular with respect to the CGT and superannuation provisions. TLIP responded that it did not consider there was a problem but it would revisit the issue when the CGT provisions were rewritten.

2.27 The Committee was satisfied with this response and concluded that it would delay consideration of whether the provisions needed to be underpinned by a separate imposition Act until after the new CGT provisions were drafted.²⁰

2.28 TLIP has now reassured the Committee that constitutionality does not appear to be an issue.²¹ The lack of concern expressed by witnesses confirms this view.

Timing issues

2.29 After reviewing the second tranche of rewrite legislation, the Chairman commented in the foreword to *Report 348* that the Committee had not had time to review the Tax Law Improvement Bill 1996 as comprehensively as it would have liked and would seek more time to review future tranches of rewrite legislation.²²

19 TLIP, *Transcript*, p. 218 (18 February 1998).

20 JCPA, *Report 345*, pp. 9-11.

21 TLIP, *Submission*, p. S321 (Vol. 1 of Submissions).

22 JCPA, *Report 348*, p. xi.

2.30 Unfortunately, while the time for the Committee to review the current bill has increased somewhat, there have been criticisms from stakeholders. Dissatisfaction with the truncated consultation process, lack of a formal response from TLIP to stakeholder submissions, and the incomplete state of the Bill and associated consequential and transitional provisions has been expressed during the inquiry. This has led to calls for implementation of the Bill to be delayed and for inclusion of a no-detriment clause to allay fears that unintended consequences may have been overlooked.

Truncated consultation process

2.31 The three tax professional bodies commented that there had been significant slippage in the timetable for delivery of the Bill. It had originally been scheduled for introduction in November 1996, but the first exposure draft was not released until June 1997. The next exposure draft, anticipated to be released in July 1997, was in fact released in late September 1997.²³

2.32 The Corporate Tax Association (CTA) stated that when the rewrite process started, there was an expectation that a period of up to three months would be allowed for public comment. Only four weeks were allowed for public comment on the September exposure draft of the Bill which, in the view of the CTA, was inadequate.²⁴ A similar comment was made by Deloitte Touche Tohmatsu.²⁵

2.33 It was suggested that this slippage and shortening of deadlines had led to inadequate consultation. There had been no formal response from TLIP to the submissions put to it from the major stakeholders before the Committee's public hearing in mid-January 1998.²⁶ Such haste, it was argued, could lead to increased errors and the need for 'tidy up' legislation—any amendment to existing legislation would be

23 Tax professional bodies, *Transcript*, p. 129 (29 January 1998).

24 Corporate Tax Association, *Transcript*, p. 103 (29 January 1998), *Submission*, p. S20 (Vol. 1 of Submissions).

25 Deloitte Touche Tohmatsu, *Transcript*, pp. 147–8 (29 January 1998).

26 Consultative Committee, *Transcript*, pp. 6, 18 (28 January 1998); CTA, *Transcript*, p. 104 (29 January 1998); Tax professional bodies, *Transcript*, p. 136 (29 January 1998).

of concern to taxpayers.²⁷ A potentially serious error was in fact raised during the Committee's second public hearing.²⁸

2.34 The witnesses therefore argued strongly that implementation of the Bill should be delayed.

2.35 TLIP responded to these criticisms by drawing attention to the tightness of the timetable for the rewrite project as a whole and the need to keep progressing steadily. The introduction of the Bill had been brought forward because of the altered Parliamentary sitting patterns due to the Constitutional Convention.²⁹

2.36 However, the major cause of the slippage had been the need to research the substantial number of issues raised by the three tax professional bodies in its initial submission to TLIP in 1996. This submission had covered some 230 issues and TLIP had had to determine whether the issues were revenue costly, or large or small policy issues. This had often involved consultations with the tax policy division in Treasury.³⁰

2.37 The Committee notes that the submission referred to by TLIP amounted to 'over 300 pages containing more than 230 separate recommendations'.³¹

2.38 While no formal response had been given to stakeholders on their submissions, TLIP advised the Committee that there had been substantial informal feedback. In addition, one stakeholder had declined to provide formal comments on the exposure drafts preferring to await the Committee's review.³²

2.39 TLIP also argued that previous Bills had not resulted in the need for significant amendments. Many of the amendments were for minor changes such as the need to

27 Consultative Committee, *Transcript*, p. 6 (28 January 1998); CTA, *Transcript*, p. 116 (29 January 1998); Deloitte Touche Tohmatsu, *Transcript*, p. 151 (29 January 1998); Tax professional bodies, *Transcript*, p. 193 (18 February 1998).

28 Tax professional bodies, *Transcript*, p. 189 (18 February 1998).

29 TLIP, *Transcript*, pp. 10, 21, (28 January 1998).

30 TLIP, *Transcript*, p. 131 (29 January 1998).

31 Tax professional bodies, *Submission*, p. S68 (Vol. 1 of Submissions).

32 TLIP, *Transcript*, pp. 111, 131, 142 (28 and 29 January 1998).

include asterisks and additional cross referencing. Delaying the first tranche of the rewrite for a year to allow the identification of errors had resulted in only ten pages of amendments.³³ TLIP therefore did not support delaying the Bill.

2.40 The Committee understands the criticisms of witnesses regarding the lack of formal feedback. Undoubtedly, much valuable informal feedback has been provided by TLIP to stakeholders, a fact acknowledged in the submission from the three tax professional bodies.³⁴

2.41 While informal feedback is always useful, a formal response to submissions provides a signal that discussion has closed and allows the process to move forward.³⁵ Once stakeholders become aware that particular suggestions have not been accepted, they are in a position to consider counter arguments and seek other forums to address their concerns.

2.42 The Committee's review of the Bill has been hampered because stakeholders, unaware of TLIP's response to their concerns, have forwarded to the Committee copies of the submissions they had already made to TLIP. Many of their concerns had in the meantime been accommodated, so raising them with the Committee was unnecessary. For those concerns which had not been accommodated by TLIP, stakeholders were not in a position to provide the Committee with a considered response to counter TLIP's arguments.

2.43 The truncated consultation process, the lack of formal responses to stakeholders from TLIP, and perceived TLIP bias (see below) have contributed to tensions between TLIP and its stakeholders and this may have diverted some participants from the purpose of the project, which is to draft clearer legislation leading to reduced compliance costs.

2.44 The Committee understands the factors leading to the relatively short time for consultation on the Bill, but considers there has to be some rebuilding of confidence in the rewrite process. The Committee questions whether TLIP has

33 TLIP, *Transcript*, pp. 117, 142 (29 January 1998).

34 Tax professional bodies, *Submission*, pp. S68-9 (Vol. 1 of Submissions).

35 Tax professional bodies, *Transcript*, p. 145 (29 January 1998).

sufficient resources to consult adequately with its stakeholders.

2.45 Recommendation 1

When the Joint Committee of Public Accounts and Audit is to be asked to review future Tax Law Improvement Project bills, the Tax Law Improvement Project should have responded formally to the submissions from stakeholders arising from exposure drafts by the time the bill is tabled in Parliament.

2.46 Recommendation 2

The resources available to the Tax Law Improvement Project should be reviewed and, if necessary and within reason, augmented to allow it to complete its task and consult fully with those who have an interest in the tax law rewrite process.

Incomplete Bill

2.47 The Bill as tabled on 27 November 1997 did not contain the important consequential and transitional amendments. These were released as proposed Government amendments on 8 January 1998. The lack of adequate time to respond to this material by the time of the Committee's first public hearing in late January was criticised by witnesses³⁶ and resulted in the Committee scheduling an additional public hearing in mid-February 1998.

2.48 At this hearing, the Committee was advised by TLIP that the transitional amendments were themselves incomplete and additional provisions would be added.³⁷ A list subsequently provided by TLIP indicated that transitional provisions relating to twelve areas needed to be added.³⁸

2.49 In addition, other aspects of the rewrite of the CGT legislation had not been completed at the time of the first hearing. A list which TLIP provided to the Committee

36 Consultative Committee, *Transcript*, pp. 6, 20 (28 January 1998); Tax professional bodies, *Transcript*, p. 123 (29 January 1998).

37 TLIP, *Transcript*, p. 190 (18 February 1998).

38 TLIP, *Submission*, pp. S561-2 (Vol. 2 of Submissions).

indicated four areas which had yet to be rewritten. This included Divisions 17A and 17B of the existing law, which are of relevance to the operations of small business as they cover 'roll-over relief on certain disposals of assets and exemption for disposal of ... retirement assets'.³⁹

2.50 The Committee was advised by TLIP that the provisions relating to the four remaining areas would be released in mid-February—they were duly released on 13 February 1998.

2.51 One other aspect of the rewrite was unavailable for review by the Committee—Division 138, which TLIP described as being mainly anti-avoidance measures. The division was being redrafted following concerns raised by stakeholders.⁴⁰ The Committee was advised that a final draft of Division 138 would not be available until the beginning of March.⁴¹

2.52 Estimates of the completeness of the Bill provided at the Committee's first public hearing varied from seventy five per cent from the three tax professional bodies to ninety five per cent (as far as the CGT provisions were concerned) from TLIP.⁴²

2.53 The argument was put that the Bill should be delayed because it was incomplete.⁴³ Further argument relating to delaying the Bill is discussed in the next section.

2.54 The following chronology summarises the incompleteness of the Bill:

- 27 November 1997—the Bill was introduced.
- 8 January 1998—release of minor amendments to the Bill and consequential and transitional provisions.
- 13 February 1998—release of Division 123 (old Division 17A), Subdivision 118-F (old Division

39 TLIP, *Submission*, p. S436 (Vol. 2 of Submissions).

40 TLIP, *Transcript*, pp. 67, 132 (28 and 29 January 1998); CTA, *Transcript*, p. 68 (28 January 1998).

41 TLIP, *Transcript*, p. 135 (29 January 1998).

42 Tax professional bodies, *Transcript*, p. 129 (29 January 1998); TLIP, *Transcript*, p. 115 (29 January 1998).

43 Tax professional bodies, *Transcript*, p. 136 (29 January 1998).

17B), Subdivision 126-B, and 3 clauses in Division 110.

- March 1998—Division 138 to be released.
- Unspecified date—release of additional transitional provisions.

2.55 It is apparent to the Committee that the shortening of deadlines has resulted in areas of the CGT legislation being omitted from the Bill as introduced into the House. The Committee has attempted to enable scrutiny of the amendments released in early January by holding an additional hearing in February.

2.56 As already noted, prior to that hearing a further set of amendments, including the rewritten Division 17A and Division 17B was released, providing some of the missing aspects of the Bill. The Committee considers there was not enough time to adequately review these provisions. Nor was it possible to schedule a further hearing before the Committee tabled this report.

2.57 The Committee is mindful of the argument that the two Divisions and Subdivision (123, 138 and 118-F) in theory are, or will be, rewritten existing law and not 'new law'. However their enactment together with yet to be released transitional amendments without thorough scrutiny increases the risk of further unintended consequences.

2.58 Because of these omissions in the set of provisions referred to it, the Committee is of the firm view that its review of the proposed legislation has been compromised.

2.59 In framing the following recommendation, the Committee is acknowledging the importance of Division 123 and Subdivision 118-F to small business and the importance to companies of Division 138. In so doing, the Committee notes that any area of the CGT provisions not covered by the Bill will still be covered by existing legislation.

2.60 Recommendation 3

Introduction of proposed Subdivision 118-F and Divisions 123 and 138 should be delayed pending review by the Joint Committee of Public Accounts and Audit. Following this review, these Divisions should be introduced as amendments to the Tax Law Improvement Bill (No. 2) 1997.

2.61 Recommendation 4

When the Joint Committee of Public Accounts and Audit is asked to review future Tax Law Improvement Project legislation, all of the proposed legislation and associated consequential and transitional provisions should be introduced into the Parliament together and the Committee is given adequate time for a thorough review.

Requests to delay the Bill

2.62 Throughout the inquiry, there have been consistent requests for the implementation of the Bill to be delayed until 1 July 1999. In summary, the reasons given were:

- the haste in introducing the Bill had led to inadequate consultation and reduced the opportunity for thorough scrutiny (this has been discussed above);
- the Bill was incomplete and adequate scrutiny could only be afforded to a complete Bill (the incompleteness of the Bill has been discussed above);
- early balancing companies would be the victims of retrospectivity⁴⁴; and
- practitioners being ill-prepared for the new legislation.

2.63 The Committee is concerned with these arguments as similar cases were made when previous tranches of rewrite legislation was reviewed. Nevertheless, the Committee believes it is appropriate to revisit these issues.

The problem of early balancing companies

2.64 The problem of early balancing companies being subject to the Bill before it was enacted was raised by a number of witnesses.⁴⁵ In *Report 345*, the Committee considered that special allowances should not be made for

⁴⁴ Other retrospective issues are discussed in Chapter 3.

⁴⁵ Consultative Committee, *Transcript*, pp. 20, 96 (28 January 1998); CTA, *Transcript*, p. 107 (29 January 1998).

such companies and noted that 'neither Budgets nor other tax law amendments make allowances'.⁴⁶

2.65 Despite its earlier finding, the Committee is concerned about the effect of a 1 July commencement date of the Bill on early balance companies as this introduces elements of retrospectivity.

Difficulties faced by tax practitioners

2.66 The Consultative Committee drew attention to the plight of small and sole tax practitioners who, without the resources of larger firms, would have difficulty in coming to terms with the new legislation. This would be compounded by delays in publishing houses producing copies for distribution.⁴⁷

2.67 The three tax professional bodies argued that as the rewrite has progressed, the confusion of practitioners has increased because they have to check the original legislation against the new legislation to determine whether there has been a change and whether there have been subsequent amendments.⁴⁸

2.68 TLIP countered this view with the argument that practitioners always leave examination of new legislation to the last moment, which was borne out by practitioners only attending seminars on the new legislation in the months immediately preceding its introduction.⁴⁹

2.69 The Committee was also told by Mr Simon Gaylard, one of the private sector representatives on TLIP, that some of his staff were already using the information in the Bill as an aid to understanding the existing legislation. His view was that the legislation should not be delayed as it was already being found to be better than the existing legislation.⁵⁰

⁴⁶ JCPA, *Report 345*, p. 39

⁴⁷ Consultative Committee, *Transcript*, pp. 25, 96 (28 January 1998).

⁴⁸ Tax professional bodies, *Submission*, p. S82 (Vol. 1 of Submissions).

⁴⁹ TLIP, *Transcript*, pp. 26, 162 (28 and 29 January 1998).

⁵⁰ TLIP, *Transcript*, p. 119 (29 January 1998).

The double handling of possible future amendments

2.70 The Committee's attention was also drawn to the number of foreshadowed amendments to the CGT provisions in the next year. The new legislation should be in place for those amendments to be inserted, otherwise the amendments would have to be added to the 1936 Act and then rewritten for inclusion in the 1997 Act. Such double handling was not desirable.⁵¹

The Committee's conclusion

2.71 Although the four private sector representatives on TLIP supported the introduction of the Bill as intended, one acknowledged that there was some 'disquiet out in the marketplace'.⁵²

2.72 In contrast, those on the Consultative Committee, representing both small and large stakeholders, and the professional bodies have shown less faith in the new legislation and advocated a one year delay. Indeed, the three tax professional bodies also suggested that the Bill be delayed until after the announcement of the Government's reform of the taxation system.⁵³

2.73 The Committee notes that the implementation of the first tranche of legislation was delayed following the Committee's *Report 345*. The ensuing interval resulted in only a small number of amendments being introduced to the operative aspects.⁵⁴ The Committee therefore tends to the view that delaying the Bill may similarly only result in minor adjustments.

2.74 In contrast to the view of the three tax professional bodies, the Committee believes it is important to progress the Bill before attention becomes diverted to taxation reform. There is also the possibility, as the Parliamentary term draws to a close, of the legislative program curtailing or preventing consideration of proposed legislation.

51 TLIP, *Transcript*, p. 163 (29 January 1998).

52 TLIP, *Transcript*, pp. 119, 162, 167-8. (29 January 1998).

53 Tax professional bodies, *Submission*, p. S68 (Vol. 1 of Submissions).

54 TLIP, *Transcript*, p. 168 (29 January 1998).

2.75 Such a delay to the Bill would create a legislative log jam as new TLIP bills are drafted. When the bills are eventually released, taxpayers may be swamped with an unreasonable amount of rewritten legislation at the one time.⁵⁵ In that event, there would be calls to delay the introduction of future bills and the whole rewrite project would thus experience serious slippage.

2.76 The Committee believes that taxpayers should not be denied recourse to the Bill and subsequent bills which are designed to be clearer and to enable savings through reduced compliance costs.

2.77 Other than recommending delaying certain Divisions to enable proper Parliamentary review, the Committee does not support delaying the implementation of the Bill by a year.

Ways to protect taxpayers from unintended changes

2.78 Three alternative ways were suggested which could protect taxpayers from unintended consequences of the Bill. These were:

- the inclusion of a no-detriment clause;
- reliance on the existing section 1-3; and
- the issuing of a new tax ruling.

A 'no-detriment' clause

2.79 The three tax professional bodies proposed that there be a no-detriment clause to operate for a period of two years. The clause would 'protect taxpayers from unforeseen consequences.' At the public hearing, the three tax professional bodies extended the suggested protection to the revenue.⁵⁶ The argument, endorsed by Deloitte Touche Tohmatsu, was that taxation advisers would have to examine

55 TLIP has advised that the rewrite program is 'substantially short of 50 per cent of the total' task. *Transcript*, p. 21 (28 January 1998).

56 Tax professional bodies, *Submission*, p. S83 (Vol. 1 of Submissions); *Transcript*, pp. 130, 183 (29 January and 18 February 1998).

the 1936 and 1997 Acts anyway 'to recalculate cost bases ... determine [if] there is a difference and then determine whether it is an intended difference.'⁵⁷

2.80 Deloitte Touche Tohmatsu noted that a precedent had already been set by the no-detriment clause in the 1988 amendments to the superannuation provisions.⁵⁸

2.81 TLIP's counter argument was that it would encourage tax advisers to use both sets of legislation to determine which was most favourable. It doubted whether the detailed comparison of the two Acts, as alluded to by Deloitte Touche Tohmatsu, would happen as routinely as suggested. A no-detriment clause would delay the closing off of the 1936 Act, would increase compliance costs, and would not be revenue neutral as the clause always benefited the taxpayer.⁵⁹

Reliance on section 1-3

2.82 TLIP suggested reliance on the existing section 1-3 as an alternative to a no-detriment clause. TLIP argued that the section 'gives a signal to the courts that ... the law should be interpreted as having the same meaning as the old law unless it is clear that that was not the intention.' In other words the clause indicated to the taxpayer or adviser that they should not search for discrepancies.⁶⁰

2.83 The three tax professional bodies responded that section 1-3 is 'only a very limited safeguard' and 'depends on whether or not the intention of the rewrite is to express the same language as the 1936 Act.'⁶¹

57 Tax professional bodies, *Transcript*, p. 137 (29 January 1998); Deloitte Touche Tohmatsu, *Transcript*, p. 152 (29 January 1998).

58 Deloitte Touche Tohmatsu, *Transcript*, p. 151 (29 January 1998).

59 TLIP, *Transcript*, pp. 167, 181 (29 January and 18 February 1998), *Submission*, p. S474 (Vol. 2 of Submissions).

60 TLIP, *Transcript*, pp. 133, 167 (29 January 1998).

61 Tax professional bodies, *Transcript*, p. 139 (29 January 1998).

Extending Taxation Ruling TR 97/16

2.84 The Consultative Committee supported a third alternative which was for the Commissioner of Taxation to extend Taxation Ruling TR 97/16 'to the interpretation of the new law itself and section 1-3 in particular.' The extended ruling would specify that the Commissioner would 'accept the new law as expressing the same ideas as the old law "unless and until" announced to the contrary (in one of three specified ways)'. The Consultative Committee advised that the proposal had 'met with approval of all the major professional and taxpayer bodies'.⁶²

2.85 The Committee was provided with a draft of the proposed ruling.⁶³

2.86 TLIP did not support the proposal and told the Committee that:

*... the tax rulings area of the tax office advised that they do not believe that this proposition can be dealt with by a tax ruling. ... if you really did have a situation where the new law says something quite clearly different from the old law, it is really not possible for the Commissioner, by a tax ruling, to say, 'I'm going to ignore what is in fact the law.'*⁶⁴

2.87 A supplementary submission from TLIP provided a legal basis for its view and added the observation that it was:

*... outside the Commissioner's legal authority to bind himself in these circumstances. It would be against long standing legal principles based on the doctrine of separation of powers.*⁶⁵

2.88 The appropriate way to proceed, TLIP suggested, was for the Minister to sponsor any corrections or the Government could issue a clear policy statement.⁶⁶

62 Consultative Committee, *Submission*, p. S450 (Vol. 2 of Submissions).

63 Consultative Committee, *Submission*, pp. S455-7 (Vol. 2 of Submissions).

64 TLIP, *Transcript*, pp. 170-1 (29 January 1998).

65 TLIP, *Submission*, p. S473 (Vol. 2 of Submissions).

66 TLIP, *Transcript*, p. 171 (29 January 1998).

The Committee's conclusion

2.89 The Committee believes that discussion of no-detriment safeguards has arisen because of uncertainty surrounding the provisions of the Bill. This uncertainty has in part arisen because of the shortening of the deadlines which has curtailed scrutiny of the Bill, and the incompleteness of the Bill and associated amendments when introduced into the Parliament.

2.90 The Committee, in drawing its conclusions on this matter, believes it is important that the proposals be significantly better than the current safeguards ie section 1-3 supplemented by legislative amendment.

2.91 Regarding a no-detriment clause, the Committee is unsure whether it is proposed to apply to just the CGT aspects or to all aspects of rewritten tax legislation. If, as the Committee suspects, it is designed to apply just to the CGT provisions, it would sit uncomfortably with previous tranches and set a precedent for future rewrite legislation.

2.92 The Committee is concerned that a no-detriment clause, effective for two years, would cause the 1936 Act to remain operative for that time. It would in effect allow tandem implementation whereby taxpayers can rely on either the rewritten legislation or the 1936 Act.

2.93 The Committee, in deliberating on previous tranches of rewrite legislation, has discussed the option of tandem implementation of legislation. In those reports the Committee concluded that tandem implementation would:

- cause unnecessary confusion for taxpayers preparing their own tax returns;
- have a particularly heavy impact on small businesses and tax agents who would have to prepare and weigh up two potential tax returns; and
- require two sets of amendments to effect changes to the law.⁶⁷

2.94 The Committee has not changed its view concerning tandem implementation and therefore does not support a no-detriment clause. The Committee therefore believes this proposal is not better than the existing safeguards.

⁶⁷ See JCPA, Report 345, pp. 43-5 and JCPA, Report 348, pp. 7-9.

2.95 The Committee has not sought legal advice concerning the proposal for a modified tax ruling. However, it acknowledges the force of TLIP's argument. The prospect of the Tax Commissioner in effect saying in the proposed ruling: 'I will ignore something which is clearly stated by the law because it is unintentional' is unappealing to the Committee.

2.96 The Committee believes that the concern of those calling for a no-detriment clause is that any unintended adverse consequences arising from the new legislation may affect taxpayers up until the time it is officially corrected by legislative amendment or by Ministerial statement. This concern could be addressed if the amendment or statement made the correction retrospective to the commencement of the rewritten CGT provisions.

2.97 The Committee believes this rule should apply irrespective of whether the taxpayer or the revenue had been adversely affected by the unintended consequence. It would thus provide a general incentive to quickly identify and remedy any unintended consequences.

2.98 The Committee repeats its request contained in Recommendation No. 9 in Report 345, that the Government quickly introduce any necessary technical corrections to the law after the Bill is enacted.⁶⁸

2.99 Recommendation 5

In correcting unintended consequences introduced by the Tax Law Improvement Bill (No. 2) 1997, the correction should be made retrospective to the commencement of the 1998-99 year of income, irrespective of whether the error had adversely affected the taxpayer or revenue. This principle should remain in force for the first two years of the operation of the provisions of the Tax Law Improvement Act (No. 2) 1997.

2.100 The Committee has placed a time limit on the effect of this recommendation because it considers this should satisfy those suggesting a no-detriment clause of two years duration.

⁶⁸ JCPA, Report 345, p. 53.

Perceived TLIP bias towards the Australian Taxation Office view

2.101 During the inquiry, TLIP was accused by the three tax professional bodies and the CTA of adopting Australian Taxation Office (Tax Office) bias when ambiguities arose during the rewrite process.

2.102 The three tax professional bodies gave two examples, relating to Division 128 and Division 138.⁶⁹ The CTA suggested that when disputes arose, there resulted 'far too often a decision that favours the Tax Office view without, in our considered opinion, an adequate analysis of what is being said from the other side.' The CTA's 'perception [was] that in 99 per cent of cases the interpretation that the [Tax Office] puts forward is the interpretation that is adopted.'⁷⁰

2.103 The CTA substantiated the second comment with a supplementary submission containing an analysis of some major areas of disagreement with TLIP where the Tax Office view had prevailed. Most of these issues related to previous rewrite legislation and had been commented on by the Committee.⁷¹

2.104 TLIP responded to the criticism of bias by describing the options faced by the project when ambiguities were identified:

- clarify the law in the way taxpayers would like, which might have a revenue implication;
- leave the law uncertain; or
- adopt the way the Tax Office currently interprets the law.

2.105 TLIP's job, it was argued, was to clarify the law and this entailed a balancing exercise whereby many small suggestions made by the professional bodies were adopted but on a few other issues 'there is a digging in'.⁷²

69 Tax professional bodies, *Submission*, pp. S14, S100 (Vol. 1 of Submissions).

70 CTA, *Transcript*, pp. 106, 114 (29 January 1998).

71 CTA, *Submission*, pp. S510-16 (Vol. 2 of Submissions).

72 TLIP, *Transcript*, p. 155 (29 January 1998).

2.106 TLIP stated that of the changes in the Bill that 'have an actual effect on the application of the law ... 85 per cent of them unequivocally favour taxpayers. In many cases they enshrine [a Tax Office] view of the law that is favourable to taxpayers.'⁷³

2.107 TLIP was able to provide additional evidence for its argument in the form of a supplementary submission listing the changes in the Bill and noting which had been favourable to the taxpayer. TLIP identified four instances where a Tax Office pro-revenue interpretation had been changed to favour taxpayers:

- clause 104-135—'interim liquidation distributions will be treated as part of disposal consideration of the shares if the company is dissolved within 18 months of the interim payment' (in contrast to TD 95/12);
- clause 116-50—'a seller of an asset who has to repay part of the sale proceeds can reduce the disposal consideration by the repaid amount' (in contrast to TD 93/44);
- clause 108-55—'a building or a capital improvement is only treated as a separate CGT asset if it is subject to a balancing adjustment provision' (in contrast to TD 94/64); and
- clause 108-70—'improvements that entitle owners to a deduction for capital works expenditure are no longer treated as assets separate from the land' (in contrast to TD 94/64).⁷⁴

2.108 As well, there were forty-three instances where the law had been clarified, two of which were neutral and twenty-eight favoured the taxpayer. The thirteen pro-revenue interpretations were 'consistent with [the] correct policy position'. The information provided by TLIP can be found at Appendix V of this report.

2.109 TLIP also provided an instance where it had successfully disputed the Tax Office view which had resulted in a loss to the revenue of \$175 million.⁷⁵ Later, TLIP provided

73 TLIP, *Transcript*, p. 156 (29 January 1998).

74 TLIP, *Submission*, pp. S479-82 (Vol. 2 of Submissions).

75 TLIP, *Submission*, p. S471 (Vol. 2 of Submissions).

a further supplementary submission responding to the issues raised by the CTA in its supplementary submission.⁷⁶

2.110 Deloitte Touche Tohmatsu supported changes where the law was unclear which reflected current administrative practice. However, it commented that there were instances 'where the law as it stands is relatively clear and the legislation as introduced, which attempts to clarify administrative practice, is in fact inconsistent with that.'⁷⁷

2.111 An example of this inconsistency, it was suggested, was the treatment accorded to Everett assignments in Exposure Draft No. 10.⁷⁸

2.112 In reaching its conclusion, the Committee understands that a process is in place where small policy changes are cleared with the Assistant Treasurer before inclusion in the rewrite.⁷⁹ Also, stakeholders are able to appeal to the Assistant Treasurer and in fact have done so successfully.

2.113 In other instances where there has been a shift detrimental to the taxpayer, the size of the adverse impact will not warrant the step of raising the matter with the Assistant Treasurer.

2.114 An extensive analysis of TLIP's performance in rewriting the 1936 Act is beyond the scope of this review. Such an analysis would seek to compare the effects of the large number of changes which are beneficial to taxpayers against those which are not. Also, some changes that are sought may be beyond TLIP's mandate because they address issues of policy.

2.115 The Committee however makes the following observations:

- Although TLIP has rigorously defended its impartiality, there appears to be a genuine feeling of grievance at least on behalf of the CTA.

76 TLIP, *Submission*, pp. S525-38 (Vol. 2 of Submissions).

77 Deloitte Touche Tohmatsu, *Transcript*, p. 152 (29 January 1998).

78 Deloitte Touche Tohmatsu, *Transcript*, p. 152 (29 January 1998).

79 TLIP, *Transcript*, p. 36 (28 January 1998).

- If the perception of TLIP bias becomes widespread, it will jeopardise the goodwill expressed by stakeholders to the rewrite process.
- There are a variety of specialised interests involved, all of whose views cannot reasonably be reconciled, either with TLIP's, or each other. A reasonable balance is all that is possible in the circumstances.

2.116 The Committee hopes that the process created by the Assistant Treasurer, referred to above, will defuse this apparent tension.

The contribution of the Consultative Committee

2.117 While the Committee has recommended a review of the resources available to TLIP, it is also aware of the demands placed on members of the Consultative Committee who receive no remuneration for the assistance they provide TLIP.⁸⁰

2.118 The stakeholders represented by members of the Consultative Committee will benefit from the ability of the Consultative Committee to provide an input into the rewrite process. TLIP also benefits because it can readily identify the concerns of the marketplace. As well, the involvement of the Consultative Committee enhances the credibility of the rewritten bills.

2.119 It was apparent to the Committee at the hearings that the Consultative Committee had been unable to undertake deep consideration of the clauses of the Bill. In part, this was the result of the tight timetable imposed by the need for the Committee to meet its own reporting deadline, but it also reflected the lack of resources available to the Consultative Committee.

2.120 The Committee recognises the contribution of the Consultative Committee to the rewrite process. The task of reviewing complex and important legislation has been demanding and has been exacerbated by the truncated consultation process and the need to complete the review before the deadlines that have been set.

80 Consultative Committee, *Transcript*, p. 28 (28 January 1998).

POLICY AND MAJOR TECHNICAL ISSUES

Introduction

3.1 This chapter discusses two types of issues. Firstly, those relating to policy and therefore beyond TLIP's mandate, and secondly those which are sufficiently weighty to require substantial review. Such a review may be beyond TLIP's capacity to undertake or is sufficiently broad in scope to impinge on policy matters.

3.2 The Committee has always been reluctant to arbitrate between TLIP and its critics on issues of tax law interpretation.¹ However, the Committee believes it is appropriate to detail some of the significant criticisms which arose during the inquiry. The Committee has decided to make general recommendations regarding these issues, rather than suggest specific wording changes, because of the complexity of the issues raised.

3.3 As stated in Chapter 1, clause by clause criticisms of the Bill are listed in Appendix IV. While some of these criticisms have been agreed to or are under consideration by TLIP², there remain a number which have not been resolved.

3.4 The Committee is conscious that many of the criticisms, and TLIP's responses, rely on subtleties of interpretation. The Committee has been advised that TLIP has consulted widely with tax professionals and others, through its private sector consultative committee and via exposure drafts, as part of the drafting process. The Committee is prepared to accept that TLIP has taken into account the range of views expressed on various issues and clauses. Accordingly, unless it has commented specifically, the

¹ JCPA, Report 345, p. 47.

² For example, see clauses 118-35 and 118-40 in Appendix IV.

Committee is satisfied that TLIP's interpretation of the law is, on balance, the most appropriate.

3.5 Of the issues that warrant comment in the body of this report, some are clearly technical in nature and lie within TLIP's mandate. These are discussed in Chapter 4.

Division 104

3.6 This Division sets out the thirty six events which can give rise to a capital gain or loss. The Division also contains the rules for determining the amount of the gain or loss and the timing of the event.

Clause 104-70

3.7 This clause which contains CGT event E4 which deals with the payment of a 'non assessable amount' by the trustee of a trust to the holder of a unit or an interest in that trust. Broadly, the clause will reduce the cost base of the unit or interest in the trust by the amount of the payment.

3.8 In the public hearings, evidence was presented to the Committee regarding an anomaly relating to the operation of clause 104-70 which replicates the same problem in the existing law.

3.9 The issue arises where the trustee of a trust has paid tax on the income of the trust in a previous year because, for example, no beneficiary was presently entitled to the income of the trust.³ If a payment is made out of this income to a holder of an interest in the trust in a following year, it will be a 'non assessable amount' because of the tax the trustee has already paid. Consequently, clause 104-70 can potentially apply to the payment.⁴

3.10 It is obviously not appropriate for the provision to apply in this situation and it appears that the Commissioner

³ 1936 Act, section 99A.

⁴ TLIP, Transcript, pp. 57-8 (28 January 1998).

of Taxation currently administers the provision favourably to taxpayers.⁵

3.11 In the public hearing, TLIP responded that an amendment to rectify this situation would be a change to the effect of the existing law. This is because clause 104-70 focuses on what is non assessable to the taxpayer *receiving* the payment. As the Government had placed an embargo on amending the trust provisions in the Act, TLIP felt they could not make an amendment to this provision.⁶

3.12 However, the Committee agrees with comments in the hearing that this amendment is more a change to the CGT provisions than to trust law concepts.⁷ The Committee has taken into account the support expressed by several of TLIP's private sector representatives for an amendment to rectify this anomaly.⁸

3.13 Further, the Committee notes that clause 104-70 already differs from the existing law in several respects. This lends weight to the view that the clause can be further amended. By excluding amounts that have previously been taxed from the scope of this provision, effect will merely be given to the administrative practice of the Commissioner.

3.14 Recommendation 6

The Tax Law Improvement Bill (No. 2) 1997 should be amended to ensure that a payment made to the holder of a unit or interest in a trust, out of income previously taxed to the trustee of the trust, is not subject to clause 104-70.

3.15 The Explanatory Memorandum (EM) to the Bill highlights a change to the existing law which will ensure that 'payment' in clause 104-70 includes payments in kind.⁹ This change has also been made to clause 104-135. The EM indicates that the existing law is ambiguous on this issue.

5 TLIP, *Transcript*, p. 60 (28 January 1998).

6 TLIP, *Transcript*, pp. 58-9 (28 January 1998).

7 TLIP, *Transcript*, p. 59 (28 January 1998).

8 TLIP, *Transcript*, p. 59 (28 January 1998).

9 *Explanatory Memorandum*, p. 35.

3.16 Deloitte Touche Tohmatsu has argued that this change is not a clarification of the law but is instead an extension of the current law. Clause 104-70, it was suggested, was only meant to apply to cash payments to ensure that the recipient of the payment had the funds to pay any capital gains tax which may arise.¹⁰

3.17 TLIP responded that the Taxation Office view of the existing law has been known for some time¹¹ and, because the CGT legislation generally treats payments in kind as equivalent to payments of cash, there was no policy reason why the same should not apply to clause 104-70.¹²

3.18 While the Committee recognises that a view could be formed that 'payment' does not encompass payments in kind, it acknowledges the policy reasons behind ensuring 'payment' does include payments in kind for the purposes of clause 104-70 and clause 104-135.

3.19 The Committee considers TLIP to have clarified the law by making this change, which is part of their mandate.

Clause 104-230

3.20 Broadly, CGT event K6, contained in clause 104-230, deals with the disposal of pre-CGT shares in a company or an interest in a trust where the relevant company or trust holds a certain percentage of post-CGT assets.

3.21 The Committee has received substantial evidence suggesting that clause 104-230, which replicates the existing law, is difficult to interpret, contains ambiguities and is complex to apply.¹³

10 Deloitte Touche Tohmatsu, *Submission*, p. S358 (Vol. 2 of Submissions).

11 See Taxation Determination 29.

12 *Submission*, pp. S445-6 (Vol. 2 of Submissions).

13 Tax professional bodies, *Submission*, p. S76 (Vol. 1 of Submissions); CTA, *Submission*, p. S39 (Vol. 1 of Submissions), *Transcript*, pp. 164-5 (29 January 1998), *Transcript*, pp. 212-13 (18 February 1998).

3.22 For example, it is suggested that the provision:

- on a literal application, can produce a capital gain greater than the capital proceeds from the disposal of the shares or trust interest;
- will operate differently depending on the level of liabilities in the entity or entities; and
- is difficult to apply where there are interposed entities, which requires tracing through those entities.¹⁴

3.23 Of particular concern to the Committee is the statement that:

*ATO representatives have identified more than 30 significant unresolved technical issues in relation to its operation which have been under discussion for nearly 4 years.*¹⁵

3.24 TLIP responded that the issues concerning deficiencies in clause 104-230 raised policy matters which were outside TLIP's mandate. In addition, the Taxation Office (outside TLIP) was addressing the issues through a legislative proposal.¹⁶

3.25 A private sector representative from TLIP told the Committee that it would have taken TLIP too long to have rectified clause 104-230 because of the number of flaws contained in the provision. More important, however, was the Government embargo on altering any provisions dealing with trusts.¹⁷

3.26 It appears to the Committee, from the evidence presented, that the issues with clause 104-230 mainly relate to clarifying how the existing provision operates and not to any proposed changes to underlying policy.

3.27 The Committee believes that taxpayers deserve certainty in the way provisions of the law operate. It appears there is general consensus that clause 104-230 is flawed (see

14 Tax professional bodies, *Submission*, pp. S147-9 (Vol. 1 of Submissions).

15 Tax professional bodies, *Submission*, p. S76 (Vol. 1 of Submissions).

16 TLIP, *Submission*, pp. S396, S425 (Vol. 2 of Submissions).

17 TLIP, *Transcript*, pp. 166-7 (29 January 1998).

above) and additional compliance costs must be placed on taxpayers as a result.

3.28 The Committee is also concerned that the problems with clause 104-230 have remained unresolved for some time. The Committee acknowledges this is not the fault of TLIP. However, the Committee believes that any issues with clause 104-230 which fall within the category of 'clarifying' the provision should be rectified by the Taxation Office as a matter of urgency.

3.29 Recommendation 7

Clause 104-230 should be amended as a matter of urgency so that the known deficiencies which relate to the operation of the provision are rectified.

Compensation payments

3.30 The Committee has received evidence suggesting that the Bill fails to deal adequately with the situation where compensation is received in relation to the loss of, or damage to, an asset.¹⁸

3.31 The issue arises from the contention that there are potentially two taxing points where compensation is received in relation to an underlying asset. There could be a disposal of the underlying asset or part of that asset, or there could be the disposal of an asset—'the right to sue'. Consequently, there is potential for double taxation to arise.¹⁹

3.32 The Taxation Office issued Taxation Ruling TR 95/35 outlining its views on the operation of the CGT provisions in these situations. The ruling adopted an 'underlying asset' approach which appears to have general support from tax professionals.²⁰ However, it is argued that the approach in the ruling has no legislative support.

18 cgtTAXnet, *Submission*, p. S8 (Vol. 1 of Submissions); Tax professional bodies, *Submission*, p. S75 (Vol. 1 of Submissions), *Transcript*, pp. 164-5, p. 198 (29 January and 18 February 1998).

19 cgtTAXnet, *Submission*, p. S8 (Vol. 1 of Submissions).

20 Tax professional bodies, *Transcript*, p. 198 (18 February 1998).

3.33 The three tax professional bodies and cgtTAXnet suggested that the legislation should be brought into line with the administrative practice of the Taxation Office by adopting the 'underlying asset' approach as this would give taxpayers more certainty in the operation of the law. The three tax professional bodies argued that there were no policy issues involved in the suggested amendment.²¹

3.34 TLIP did not accept that the provisions had the potential to impose double taxation on the same transaction and argued that the legislation treats the underlying asset as the relevant asset, as reflected in Taxation Ruling TR 95/35.²²

3.35 TLIP also stated that in regards to the permanent damage to, or reduction in value of, an asset, they had considered whether specific rules could have been included in the rewritten law. It was decided that it was not possible because it raised a policy issue. That issue was the treatment of excess compensation once the cost base of an asset has been reduced to nil. Taxation Ruling TR 95/35 provides that the excess compensation is not taxable. However, it was stated that Treasury believed the excess should be taxed if the ruling was codified. This position of Treasury put the issue beyond the mandate of TLIP.

3.36 Notwithstanding the comments made by TLIP, the Committee believes that if a ruling containing 335 paragraphs is required to clarify the operation of the existing law, then there are problems with the operation of the provisions dealing with compensation payments. The Committee believes it is crucial that the law be clarified as a matter of urgency.

3.37 Recommendation 8

The capital gains tax provisions relating to compensation payments should be reviewed, and amended as a matter of priority, to determine the underlying policy and reduce the uncertainty in the law.

21 Tax professional bodies, *Transcript*, pp. 165, 199 (29 January and 18 February 1998).

22 TLIP, *Submission*, p. S317 (Vol. 1 of Submissions).

Division 118

3.38 This Division contains various exemptions for capital gains and losses. For example, there is an exemption for the main residence of a taxpayer and a partial exemption for the sale of the goodwill of a business.²³

3.39 The Committee received evidence regarding various clauses of Division 118, two of which warrant discussion in this chapter. Additional issues are discussed in Chapter 4.

Clause 118-20

3.40 The structure of the income tax provisions means that a gain from a transaction can be taxed twice:

- under the capital gains tax provisions; and
- under the ordinary income tax provisions.

3.41 Clause 118-20 prevents this double taxation by reducing a capital gain which is otherwise assessable under another provision of the Act. However, the capital gain is only reduced if the amount is otherwise assessable because of the occurrence of the CGT event.

3.42 The Consultative Committee drew the Committee's attention to a problem with the operation of this provision, which replicates the same problem in the existing law. A transaction can give rise to a CGT event and also a tax liability under the ordinary income tax provisions, but not as a result of the CGT event.²⁴

3.43 The example described by the Consultative Committee was that of the issue and redemption of a deeply discounted debenture. The difference between the issue and redemption price of the debenture is assessed under the ordinary income tax provisions over the life of the debenture. However, this is not assessable as a result of the disposal of the debenture. Thus, this amount could also be assessable under the CGT provisions when the debenture is redeemed.

23 Subdivisions 118-B and 118-C.

24 Consultative Committee, *Transcript*, pp. 62-3 (28 January 1998).

3.44 TLIP told the Committee that they were aware of the problem but a satisfactory solution had not been found. TLIP also advised that in practice the provision was interpreted so that the Commissioner had not imposed double taxation.²⁵

3.45 The Committee is satisfied that the provision has not been used to the detriment of taxpayers. However, it is preferable for the provision to achieve its intended purpose without requiring the use of the Commissioner's discretion. Such a change would merely reflect the current administrative practice of the Taxation Office.

3.46 Accordingly, and taking into account TLIP's stated desire to pursue this issue with the Consultative Committee,²⁶ the Committee makes the following recommendation.

3.47 **Recommendation 9**

The Tax Law Improvement Bill (No. 2) 1997 should be amended to ensure that double taxation cannot arise where an amount is assessable under the ordinary income tax provisions, but not as a result of a CGT event.

3.48 A related issue was raised and considered by the Committee.²⁷

3.49 While an adjustment is made where an amount is assessable under the ordinary income tax provisions and the capital gains tax provisions (to prevent double taxation, as discussed above), there is no adjustment where an amount is assessable under the ordinary income tax provisions and the amount is also taken into account in determining the amount of a capital loss made on the disposal of a CGT asset.

3.50 The Committee has received little evidence on this issue and consequently has not formed a view on the matter.

²⁵ TLIP, *Transcript*, p. 63 (28 January 1998).

²⁶ TLIP, *Transcript*, p. 63 (28 January 1998).

²⁷ JCPA, *Transcript*, p. 44 (28 January 1998).

Clause 118-25

3.51 Clause 118-25 ensures that a capital gain or loss made from a CGT event involving trading stock is disregarded.

3.52 The Committee received evidence that clause 118-25 was not a faithful replication of the existing law.²⁸ This was because the existing law provided that the CGT provisions did not apply to the *disposal* of trading stock whereas clause 118-25 merely disregards the capital gain or loss, thus still allowing the CGT provisions to initially apply to a disposal of trading stock.²⁹

3.53 While the new and existing provisions effectively achieved the same result, it was argued that the new provision was a narrower exemption which could impact on other CGT provisions.³⁰

3.54 One example of this, the CTA argued, was the interaction of Division 138 (dealing with the shifting of value between companies under common ownership) and clause 118-25.

3.55 The CTA suggested to the Committee that the existing law dealing with the shifting of value³¹ would not apply where trading stock was transferred between two commonly owned companies for less than appropriate consideration because, as stated above, the CGT provisions do not apply to the disposal of trading stock. However, clause 118-25 provides that it is the capital gain or loss made from the disposal of trading stock that is to be disregarded. In effect, this means that the disposal of trading stock will still fall within the CGT provisions. Consequently, Division 138 would apply to trading stock transferred for less than appropriate consideration.³²

3.56 TLIP responded that clause 118-25 does reflect the existing law, although achieving it in a slightly different

²⁸ CTA, *Submission*, p. S22 (Vol. 1 of Submissions), *Transcript*, pp. 63-4 (28 January 1998).

²⁹ 1936 Act, paragraph 160L(3)(a).

³⁰ Consultative Committee, *Transcript*, p. 64 (28 January 1998).

³¹ 1936 Act, Division 19A.

³² CTA, *Transcript*, p. 64 (28 January 1998).

manner.³³ TLIP also argued that the existing law equivalent of Division 138 did apply to transfers of trading stock and that this was an appropriate policy outcome.

3.57 The Committee acknowledges there is an arguable view that clause 118-25 has effectively extended the operation of Division 138 to the transfer of trading stock. However, whichever view of the existing law is correct, the Committee acknowledges the policy reasons for Division 138 applying to the transfer of trading stock. The existing law does appear to have some ambiguity regarding its scope, as acknowledged by the EM to the Bill,³⁴ and by TLIP in the public hearing.³⁵

3.58 TLIP have now clarified the provision, which is within their mandate. This issue will be discussed further under the heading of 'transitional provisions'.

Division 122

3.59 This Division deals with CGT roll-over for the transfer of assets by an individual or partnership to a wholly owned company. The Committee received evidence on several clauses in the Division. One issue is discussed below. An additional issue is discussed in chapter 4.

Clauses 122-45, 50, and 55

3.60 Broadly, these provisions provide that where the 'assets of a business' are transferred to a wholly owned company and the assets transferred include a 'precluded asset', then the consideration for the transfer of the precluded asset must be post CGT shares. This is regardless of whether the precluded asset was acquired pre or post CGT. A 'precluded asset' includes a motor vehicle and trading stock.³⁶

3.61 During the public hearing, the Consultative Committee argued that the treatment of 'precluded assets' was not appropriate. Specifically, it was suggested that where the

33 TLIP, *Submission*, p. S393 (Vol. 2 of Submissions).

34 *Explanatory Memorandum*, p. 171.

35 TLIP, *Transcript*, p. 64 (28 January 1998).

36 Subclause 122-25(3).

precluded asset was acquired pre CGT, the shares received in consideration for the transfer should also be pre CGT.³⁷

3.62 TLIP responded that, in general, the ownership by a company of assets which are exempt from CGT, such as motor vehicles, does not impact on the CGT treatment of the shares in the company. Consequently, the same principle should apply.³⁸

3.63 The Committee supports the approach taken by TLIP. If a precluded asset was transferred to the company separately from other assets, Subdivision 122 would not apply to the transfer and thus pre CGT shares could not be received.³⁹ Further, it would not be possible for the consideration on the disposal of a precluded asset to be converted to pre CGT property. Consequently, the operation of these provisions seemed to the Committee to be appropriate.

Division 128

3.64 This Division sets out the CGT consequences when a taxpayer dies. The Committee received evidence on several clauses in the Division. One issue is discussed below.

Subclause 128-15(4)

3.65 This provision contains the rules for determining the cost base of a CGT asset which passes to a legal personal representative or beneficiary of a deceased estate.

3.66 The Consultative Committee suggested that a change to this provision could operate to the detriment of taxpayers.⁴⁰

3.67 Specifically, where an asset of the deceased was trading stock, subclause 128-15(4) will set the cost base of the asset in the hands of the legal personal representative or beneficiary at its market value at the date of death.

37 Consultative Committee, *Transcript*, p. 33 (28 January 1998).

38 TLIP, *Transcript*, p. 35 (28 January 1998).

39 Subclause 122-25(2).

40 Consultative Committee, *Transcript*, pp. 70-1 (28 January 1998).

Previously, the cost base of the asset for the legal personal representative or beneficiary was deemed to be the same as the cost base to the deceased.⁴¹

3.68 This change to the determination of cost base could be detrimental to taxpayers if the market value of the asset is less than its cost base at the date of death but then increases in value after the date of death.

3.69 TLIP responded that it had wished to establish a general principle that the value for CGT purposes should be the same as that for trading stock purposes. In addition, TLIP believed the change would overwhelmingly favour taxpayers.⁴²

3.70 While the Committee acknowledges that some taxpayers could be worse off under the new provision, it accepts the general principle that TLIP referred to. Consequently, the Committee is satisfied with the operation of this provision.

Division 373

3.71 This Division creates a capital allowance for expenditure on intellectual property used for producing assessable income. Several issues were raised with the Committee,⁴³ two of which are discussed below.

Clause 373-15

3.72 This provision contains the meaning of 'intellectual property'. For example, the term includes the rights held as the licensee of a patent or by the owner of a registered design. The CTA suggested that the definition should also encompass 'bundled' or composite intellectual property rights, which are common in the marketplace. This would overcome compliance

41 1936 Act, subsection 160X(5).

42 TLIP, *Transcript*, p. 71 (28 January 1998).

43 CTA, *Submission*, pp. S23-4 (Vol. 1 of Submissions), *Transcript*, pp. 72-8 (28 January 1998); Malleson Stephen Jaques, *Submission*, pp. 540-1 (Vol. 2 of Submissions)

difficulties encountered where intellectual property rights are encompassed within a composite licence.⁴⁴

3.73 Both TLIP and the CTA agreed that these two suggestions were beyond the mandate of TLIP and would have a significant revenue impact.⁴⁵

3.74 The Committee believes the issues raised important questions regarding the operation of the provisions. In particular, the Committee queries the logic in the provisions adopting a different basis of write off for tangible and intangible assets.

Clause 373-35

3.75 This provision defines the meaning of 'effective life', as regards intellectual property, for the purposes of the Division. Effective life is generally based on the legal life of the item of property. The CTA suggested that a more realistic measure of effective life would be the economic life of the property. This would equate with the way plant is depreciated under the existing provisions.⁴⁶ It would also reflect the diminution in economic value of the asset, especially those subject to technological or economic obsolescence.

Recommendation

3.76 For these reasons, the Committee makes the following recommendation.

3.77 Recommendation 10

The Government should review the operation of the provisions of the Tax Law Improvement Bill (No. 2) 1997 which deal with intellectual property, having regard to the issues raised in paragraphs 3.72-3.75.

44 CTA, *Submission*, p. S24 (Vol. 1 of Submissions).

45 TLIP, *Transcript*, p.75 (28 January 1998); CTA, *Transcript*, p. 76 (28 January 1998).

46 CTA, *Submission*, p. S23 (Vol. 1 of Submissions).

Transitional provisions

3.78 Schedule 2 of the Bill contains the transitional provisions for the rewritten law. The transitional provisions provide that the rewritten CGT provisions are to apply to assessments for the 1998-99 and later income years.

3.79 In working out whether a capital gain or loss is made from a CGT event that happens to a CGT asset in the 1998-99 or later income year, only the provisions of the 1997 Act are to be used (unless otherwise specified). The transitional provisions make it clear that in working out the cost base of a CGT asset, the 1997 Act will apply to circumstances that occurred **before** the 1998-99 year of income.

3.80 The CTA, Deloitte Touche Tohmatsu, and the three tax professional bodies have suggested that the transitional provisions have retrospective effect in some instances which is detrimental to taxpayers. Several examples are outlined below.

Clause 104-70

3.81 CGT event E4 involves non assessable payments being made by the trustee of a trust to a beneficiary of that trust. The provision has common application for unit holders in unit trusts. Broadly, the provision requires the amount of the non assessable payment to reduce the cost base of the units. Once the cost base has been reduced to zero, any further payments will give rise to a capital gain.

3.82 Clause 104-70 only requires cost base adjustments to be made to units once a year, even where several payments have been made during the year. Under the existing law, adjustments have to be made to the cost base as the payments are received, regardless of whether this is several times in a year.⁴⁷

3.83 The three tax professional bodies and the CTA have suggested that the transitional provisions have potential retrospective effect for CGT event E4, contained in clause

47 1936 Act, section 160ZM.

104-70.⁴⁸ They argued that the effect of this clause is that taxpayers would have to undo their cost base adjustments made under the existing law and redo them under the new law. While this process would potentially result in less tax payable for taxpayers (because of the effect of indexation, which is available where an asset is held for more than 12 months), it would also add to the compliance costs of taxpayers.

3.84 TLIP argued that taxpayers would not have cost base adjustments to undo because a taxpayer would not know with certainty what the cost base was until the unit was disposed of. That is, the taxpayer would not know whether cost base, indexed cost base or reduced cost base was relevant. In addition, as noted above, there are benefits for taxpayers if the cost base adjustments need to be redone.⁴⁹

3.85 In response, the three tax professional bodies said that taxpayers do make cost base adjustments when payments are received and that taxpayers should be given the option of using the old or the new rules. Deloitte Touche Tohmatsu agreed that taxpayers would have to make cost base adjustments to ensure that the cost base had not been reduced to nil.⁵⁰

3.86 A private sector representative from TLIP replied that he had never seen a cost base of a unit in a property unit trust reduced to nil. He also believed that very few taxpayers kept records of payments received.⁵¹

Clause 118-120

3.87 This clause provides that the CGT main residence exemption extends to land that is adjacent to the residence if the land is used primarily for private or domestic purposes in association with the dwelling.

48 CTA, *Transcript*, pp. 92-3 (28 January 1998); Tax professional bodies, *Transcript*, p. 184 (18 February 1998).

49 TLIP, *Transcript*, p. 185 (18 February 1998).

50 Tax professional bodies, *Transcript*, p. 185 (18 February 1998); Deloitte Touche Tohmatsu, *Transcript*, p. 187 (18 February 1998).

51 TLIP, *Transcript*, p. 187 (18 February 1998).

3.88 Deloitte Touche Tohmatsu have suggested that the transitional provisions have potential retrospective effect for clause 118-120 because the existing law only requires the adjacent land to be used for private or domestic purposes at the time of disposal of the residence.⁵² As a result, a taxpayer who acquired a residence and adjacent land before the 1998-99 year of income and disposed of it in that year of income or later would need to examine their use of that adjacent land from when it was first acquired.

3.89 The EM to the Bill states that the administrative practice of the Tax Office has been to look at how the land has been used over the whole period of ownership.⁵³ This is reflected in Taxation Determination 92/115.

Division 138

3.90 This Division deals with the shifting of value between companies under common ownership. Broadly, where this occurs, cost base adjustments are made to the shares in the relevant companies.

3.91 Division 138 will apply to the transfer of trading stock between companies under common ownership at less than market value. However, there is some dispute as to whether the existing law can apply to trading stock. (This issue has been discussed at paragraphs 3.51-3.58.)

3.92 The three tax professional bodies have suggested that the transitional provisions have potential retrospectivity for Division 138.⁵⁴ They argued that taxpayers who have interpreted the existing law as not applying to the transfer of trading stock would have to adjust cost bases where any transfers of trading stock at an under value had occurred in the past.

52 Deloitte Touche Tohmatsu, *Submission*, p. S558 (Vol. 2 of submissions).

53 *Explanatory memorandum*, p. 84.

54 Tax professional bodies, *Transcript*, p. 160 (29 January 1998).

Conclusion

3.93 The Committee has an in-principle objection to retrospective legislation unless it is unavoidable. The Committee believes the approach that TLIP has taken in regard to the transitional provisions is not unreasonable. By providing that the Bill applies to assessments from the 1998-99 year of income, the provisions of the 1936 Act are closed off.

3.94 With regard to clause 104-70, the Committee acknowledges the point raised by the three tax professional bodies that the existing law does require cost base adjustments to be made when payments are received, regardless of whether the chances of the cost base being reduced to nil is very small.

3.95 However, the Committee also recognises that the level of compliance with the provision is probably low. Further, there is a tax benefit for taxpayers who do have to recalculate their cost base under the new rules. The Committee does not want to deny this benefit to taxpayers.

3.96 While it was suggested that taxpayers should be given the option of using the old or the new rules⁵⁵, the Committee does not support this proposition as it would mean the existing law remaining operative for a further period of time.

3.97 On balance, the Committee supports the way clause 104-70 will operate under the new law.

3.98 With regard to clause 118-120, the Committee acknowledges the administrative practice of the Tax Office and the existence of a Taxation Determination dealing with the issue. The Committee believes that clause 118-120 does not operate retrospectively.

3.99 With regard to Division 138, the Committee acknowledges that the issue involves a disputed interpretation of the law. The Committee is not comfortable with adjudicating on the matter of the correct interpretation nor does it believe this is its role. In the absence of any positive ruling on this matter, the Committee accepts the position that TLIP has taken. However, the Committee notes that if the interpretation adopted by TLIP is not correct, then Division 138 will have retrospective application.

55 Tax professional bodies, *Transcript*, p. 185 (18 February 1998).

MINOR TECHNICAL ISSUES

Introduction

4.1 This Chapter makes specific comments of a minor technical nature on individual Divisions of the Bill. The recommendations made are, the Committee believes, within TLIP's mandate (ie: are not small 'p' policy issues) and should be addressed before the Bill is passed.

Division 104

4.2 As discussed in Chapter 3, this Division sets out the thirty six events which can give rise to a capital gain or loss.

4.3 The Committee was impressed with the 'CGT event' approach in the rewritten law and believes it is a significant improvement over the existing law. The Committee supports the alpha numeric labelling system used for the CGT events and believes that it is more appropriate and 'user friendly' than the alternatives.¹

4.4 Nevertheless, the Committee considers that the operation of Division 104 could be further improved, as outlined below.

Table of provisions

4.5 One of TLIP's private sector representatives suggested to the Committee that it would be useful to have a table of relevant provisions at the end of each CGT event.² It was suggested that the table would not necessarily contain

1 Tax professional bodies, *Submission*, p. S84 (Vol. 1 of Submissions); Michael Dirkis, *Submission*, p. S15 (Vol. 1 of Submissions).

2 TLIP, *Transcript*, p. 53 (28 January 1998).

every provision which a user of the legislation would have regard to but merely those provisions which were specific to the CGT event in question.³

4.6 In effect, the suggestion was to ensure that there was appropriate cross referencing between the CGT events and any specific provisions which applied to those events. For example, clause 116-20 contains general rules about capital proceeds. Subclause (2) sets out what the capital proceeds from CGT events F1, F2 and H2 are. The suggestion is that under those CGT events, a reference be made to subclause 116-20(2).

4.7 The Committee agrees with this general proposition, noting TLIP's comment that the 'CGT event' approach really provides a 'one-stop shop' for each event. The law has been rewritten so that the 'ordinary' tax practitioner can effectively use the provisions and so the more guidance that can be provided, the easier the law will be to use.⁴

4.8 The Committee is aware of TLIP's concern that the law may become too long if there is an over abundance of guide material.⁵ However, the Committee believes that this suggestion warrants the following recommendation.

4.9 Recommendation 11

Division 104 should include additional cross referencing to provisions which specifically relate to each CGT event. Alternatively, the Explanatory Memorandum should be amended to include a list of relevant provisions for each CGT event.

Clause 104-10

4.10 This clause contains CGT event A1, which involves the disposal of a CGT asset. Subclause 104-10(2) provides that there is a disposal of a CGT asset where a change of ownership occurs. However, a change of ownership does not occur where a taxpayer ceases to be the legal owner of the CGT asset but is still the beneficial owner of the asset.

3 TLIP, *Transcript*, pp. 56-7 (28 January 1998).

4 TLIP, *Transcript*, pp. 54-5 (28 January 1998).

5 TLIP, *Transcript*, p. 54 (28 January 1998).

4.11 The existing law equivalent of subclause 104-10(2) ensures that there are no CGT consequences where there is a change in trustee of a trust.⁶ However, a private sector representative of TLIP has suggested that subclause 104-10(2) does not prevent CGT consequences in this situation.⁷

4.12 TLIP responded that the interaction of subclause 104-10(2) with subsection 960-100(2) of the 1997 Act achieved the same result as the existing law.⁸ Broadly, subsection 960-100 provides that the trustee of a trust is taken to be an entity consisting of the persons who are the trustees at any given time.

4.13 The Committee believes that it is unclear that the interaction of the two provisions produces the desired result. Accordingly, the Committee makes the following recommendation.

4.14 **Recommendation 12**

Subclause 104-10(2) should be clarified, by way of amendment or the addition of guide material, to ensure that the provision will not apply to the mere change of trustee of a trust.

Clause 104-20

4.15 This clause deals with the loss or destruction of a CGT asset. The three tax professional bodies suggested that it would be unclear to a user of the legislation whether the provision applies to a *part* loss or destruction of an asset.⁹ The three tax professional bodies suggested that additional signposting was required.

4.16 The Committee agrees that the provision would be enhanced with the addition of some guide material.

6 1936 Act, subsection 160M(1A)

7 TLIP, *Transcript*, p. 214 (18 February 1998).

8 TLIP, *Transcript*, pp. 214-5 (18 February 1998).

9 Tax professional bodies, *Submission*, p. S88 (Vol. 1 of Submissions).

4.17 **Recommendation 13**

Guide material, by way of signposting or note, should be inserted into clause 104-20 to make it clear that the provision also applies to the part disposal of a CGT asset.

Clause 104-70

4.18 As discussed in Chapter 3, this clause deals with the payment of a non assessable amount by the trustee of a trust to the holder of a unit or an interest in that trust.

4.19 During the public hearing, one of TLIP's private sector representatives suggested that some examples should be incorporated into clause 104-70 to assist in the interpretation of the provision.¹⁰

4.20 The Committee agrees that the operation of clause 104-70 is difficult to follow where multiple payments are made by a trustee during a year of income. Some clarification of the provision, possibly by way of examples, would greatly enhance the ability of taxpayers to comply with the provision. TLIP agreed during the public hearing to consider this suggestion.¹¹

4.21 Accordingly, the Committee makes the following recommendation.

4.22 **Recommendation 14**

The operation of clause 104-70 should be clarified in regards to multiple payments, either by amending the provision or by including relevant examples.

Division 112

4.23 This Division contains modifications to cost base and reduced cost base. The following issues were raised in submissions received by the Committee.

10 TLIP, *Transcript*, p. 61 (28 January 1998).

11 TLIP, *Transcript*, p. 61 (28 January 1998).

Clause 112-20

4.24 This provision contains the market substitution rule for the first element of the cost base or reduced cost base of an asset. Paragraph 112-20(1)(b) provides that the rule applies if 'some part' of the expenditure incurred to acquire a CGT asset cannot be valued.

4.25 The CTA queried whether the provision applies where *all* of the expenditure cannot be valued.¹² TLIP stated that the provision does apply in this case.¹³ However, the Committee believes the provision could be made clearer.

Clause 112-45

4.26 This provision contains a table of special rules dealing with cost bases and reduced cost bases of assets. The three tax professional bodies suggested that the table should refer to the CGT event number in each situation and not just item and section numbers.¹⁴

4.27 The Committee believes it would be more appropriate for the CGT event numbers to be used in the table and notes that TLIP is considering this suggestion.¹⁵

Recommendation

4.28 After considering the issues discussed above, the Committee makes the following recommendation relating to Division 112.

12 CTA, *Submission*, p. S46 (Vol. 1 of Submissions).

13 TLIP, *Submission*, p. S430 (Vol. 2 of Submissions).

14 Tax professional bodies, *Submission*, p. S92 (Vol. 1 of Submissions).

15 TLIP, *Submission*, p. S406 (Vol. 2 of Submissions).

4.29 Recommendation 15

(a) *Clause 112-20 should be amended to clarify that it applies where all of the expenditure incurred cannot be valued; and*

(b) *The table in clause 112-45 should be amended to include references to the CGT event number for each situation.*

Division 118

4.30 As discussed in Chapter 3, this Division sets out various exemptions for capital gains and losses. The following issues were raised in submissions received by the Committee.

Clause 118-40 - 118-60

4.31 These clauses are preceded by the heading 'exempt transactions'. The three tax professional bodies suggested that the heading does not reflect the content of clause 118-40.¹⁶

4.32 Clause 118-40 broadly provides that a capital loss a lessee makes from the expiry of a lease is disregarded if the lessee did not use the lease for the purpose of producing assessable income.

4.33 The Committee agrees that the heading is misleading and notes that TLIP has undertaken to consider this issue.¹⁷

Clause 118-145

4.34 This clause allows a taxpayer to treat a dwelling as their main residence even where the residence has ceased to be the main residence. If the taxpayer uses the residence to earn assessable income during their absence from the residence, the maximum period it can be treated as the main residence is six years.

16 Tax professional bodies, *Submission*, p. S93 (Vol. 1 of Submissions).

17 TLIP, *Submission*, p. S407 (Vol. 2 of Submissions).

4.35 John Gaal, Taxation Consultant, suggested that this provision is not a faithful replication of the existing law.¹⁸ Specifically, under the existing law, if a residence is used partly for earning assessable income while it is the main residence of the taxpayer, and continues to be used for that purpose after it ceases to be the main residence of the taxpayer, this does not affect the six year absence entitlement. However, it was argued that clause 118-145 does take into account this partial use, to the detriment of taxpayers.¹⁹

4.36 The Committee agrees that the provision is unclear in its operation and notes that TLIP has undertaken to consider this issue.²⁰

Subclause 118-250(4)

4.37 This provision provides the definition of 'related business', for the purposes of the goodwill exemption, where the primary business is carried on by the trustee of a trust.

4.38 The three tax professional bodies suggested that the definition is wider than the existing provisions.²¹ This was because in paragraph 118-250(4)(b), one of the defining conditions is that there must be a common beneficiary or 'common *potential* beneficiary'. In effect, anyone can be a potential beneficiary of a trust, as long as the trust deed allows it. The existing law is not this wide.²²

4.39 The Committee agrees that the definition appears wider than the existing law and notes that TLIP has undertaken to consider this issue.²³

18 1936 Act, Subsection 160ZZQ (ii)

19 John Gaal, *Submission*, p. S309-10 (Vol. 1 of Submissions).

20 TLIP, *Submission*, p. S388 (Vol. 2 of Submissions).

21 1936 Act, Subsection 160ZZR (2)

22 Tax professional bodies, *Submission*, p. S95-6 (Vol. 1 of Submissions).

23 TLIP, *Submission*, p. S410 (Vol. 2 of Submissions).

Recommendation

After considering the issues discussed above, the Committee makes the following recommendation relating to Division 118.

4.40 Recommendation 16

- (a) *The heading above clauses 118-40 to 118-60 should be amended to reflect the content of all of the provisions;*
- (b) *Clause 118-145 should be amended to ensure that the existing use of a dwelling for income producing purposes will not affect the determination of the six year period; and*
- (c) *The words 'or common potential beneficiary' should be removed from the definition of 'related business' in subclause 118-250(4).*

Miscellaneous issues

Additional signposting

4.41 The Committee received evidence requesting additional signposting in various areas of the provisions.

4.42 The Committee acknowledges the value of appropriate signposting in the rewritten law and accepts that the decision to use more signposting depends on balancing the benefits of additional guidance against the extra length of the provisions.

4.43 However, the Committee considers there needs to be at least the following additions to the signposting in the Bill:

- Clause 112-35—signpost to subclause 110-30(2); and
- Division 132—signpost to CGT event C2.

Subclause 100-25(2)

4.44 This provision contains some examples of 'CGT assets'. The three tax professional bodies suggested that 'your home' should be included in the list.²⁴

4.45 The Committee agrees that the inclusion of 'your home' is a worthwhile suggestion and notes that TLIP is considering this issue.²⁵

Clause 102-25

4.46 This provision outlines the order in which CGT events are to be applied. Subclause 102-25(1) provides that a taxpayer must first work out if a CGT event **applies** to their circumstances (disregarding CGT events D1 and H2). Subclause 102-25(3) provides that if no CGT event **applies**, the taxpayer must consider whether CGT events D1 and H2 apply to their circumstances.

4.47 The Committee received evidence that the operation of clause 102-25 was unclear when a CGT event led to the instruction to disregard the capital gain or loss made from the CGT event.²⁶ It was submitted that in this situation, it could be argued that the CGT event had not **applied** which then resulted in CGT events D1 and H2 having potential operation.

4.48 TLIP responded that the CGT event would be taken to have **applied** where a capital gain or loss was to be disregarded.²⁷

4.49 The Committee agrees that there is ambiguity in the operation of clause 102-25. The Committee believes that this could be rectified by the use of guide material in the provision, such as a note and/or examples, which make it clear that a CGT event will **apply** even where there are no consequences from the CGT event in question (for example, because the capital gain or loss is disregarded).

24 Tax professional bodies, *Submission*, p. S87 (Vol. 1 of Submissions).

25 TLIP, *Submission*, p. S93 (Vol. 1 of Submissions).

26 CTA, *Submission*, p. S30 (Vol. 1 of Submissions); Deloitte Touche Tohmatsu, *Submission*, p. S368 (Vol. 2 of Submissions); Tax professional bodies, *Submission*, p. S80 (Vol. 1 of Submissions).

27 TLIP, *Submission*, pp. S398, S418 (Vol. 2 of Submissions).

Clause 114-10

4.50 This provision broadly provides that a CGT asset must be owned for at least twelve months before the cost base of the asset can be indexed. Where an asset is rolled over between wholly owned companies, subclause (4) allows the two periods of ownership to be added together to determine whether the twelve month period has been satisfied.

4.51 Deloitte Touche Tohmatsu suggested that the provision requires amendment to deal with the situation where there is more than two roll-overs within a company group.²⁸ The Committee agrees with this suggestion and notes that TLIP is considering the issue.²⁹

Clause 121-20

4.52 This provision outlines the record keeping requirements for taxpayers. Subclause (5) provides that if the necessary records do not exist, the taxpayer must 'create' them or have someone else create them.

4.53 The three tax professional bodies suggested that the use of the word 'create' implies that the taxpayer can 'manufacture' records which do not reflect the transaction.³⁰ TLIP disagreed with this suggestion.³¹

4.54 However, the Committee believes that the provision should be reworded to convey more accurately its meaning and suggests the word 'reconstruct' might be appropriate.

4.55 The three tax professional bodies also suggested that the example in subclause (5) should not refer to valuations being done by 'an appropriately qualified person' as this is not required under the existing law.³²

28 Deloitte Touche Tohmatsu, *Submission*, pp. S373-4 (Vol. 2 of Submissions).

29 TLIP, *Submission*, p. S447 (Vol. 2 of Submissions).

30 Tax professional bodies, *Submission*, p. S96 (Vol. 1 of Submissions).

31 TLIP, *Submission*, p. S411 (Vol. 2 of Submissions).

32 Tax professional bodies, *Submission*, p. S96 (Vol. 1 of Submissions).

4.56 The Committee supports the view of the three tax professional bodies and notes that TLIP is considering this suggestion.³³

Subclause 122-20(4)

4.57 This subclause provides that contingent liabilities are to be disregarded when determining whether the shares received in consideration for the transfer of an asset have a market value substantially the same as the market value of the asset.

4.58 The Consultative Committee suggested that the clarity of the wording in subclause 122-20(4) could be improved.³⁴

4.59 The Committee agrees that the provision is difficult to follow. While acknowledging the guide material after the provision, the Committee believes that the EM to the Bill should be amended to make it clear that the provision does not only apply to contingent tax liabilities.

Division 138

4.60 Division 138 is designed to overcome the timing advantages that can arise when value is shifted from one commonly owned company to another. Value could be shifted by transferring an asset from one company to another at less than its market value. This could lead to the deferral of a capital gain or the bringing forward of a capital loss.

4.61 The Committee received evidence that the Division was not an improvement on the existing provisions.³⁵

4.62 TLIP expressed some sympathy with this suggestion and foreshadowed a review of the Division to

33 TLIP, *Submission*, p. S411 (Vol. 2 of Submissions).

34 Consultative Committee, *Transcript*, p. 41 (28 January 1998).

35 CTA, *Submission*, p. S23 (Vol. 1 Submissions); Tax professional bodies, *Submission*, pp. S77-8 (Vol. 1 Submissions); Consultative Committee, *Transcript*, pp. 66-9 (28 January 1998).

further improve its wording and structure. TLIP advised the redrafted provisions would be released in early March 1998.³⁶

4.63 The Committee suggests the inclusion of a diagram similar to that in the existing law would enhance the provisions.

Division 165

4.64 This Division deals with the income tax consequences where there is a change in the ownership or control of a company.

4.65 The Consultative Committee commented on the guide boxes in clauses 165-93 and 165-117, suggesting that the wording was unclear and misleading. This was because the guide says that a capital loss cannot be claimed unless a business 'entered no new transactions and conducted no additional business'. These conditions would seem to be impossible to satisfy.³⁷

4.66 TLIP responded that the guide box was merely a condensed paraphrase of the actual provisions, meant to be a guide and not an exhaustive statement of the law.³⁸

4.67 However, while agreeing that the guide is not meant to be exhaustive, the Committee agrees that the words expressed in the guide boxes in clauses 165-93 and 165-117 need clarification. This would also require a consequential amendment to section 165-5 of the *Income Tax Assessment Act 1997*.

Clause 387-160

4.68 This provision contains a guide setting out an overview of subdivision 387-C. The Consultative Committee suggested that the guide box in the existing law is much better than that in clause 387-160.³⁹

36 TLIP, *Transcript*, pp. 67, 135 (28 and 29 January 1998).

37 Consultative Committee, *Transcript*, pp. 47-9 (28 January 1998).

38 TLIP, *Transcript*, p. 50 (28 January 1998).

39 Consultative Committee, *Transcript*, p. 86 (28 January 1998).

4.69 The Committee agrees with the Consultative Committee and notes that TLIP is considering the issue.⁴⁰

Transitional provision - clause 110-35

4.70 Clause 110-35 deals with the incidental costs that can be included in the cost base of a CGT asset. Subclause 110-35(2) provides, among other things, that remuneration paid for taxation advice cannot be included in the cost base of a CGT asset if the advice is not provided by a recognised tax adviser.

4.71 Under the existing law, the requirement that advice be provided by a recognised tax adviser only applied to expenditure incurred on or after 1 July 1989.⁴¹ Prior to that date, expenditure on obtaining taxation advice could not be included in the cost base of an asset.

4.72 The three tax professional bodies have suggested that the transitional provision dealing with clause 110-35⁴² is incorrect because it **does** allow expenditure incurred prior to 1 July 1989 to be included in the cost base.⁴³

4.73 The Committee agrees that the transitional provision appears to be incorrect.

Recommendation

4.74 After considering the miscellaneous issues discussed above, the Committee makes the following recommendation.

4.75 Recommendation 17

The Tax Law Improvement Bill (No. 2) 1997 should be amended to incorporate the suggestions made in paragraphs 4.42-4.74.

40 TLIP, *Transcript*, p. 86 (28 January 1998).

41 For example, see 1936 Act, subsection 160ZH(7).

42 See Schedule 2 of the Bill.

43 Tax professional bodies, *Transcript*, p. 196 (18 February 1998).

Additional matters

4.76 The Committee also draws attention to the following clauses in the Bill, described in Appendix IV, where TLIP has agreed to make amendments:

- Clause 100-15;
- Clause 102-1;
- Clause 104-100;
- Clause 108-10;
- Clause 110-28;
- Subclause 110-30(8);
- Clause 118-35;
- Clause 140-90;
- Subclause 387-195(2); and
- Subclause 387-205(4).

Bob Charles MP
Chairman

**APPENDIX I – SUBMISSIONS**

1. Australian Institute of Valuers and Land Economist (Inc)
2. Mr James I Cone
3. cgtTAXnet
4. cgtTAXnet
5. Corporate Tax Association of Australia Incorporated
6. Australian Society of Certified Practising Accountants,
the Institute of Chartered Accountants in Australia and
the Tax Institute of Australia
7. Mr John W Gaal, Taxation Consultant
8. Mr John W Gaal, Taxation Consultant
9. Tax Law Improvement Project (ATO)
10. Deloitte Touche Tohmatsu
11. Tax Law Improvement Project (ATO)
12. Corporate Tax Association of Australia Incorporated
13. Tax Law Improvement Project (ATO)
14. Tax Law Improvement Project Consultative Committee
15. Tax Law Improvement Project (ATO)
16. Tax Law Improvement Project Consultative Committee
17. Tax Law Improvement Project (ATO)
18. Corporate Tax Association of Australia Incorporated
19. Tax Law Improvement Project (ATO)
20. Corporate Tax Association of Australia Incorporated
21. Mallesons Stephen Jaques
22. Deloitte Touche Tohmatsu
23. Tax Law Improvement Project (ATO)



APPENDIX II - EXHIBITS

Exhibits

1. Tax Law Improvement Project - Draft Taxation Determination TD 98/D3, *Income tax: capital gains—May initial repair expenditure incurred after the acquisition of an asset be included in the cost base of the asset?*
2. Blake Dawson Waldron - Briefing minute, *Suggested policy changes, proposal to fix the CGT and damages problems.*

Confidential Exhibits

The Committee received a number of confidential exhibits.



APPENDIX III - WITNESSES APPEARING AT PUBLIC HEARINGS

Sydney, Tuesday 28 January 1998

Tax Law Improvement Project

Mr Brian Nolan
Project Director

Mr Gavin Back
Assistant Commissioner

Mr John Burge
Senior Officer

Professor Bob Deutsch
University of NSW

Ms Lyn Freshwater
Technical Officer

Mr Simon Gaylard
Private Sector Representative

Ms Margaret Haly
Assistant Commissioner

Mr Geoffrey Harders
Consultant

Mr Thomas Magney
External Consultant

Mr John Morgan
Private Sector Representative

Mr Thomas Reid
Second Parliamentary Counsel

Tax Law Improvement Project Consultative Committee

Mr Stanley Droder (Chairman)
Director, Australian Society of Certified Practising Accountants

Mr Allan Blaikie
Senior Tax Partner, Clayton Utz

Mr Bob Bryant
Executive Director, Corporate Tax Association of Australia Inc

Mrs Margaret Gibson
Partner, Price Waterhouse

Professor Richard Krever
School of Law, Deakin University

Mr Ian Langford-Brown
Director, Institute of Chartered Accountants

Ms Joycelyn Morton
Group Taxation Manager, Woolworths Ltd

Mr Tony Parker
Principal, TL Parker & Co, Yass

Sydney, Thursday 29 January 1998

Tax Law Improvement Project

Mr Brian Nolan
Project Director

Mr Gavin Back
Assistant Commissioner

Mr John Burge
Senior Officer

Professor Bob Deutsch
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Ms Lyn Freshwater
Technical Officer

Mr Simon Gaylard
Private Sector Representative

Ms Margaret Haly
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Mr Thomas Magney
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Mr John Morgan
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Mr Thomas Reid
Second Parliamentary Counsel

Corporate Tax Association of Australia Incorporated

Mr Bob Bryant
Executive Director

Mr William Glass
President

*Australian Society of Certified Practising Accountants
(ASCPAs), Institute of Chartered Accountants in Australia
(ICAA) and the Taxation Institute of Australia (TIA)*

Mr Jon Kirkwood
Member, Taxation Committee, ICAA

Mr Geoffrey Petersson
Member, National Technical Committee, TIA

Dr Mark Robertson
Spokesperson, ASCPAs

Mr Kenneth Spence
Senior Vice-President, TIA

Deloitte Touche Tohmatsu

Mr Duncan Baxter
Partner

Ms Kim Gardam
Tax Analyst

Melbourne, Wednesday 18 February
1998

Tax Law Improvement Project

Mr Brian Nolan
Project Director

Mr Gavin Back
Assistant Commissioner

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Mr Ian Langford-Brown
Director, Institute of Chartered Accountants

Australian Society of Certified Practising Accountants (ASCPAs), Institute of Chartered Accountants in Australia (ICAA), and the Taxation Institute of Australia (TIA).

Mr Jon Kirkwood
Member, Taxation Committee, ICAA

Mr Geoffrey Petersson
Member, National Technical Committee, TIA

Mr Kenneth Spence
Senior Vice-President, TIA

Mr Gordon Thring
Member, ASCPAs

Deloitte Touche Tohmatsu

Mr Duncan Baxter
Partner

Ms Kim Gardam
Tax Analyst

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 (No. 2) 1997 (TLIB 2) that have been made in submissions and at the public hearings. The Committee asked the Tax Law Improvement Project (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:

- CC - Consultative Committee
- CGT - Capital Gains Tax
- CTA - Corporate Tax Association
- Deloitte - Deloitte Touche Tohmatsu
- Tax Bodies - Taxation Institute of Australia, Institute of Chartered Accountants and Australian Society of Certified Practising Accountants
- *Sub* - Submission
- *The 1997 Act* - *Income Tax Assessment Act 1997*
- *Trans* - Transcript

Clause	Comments	TLIP Response
	<p>The transitional rules are potentially retrospective in some circumstances. (Tax Bodies, <i>Trans</i>, p. 160, 184-6, 188; CTA, <i>Trans</i>, pp. 92-3; Deloitte, <i>Sub</i>, p. S556-60)</p> <p>The transitional provisions are incomplete. (Tax Bodies, <i>Trans</i>, p. 188-90; Deloitte, <i>Sub</i>, p. S548-556, <i>Trans</i>, p. 211-2)</p> <p>The transitional provision dealing with clause 110-35 is incorrect. (Tax Bodies, <i>Trans</i>, p. 196-7)</p>	<p>Explanation, <i>Trans</i>, pp. 93-4, 185, 187</p> <p>Agree, <i>Trans</i>, p. 190-1, 212</p> <p>Under consideration, <i>Trans</i>, p. 197</p>
100	It is cumbersome to have to refer to Part 3-1 and Part 3-3. (Tax Bodies, <i>Trans</i> , p. 183)	Explanation, <i>Sub</i> , p. S399
100-10	The examples in subclause (3) are too wide. (Tax Bodies, <i>Sub</i> , p. S87)	Disagree, <i>Sub</i> , p. S401
100-15	The words 'for the income year' should be removed from the second box. (Tax Bodies, <i>Sub</i> , p. S87)	Agree, <i>Sub</i> , p. S401
100-25	<p>'Your home' should be included in the list of 'not so well known' assets in subclause (2). (Tax Bodies, <i>Sub</i>, p. S87)</p> <p>The use of the word 'weekender' is too colloquial. (Tax Bodies, <i>Sub</i>, p. S87)</p>	<p>Under consideration, <i>Sub</i>, p. S401</p> <p>Disagree, <i>Sub</i>, p. S401</p>
100-45	Point 2 assumes there will always be a CGT asset. This is not necessarily the case. (Tax Bodies, <i>Sub</i> , p. S87)	Explanation, <i>Sub</i> , p. S401
100-70	The opening words should read 'you must keep'. (Tax Bodies, <i>Sub</i> , p. S87)	Disagree, <i>Sub</i> , p. S401
102-1	<p>The guide should state that a net capital gain included in assessable income does not duplicate an amount that is otherwise assessable income. (CTA, <i>Sub</i>, p. S29)</p> <p>The guide should state that a net capital loss can be offset against a capital gain of a later year. (CTA, <i>Sub</i>, p. S29)</p>	<p>Disagree, <i>Sub</i>, p. S417</p> <p>Agree, <i>Sub</i>, p. S417</p>
102-20	The use of the acronym CGT would be better avoided because there is no separate capital gains tax. The phrase "capital transaction" might be a suitable replacement. (CTA, <i>Sub</i> , p. S29)	Disagree, <i>Sub</i> , p. S417

102-25	<p>Does a CGT event "apply" in circumstances where the capital gain or loss arising is to be "disregarded". The significance of this is in the context of CGT events D1 and H2. (CTA, <i>Sub</i>, p. S30) (Deloitte, <i>Sub</i>, p. S368)</p> <p>It would be desirable for some examples to be included to give guidance on how to apply this provision. CGT event E8 is one section where an example would be useful. (Tax Bodies, <i>Sub</i>, pp. S84-5 & S90)</p>	<p>Explanation, <i>Sub</i>, p. S418</p> <p>Explanation, <i>Sub</i>, p. S399</p>
103-5	<p>This section should be duplicated in Part 3-3. Alternatively, the section should be translated into the relevant parts of the legislation. (CTA, <i>Sub</i>, pp. S30-1)</p> <p>If a provision does not say that property can be given, does clause 103-5 have any effect? (Deloitte, <i>Sub</i>, p. S330)</p>	<p>Disagree, <i>Sub</i>, p. S418</p> <p>Explanation, <i>Sub</i>, p. S443</p>
103-10	The provision should deal with the Marren v Ingles issue. (Tax Bodies, <i>Sub</i> , pp. S92-3)	Disagree, <i>Sub</i> , S406
104	<p>The descriptive titles of events, such as 'CGT event B1', should be replaced with more accurate descriptions. (Michael Dirkis, <i>Sub</i>, p. S15)</p> <p>It would be preferable for the CGT events to be identified by plain numbering. (Tax Bodies, <i>Sub</i>, p. S84)</p> <p>CGT Events D1 and H2 should be the last two events. (Deloitte, <i>Sub</i>, p. S368)</p> <p>It would be helpful to have a table of relevant provisions at the end of each CGT event. (TLIP, <i>Trans</i>, p. 53)</p>	<p>Disagree, <i>Sub</i>, pp. S321-2</p> <p>Disagree, <i>Sub</i>, p. S399</p> <p>Under consideration, <i>Trans</i>, pp. 54-7</p>
104-10	<p>Pre 1985 assets should not be treated as an after thought. (CTA, <i>Sub</i>, p. S32)</p> <p>Subclause (2) does not reflect the existing law. (TLIP, <i>Trans</i>, p. 214)</p>	<p>Explanation, <i>Sub</i>, p. S419</p> <p>Disagree, <i>Trans</i>, pp. 214-5</p>
104-15	<p>The integration of this provision and other sections of the law dealing with hire purchase are lacking. (CTA, <i>Sub</i>, p. S32)</p> <p>The presence of this event as the second in the list implies it has a particular importance. (Tax Bodies, <i>Sub</i>, p. S88)</p>	Explanation, <i>Sub</i> , p. S402

104-20	The provision needs amendment to preserve the thrust of TR 95/35. (CTA, <i>Sub</i> , p. S32) A cross reference should be inserted to sections 108-5 and 112-30. (Tax Bodies, <i>Sub</i> , p. S88)	Disagree, <i>Sub</i> , p. S419 Under consideration, <i>Sub</i> , p. S402
104-25	The wording of subclause (1) may have a different interpretation to the existing law. (CTA, <i>Sub</i> , p. S33) Subclause (2) suggests that up front losses can be produced. (Tax Bodies, <i>Sub</i> , p. S88) The provision is wider than the existing law. (Deloitte, <i>Sub</i> , p. S363)	Disagree, <i>Sub</i> , p. S419 Explanation, <i>Sub</i> , p. S402 Disagree, <i>Sub</i> , p. S446
104-35	A note should be inserted to indicate the possibility of the goodwill exemption applying (John Gaal, <i>Sub</i> , p. S309) Subclause (5) is not accurately replicated from the existing law. (CTA, <i>Sub</i> , pp. S33-4) It is not clear that the clause operates 'subject to' the CGT provisions. (CTA, <i>Sub</i> , p. S34) Does 'contractual right' mean that you must look at each right arising under a contract or is the contract treated as a bundle of rights? (Tax Bodies, <i>Sub</i> , p. S88; Deloitte, <i>Sub</i> , p. S364) Some examples of the meaning of 'other legal or equitable right' would be helpful. (Tax Bodies, <i>Sub</i> , p. S88) It should be made clear that gains or losses to which this provision refers are exempt from all CGT events. (Tax Bodies, <i>Sub</i> , p. S89) Is the new provision intended to apply to a more restricted group of assets? (Deloitte, <i>Sub</i> , p. S364)	Disagree, <i>Sub</i> , p. S387 Disagree, <i>Sub</i> , pp. S420 Disagree, <i>Sub</i> , pp. S421 Explanation, <i>Sub</i> , pp. S402-3 Disagree, <i>Sub</i> , p. S403 Explanation, <i>Sub</i> , p. S403 Explanation, <i>Sub</i> , p. S446
104-45	It is unclear whether it can be argued that there has been a disposal of part of a mining or prospecting right. (CTA, <i>Sub</i> , p. S34)	Explanation, <i>Sub</i> , p. S421
104-55	The clause should make it clear that it applies to an asset 'owned' by the taxpayer. (CTA, <i>Sub</i> , p. S35) Section 106-50 should be restated here. (CTA, <i>Sub</i> , p. S35)	Explanation, <i>Sub</i> , p. S422 Explanation, <i>Sub</i> , p. S423

104-55	This section and sections 104-60 and 104-75 should have signposts to the exceptions for employee share plan participation. (Tax Bodies, <i>Sub</i> , p. S89)	Under consideration, <i>Sub</i> , p. S403
104-70	It is unclear whether 'payment' refers to actual payment or the declaration of a distribution. (Tax Bodies, <i>Sub</i> , p. S89) The provision should not apply to the receipt of property. (Deloitte, <i>Sub</i> , pp. S358-9) It should be made clear that amounts previously taxed under section 99A will not be caught by this provision. (TLIP, <i>Trans</i> , pp. 57-8) Examples of the operation of the provision would be helpful. (TLIP, <i>Trans</i> , p. 61)	Under consideration, <i>Sub</i> , p. S403 Disagree, <i>Sub</i> , p. S445 Beyond mandate, <i>Trans</i> , pp. 58-9 Under consideration, <i>Trans</i> , p. 61
104-75	There is no definition of 'absolutely entitled'. (Tax Bodies, <i>Sub</i> , p. S89)	Beyond mandate, <i>Sub</i> , p. S404
104-100	Paragraph (6)(b) is missing a 'not'. (TLIP, <i>Trans</i> , p. 61)	Agree, <i>Trans</i> , p. 61
104-135	The heading of this section should be changed. (CTA, <i>Sub</i> , p. S37) The provision should not apply to the receipt of property. (Deloitte, <i>Sub</i> , p. S358)	Disagree, <i>Sub</i> , pp. S424 Disagree, <i>Sub</i> , p. S445-6
104-150	The example should be expanded to demonstrate the contrary position. (CTA, <i>Sub</i> , p. S38)	Disagree, <i>Sub</i> , p. S424
104-155	It is not clear that, where a taxpayer has a right of action in relation to an underlying asset, CGT will only have application to the underlying asset. (cgtTAXnet, <i>Sub</i> , p. S8) (Tax Bodies, <i>Sub</i> , p. S75, <i>Trans</i> , pp. 164-5, 198-9, 202) A note should be added to state that 'capital proceeds' includes consideration in addition to money. (CTA, <i>Sub</i> , p. S38) This section should be prominently signposted. (Tax Bodies, <i>Sub</i> , p. S84)	Explanation, <i>Sub</i> , p. S317, <i>Trans</i> , pp. 199, 202-3 Disagree, <i>Sub</i> , p. S425
104-165	It is not clear how a taxpayer who ceases residency will know there is a choice available to them. (Tax Bodies, <i>Sub</i> , p. S90)	Explanation, <i>Sub</i> , p. S404

104-205	The example does not accord with the existing law or TR 95/35. (CTA, <i>Sub</i> , p. S35)	Disagree, <i>Sub</i> , p. 422
104-215	The application of this provision to taxpayers holding life interests arising from deceased estates with a bequest for the remainder to charity needs to be explored. (CTA, <i>Sub</i> , p. S39) This event should operate from when the asset passes to the beneficiary. (Tax Bodies, <i>Sub</i> , p. S90)	Disagree, <i>Sub</i> , p. S404
104-225	Subclause (4) is difficult to follow. (TLIP, <i>Trans</i> , pp. 61-2)	Under consideration, <i>Trans</i> , p. 62
104-230	The known difficulties and deficiencies in this provision need to be addressed. (CTA, <i>Sub</i> , p. S39) (Tax Bodies, <i>Sub</i> , p. S76, <i>Trans</i> , pp. 164-5, pp. 212-3)	Explanation, <i>Sub</i> , p. S396, <i>Trans</i> , p. 213-4
106-A	The operation of the Subdivision and the examples needs to be fully tested. (Tax Bodies, <i>Trans</i> , p. 127)	Under consideration, <i>Trans</i> , pp. 127-8
106-50	This provision should merely attribute any gain or loss to the beneficiary. (Tax Bodies, <i>Sub</i> , p. S91)	Disagree, <i>Sub</i> , p. S405
106-60	This provision should merely attribute any gain or loss to the owner of the asset. (Tax Bodies, <i>Sub</i> , p. S91)	Under consideration, <i>Sub</i> , p. S405
108-5	The inclusion of 'an interest in an asset' in the definition of 'CGT asset' goes beyond the existing law. (CTA, <i>Sub</i> , p. S40) 'An interest in an asset of a partnership' should be clarified to mean property of a partnership. (CTA, <i>Sub</i> , p. S40) It is unclear whether Australian currency is an asset. (Tax Bodies, <i>Sub</i> , p. S91)	Disagree, <i>Sub</i> , p. S425 Explanation, <i>Sub</i> , p. S405
108-10	In paragraph (2)(c), the 'or' at the end of the sentence should be removed. (Deloitte, <i>Sub</i> , p. S330)	Agree, <i>Sub</i> , p. 442
108-20	The definition of 'personal use asset' is overly wide to the extent that it envisages a company having an asset for personal use. (CTA, <i>Sub</i> , p. S41)	Explanation, <i>Sub</i> , p. S427

108-55	The scope of the provision needs to be made harmonious with the depreciation provisions. (CTA, <i>Sub</i> , p. S42)	Disagree, <i>Sub</i> , p. S427
108-60	The scope of the provision needs to be made harmonious with the depreciation provisions. (CTA, <i>Sub</i> , p. S42)	Disagree, <i>Sub</i> , p. S427
108-65	The section would be better concluded: 'irrespective of whether it and the original land are amalgamated into one title'. (CTA, <i>Sub</i> , p. S42)	Disagree, <i>Sub</i> , p. S427
108-70	The provision is difficult to contain in the case of capital improvements of an intangible nature. (CTA, <i>Sub</i> , p. S43)	Disagree, <i>Sub</i> , p. S427
108-80	The insertion into the legislation of factors currently applied administratively is inappropriate. (CTA, <i>Sub</i> , p. S43) It is undesirable that CGT implications depend on such a vague test. (Deloitte, <i>Sub</i> , p. S359)	Disagree, <i>Sub</i> , p. S427 Disagree, <i>Sub</i> , p. S446
110	The calculation of reduced cost base and cost base should be the same. (CC, <i>Trans</i> , p. 30-1)	Explanation, <i>Trans</i> , p. 31
110-28	The section appears after section 110-30. (Tax Bodies, <i>Sub</i> , p. S85)	Agree, <i>Sub</i> , p. S399
110-30	Each of the five elements of the cost base should be given a generic label. (CTA, <i>Sub</i> , p. S44) The ambit of 'any other property you gave' should be expanded to articulate the administrative practice of TR 96/23. (CTA, <i>Sub</i> , p. S45) It needs to be clear that the deemed sale and reacquisition under section 70-110 will generate a cost base under this provision. (CTA, <i>Sub</i> , p. S45) Paragraph (3)(b) should make it clear that the costs may relate to the asset rather than the 'CGT event' itself. (CTA, <i>Sub</i> , p. S45) Subclause (5) should include expenditure which may not be reflected in the state of the asset at the time of sale. (CTA, <i>Sub</i> , p. S45)	Disagree, <i>Sub</i> , p. S428 Disagree, <i>Sub</i> , p. S428 Explanation, <i>Sub</i> , p. S428 Explanation, <i>Sub</i> , p. S429 Beyond mandate, <i>Sub</i> , p. S429

110-30	Subclause (4) should be amended to take into account the decision in Steele' case. (Tax Bodies, <i>Sub</i> , p. S77) Subclause (8) is badly drafted in that it contains a double negative. (Tax Bodies, <i>Sub</i> , p. S92)	Explanation, <i>Sub</i> , p. S397 Agree, <i>Sub</i> , p. S406
110-55	The interaction between this section and section 110-30 is confusing. (CTA, <i>Sub</i> , p. S46)	Disagree, <i>Sub</i> , p. S429
112	The fact that Subdivisions B, C and D have no operative effect is not sufficiently clear. (CTA, <i>Sub</i> , p. S46)	
112-20	In subclause (1), does 'some part' embrace 'the whole'. (CTA, <i>Sub</i> , p. S46) It is not clear that subclause (2) is an adequate translation of the existing law. (CTA, <i>Sub</i> , p. S46)	Explanation, <i>Sub</i> , p. S430 Disagree, <i>Sub</i> , p. S430
112-25	Does subclause (1) apply to an asset which becomes, or ceases to be, trading stock? (CTA, <i>Sub</i> , p. S47)	Explanation, <i>Sub</i> , p. S430
112-30	The CGT events listed in subclause (2) is not sufficient to cover all possible part disposals. (Deloitte, <i>Sub</i> , p. S367)	Disagree, <i>Sub</i> , p. S446
112-35	This section should be cross referenced to subclause 110-30(2). (CTA, <i>Sub</i> , p. S47)	Disagree, <i>Sub</i> , p. S430
112-45	The table should not use item numbers. (Tax Bodies, <i>Sub</i> , p. S92)	Under consideration, <i>Sub</i> , p. S406
112-85	The table should distinguish between rights under employee share plans and options generally. (Tax Bodies, <i>Sub</i> , p. S92)	Under consideration, <i>Sub</i> , p. S406
114-5	The provision should be redrafted to remove double negatives. (Tax Bodies, <i>Sub</i> , p. S92)	Under consideration, <i>Sub</i> , p. S406
114-10	The provision appears to be deficient. (Tax Bodies, <i>Sub</i> , p. S92) Subclause (4) should be amended to cater for a multiplicity of roll-over events. (Deloitte, <i>Sub</i> , p. S373-4)	Under consideration, <i>Sub</i> , p. S406 Under consideration, <i>Sub</i> , p. S447
116-10	Each 'modification' should be given a generic label. (CTA, <i>Sub</i> , p. S48)	Disagree, <i>Sub</i> , p. S431

116-20	Subclauses (3) and (4) should be in a separate section. (CTA, <i>Sub</i> , p. S48) In subclause (2), the words 'or other consideration' should be avoided in event number H2. (CTA, <i>Sub</i> , p. S48)	Disagree, <i>Sub</i> , p. S431 Disagree, <i>Sub</i> , p. S431
116-30	A reference to subclause (2) should be made in section 104-35. (CTA, <i>Sub</i> , p. S49)	
116-50	The cost base should be reduced regardless of whether the repayment is deductible. (Deloitte, <i>Sub</i> , p. S359)	Explanation, <i>Sub</i> , p. S443
116-52	The liability to which the asset is subject should be a liability that is borne by the taxpayer vendor. (CTA, <i>Sub</i> , p. S49)	
116-75	Subclause (1) should also refer to the 'loss or destruction' of an asset. (CTA, <i>Sub</i> , p. S50)	Disagree, <i>Sub</i> , p. S432
116-80	The heading to the section should refer to 'a share'. (CTA, <i>Sub</i> , p. S50)	Disagree, <i>Sub</i> , p. S433
118	Specific exemptions should be given for CGT events over underlying assets whose actual disposal would have been exempt. (Deloitte, <i>Sub</i> , p. S360-1) The main residence exemption provisions do not give effect to the decision in Guy's case. (Tax Bodies, <i>Trans</i> , p. 209)	Beyond mandate, <i>Sub</i> , p. S446 Under consideration, <i>Trans</i> , pp. 209-10
118-10	The \$10000 threshold should be indexed. (Deloitte, <i>Sub</i> , p. S359)	Beyond mandate, <i>Sub</i> , p. S443
118-20	The Division should contain an exemption from CGT for any gains otherwise assessable under the 1997 Act. (cgtTAXnet, <i>Sub</i> , pp. S9-10) There is potential double taxation from the operation of this provision. (CC, <i>Trans</i> , pp. 62-3)	Disagree, <i>Sub</i> , p. S320 Under consideration, <i>Trans</i> , p. 63
118-25	The Bill does not accurately reflect the existing law in relation to the exclusion of trading stock. (CTA, <i>Sub</i> , p. S22) (CTA, <i>Trans</i> , pp. 63-4)	Disagree, <i>Sub</i> , p. S393, <i>Trans</i> , pp. 64-5
118-35	There is no benefit in introducing a new concept, 'absolutely entitled to the net income of a trust' in subsection (3). (Tax Bodies, <i>Sub</i> , p. S93)	Agree, <i>Sub</i> , p. S407

118-40	The heading 'exempt transactions' does not reflect the content of this section. (Tax Bodies, <i>Sub</i> , p. S93)	Under consideration, <i>Sub</i> , p. S407
118-100	It is confusing for there to be a number of separate but inter-related exemptions, without there being some general guiding rules. (Tax Bodies, <i>Sub</i> , p. S94)	Explanation, <i>Sub</i> , pp. S407-8
118-110	There should not be a separate exemption for inherited houses. (Tax Bodies, <i>Sub</i> , p. S94) Subclause (2) needs to be clarified in regards to the use of the words 'these CGT events are relevant'. (Tax Bodies, <i>Sub</i> , p. S94) The list of relevant "CGT events" in subclause (2) should be expanded to include all of the events. (Deloitte, <i>Sub</i> , p. S331-2)	Disagree, <i>Sub</i> , p. S408 Disagree <i>Sub</i> , p. S444
118-120	Subclause (2) provides no guidance as to how the 2 hectares is to be calculated. (Tax Bodies, <i>Sub</i> , p. S94)	Explanation, <i>Sub</i> , pp. S408-9
118-140	A CGT event can occur without affecting the ownership interest of the taxpayer. (Deloitte, <i>Sub</i> , p. S332-4)	Explanation, <i>Sub</i> , p. S444
118-145	Existing use of part of a dwelling for income producing purposes will affect the determination of the six year period. (John Gaal, <i>Sub</i> , pp. S309-310) Can a taxpayer choose to treat a residence as their 'main residence' during certain periods of the one period of absence? (John Gaal, <i>Sub</i> , p. S310) When does the choice for the exemption have to be made? (John Gaal, <i>Sub</i> , p. S310) The example following subclause (4) implies a minimum qualifying period. (Tax Bodies, <i>Sub</i> , p. S95)	Under consideration, <i>Sub</i> , pp. S387-8 Explanation, <i>Sub</i> , p. S388 Explanation, <i>Sub</i> , pp. S389 Disagree, <i>Sub</i> , p. S409
118-185	The provision is unrealistic in that it requires an owner to determine the exact number of days of occupancy. (Tax Bodies, <i>Sub</i> , p. S95)	Disagree, <i>Sub</i> , p. S409

118-190	This provision does not reflect the administrative practice in IT 2673. (Tax Bodies, <i>Sub</i> , p. S95, <i>Trans</i> , pp. 215-16) The example following subclause (1) is misleading in that it may give the impression that rental income is not subject to income tax. (Tax Bodies, <i>Sub</i> , p. S95)	Disagree, <i>Sub</i> , p. S409-410, <i>Trans</i> , p. 217 Disagree, <i>Sub</i> , p. S410
118-195	The list of relevant "CGT events" in subclause (2) should be expanded to include all of the events. (Deloitte, <i>Sub</i> , p. S332)	Disagree, <i>Sub</i> , p. S444
118-210	The list of relevant "CGT events" in subclause (2) should be expanded to include all of the events. (Deloitte, <i>Sub</i> , p. S332)	Disagree, <i>Sub</i> , p. S444
118-250	Subclause (4) has widened the definition in the existing law by referring to 'potential beneficiary'. (Tax Bodies, <i>Sub</i> , pp. S95-6) The exemption should be available regardless of the CGT event which occurs. (Deloitte, <i>Sub</i> , p. S334)	Under consideration, <i>Sub</i> , p. S410 Disagree, <i>Sub</i> , p. S445
118-300	Is the list of 'CGT events' in subclause (2) accurate? (Deloitte, <i>Sub</i> , pp. S334-5)	Explanation, <i>Sub</i> , p. S445
121	The provisions should contain a 'safe harbour' clause similar to the existing subsection 160ZZU(4). (Deloitte, <i>Sub</i> , pp. S375-6)	Disagree, <i>Sub</i> , p. S447
121-20	In subclause (3), the intention of the word "day" should be clarified. (Tax Bodies, <i>Sub</i> , p. S96) In subclause (5), using the word 'create' implies that records can be 'manufactured'. (Tax Bodies, <i>Sub</i> , p. S96) The example in subclause (5) implies that all valuations must be done by a qualified valuer, which is not a requirement of the existing law. (Tax Bodies, <i>Sub</i> , p. S96)	Explanation, <i>Sub</i> , p. S411 Disagree, <i>Sub</i> , p. S411 Under consideration, <i>Sub</i> , p. S411
122	It would be helpful to set out in the guide what 'roll-over relief' is. (Tax Bodies, <i>Sub</i> , pp. S96-7) (TLIP, <i>Trans</i> , pp. 42-3) The provisions are no simpler than the existing law and could lead to fresh anomalies being created. (Tax Bodies, <i>Sub</i> , pp. S96-7)	Under consideration, <i>Trans</i> , pp. 42-3 Disagree, <i>Sub</i> , p. S411

122-20	The provisions do not appear to deal with an individual taxpayer obtaining an indemnity from the company for provisions for sick or long service leave. (Tax Bodies, <i>Sub</i> , p. S97) (Tax Bodies, <i>Trans</i> , p. 41) The provision does not seem to apply appropriately where the assets of the business include personal use assets. (Tax Bodies, <i>Sub</i> , p. S97)	Under consideration, <i>Sub</i> , pp. S411-2, <i>Trans</i> , p. 41 Disagree, <i>Sub</i> , pp. S411-22
122-35	The provision is unnecessarily detailed and restrictive. (Tax Bodies, <i>Sub</i> , p. S97) There is no equivalent rules for Subdivision 122-B. (Tax Bodies, <i>Sub</i> , p. S97)	Disagree, <i>Sub</i> , p. S412 Disagree, <i>Sub</i> , p. S412
122-37	Does subclause (2) deal with provisions such as accrued long service leave? (Tax Bodies, <i>Trans</i> , p. 40)	Explanation, <i>Trans</i> , p. 40
122-55	Why are 'precluded assets' treated separately for the purposes of the roll-over. (CC, <i>Trans</i> , pp. 33-6)	Explanation, <i>Trans</i> , pp. 33-6
124	Subdivision G should allow roll-over relief for the merger of two companies. (Tax Bodies, <i>Sub</i> , p. S78)	Beyond mandate, <i>Sub</i> , p. S397
126	The provisions in Subdivision B have not simplified the existing law. At the very least, more signposting is required. (Tax Bodies, <i>Sub</i> , p. S97)	Under consideration, <i>Sub</i> , p. S412
126-45	The list of 'CGT events' in subclause (2) should include all of the events. (Deloitte, <i>Sub</i> , pp. S335-6)	Disagree, <i>Sub</i> , p. S445
128	The legal personal representative or beneficiary should be 'deemed' to have paid or given consideration for the acquisition of the asset. (John Gaal, <i>Sub</i> , pp. S311-12) Clarification is required for the situation where the executors of a deceased estate are intended to become the trustees of assets after the estate has been wound up. (Tax Bodies, <i>Sub</i> , p. S98)	Agree, <i>Sub</i> , p. S389 Beyond mandate, <i>Sub</i> , p. S413
128-15	Some taxpayers can be disadvantaged by the operation of this provision. (CC, <i>Trans</i> , pp. 70-1) Does the Bill reflect the old law in regards to which assets are covered by this Division? (CC, <i>Trans</i> , p. 46)	Explanation, <i>Trans</i> , pp. 71-2 Explanation, <i>Trans</i> , p. 46

130-D	Subdivision D should be an exclusive code for CGT issues relating to employee share schemes. Division 134 should have no application. (Tax Bodies, <i>Sub</i> , pp. S98-9) There is no rule for the establishment of cost base in respect of an amount taxable under the existing section 26AAC. (Tax Bodies, <i>Sub</i> , pp. S98-9) The special qualities of trusts established for ESAS participants are not recognised in the rewrite. (Tax Bodies, <i>Sub</i> , pp. S98-9)	Disagree, <i>Sub</i> , p. S413 Explanation, <i>Sub</i> , p. S413 Explanation, <i>Sub</i> , p. S413
130-83	The list of 'CGT events' in subclause (2) should include all of the events. (Deloitte, <i>Sub</i> , pp. S336-7)	Disagree, <i>Sub</i> , p. S445
130-90	The provision does not apply to a person who has recently retired from the workforce and is entitled to call for their shares and rights. (Tax Bodies, <i>Sub</i> , p. S99, <i>Trans</i> , pp. 206-7)	Beyond mandate, <i>Sub</i> , p. S413, <i>Trans</i> , p. 207-8
132	There should be a signpost to CGT event C2 where a lease expires. (TLIP, <i>Trans</i> , p. 46)	Under consideration, <i>Trans</i> , p. 46
132-1	The provision does not permit any recognition of the costs to a lessee where the costs are not for a variation in the lease term. (CTA, <i>Sub</i> , p. S52)	Explanation, <i>Sub</i> , p. S434
134	The interaction of this Division with CGT event D1 could lead to double taxation for the grantee of an option. (John Gaal, <i>Sub</i> , pp. S312-313)	Disagree, <i>Sub</i> , p. S389
138	The Division should be withdrawn so that a redraft can be attempted. (CTA, <i>Sub</i> , p. S23) (Tax Bodies, <i>Sub</i> , pp. S77-8) (CTA, <i>Trans</i> , pp. 66-7) The Division should not apply to the transfer of trading stock. (CTA, <i>Sub</i> , p. S55) The guide box for this Division and Division 140 could be improved by drafting in the negative. (TLIP, <i>Trans</i> , p. 67) A map similar to that in Division 140 could be incorporated. (TLIP, <i>Trans</i> , p. 68)	Under consideration, <i>Sub</i> , p. S394, <i>Trans</i> , p. 67 Disagree, <i>Sub</i> , p. S393 Under consideration, <i>Trans</i> , pp. 67-8 Under consideration, <i>Trans</i> , p. 69
138-15	Anomalous results will occur in relation to CGT event B1 if the hire purchase agreement does not proceed to completion. (Tax Bodies, <i>Sub</i> , p. S100)	Disagree, <i>Sub</i> , p. S414

138-20	The word 'or' could be inserted after each paragraph. (TLIP, <i>Trans</i> , p. 69)	Under consideration, <i>Trans</i> , p. 69
140	The Division is too broad in its operation. The law can apply to actions where there is no intention or purpose to avoid CGT. (cgtTAXnet, <i>Sub</i> , p. S9) The emphasis of this Division should be on anti avoidance. (Tax Bodies, <i>Sub</i> , p. S100) The threshold limits should be 20% and \$1 million. (Tax Bodies, <i>Sub</i> , p. S100) The summary of the Division should state that the rules only apply to value shifts involving pre CGT assets or associates. (Tax Bodies, <i>Sub</i> , p. S100)	Disagree, <i>Sub</i> , pp. S318-319 Disagree, <i>Sub</i> , p. S414 Disagree, <i>Sub</i> , p. S414 Disagree, <i>Sub</i> , p. S414
140-60, 140-65, 140-95	The alternative (simplified) version of these provisions, provided in Exposure Draft 11 is preferred. (cgtTAXnet, <i>Sub</i> , p. S9)	Explanation, <i>Sub</i> , pp. S319-20
140-22	The drafting in subclause (2) is cumbersome. (TLIP, <i>Trans</i> , p. 161)	Explanation, <i>Trans</i> , p. 162
140-50	The provision is elliptical and difficult to understand. The example does not help. (Tax Bodies, <i>Sub</i> , p. S101)	Under consideration, <i>Sub</i> , p. S415
140-90	The example in subclause (3) should contain an 'x', not a '+'. (Deloitte, <i>Sub</i> , p. S337)	Agree, <i>Sub</i> , p. S442
165	The wording in clauses 165-93 and 165-117 is unclear. (CC, <i>Trans</i> , p.48)	Under consideration, <i>Trans</i> , pp.48-50
165-CA	This Subdivision and Subdivision 165CB could be improved by having a list of certain events which clarify what is the same owners, same control etc. (CC, <i>Trans</i> , p. 47) The use of multiple capital letters should be avoided. (TLIP, <i>Trans</i> , p. 50)	Disagree, <i>Trans</i> , p. 47 Explanation, <i>Trans</i> , pp. 50-1
165-93	The guide box in this provision and clause 165-117 is misleading. (CC, <i>Trans</i> , pp. 47-9)	Under consideration, <i>Trans</i> , p. 50
165-120	The tracing rules for public companies should be more prominently flagged than the note in subclause (1). (CTA, <i>Trans</i> , p. 79)	Disagree, <i>Trans</i> , p. 79
170-145	Subclauses (2-4) should be removed as they are no longer necessary. (CTA, <i>Sub</i> , p. S55)	Explanation, <i>Sub</i> , p. S395

373	The use of the terms 'unrecouped expenditure' and 'written down value' is confusing. (CC, <i>Trans</i> , p. 73) It would be desirable to standardise the treatment of capital allowances. (<i>Trans</i> , p. 73)	Explanation, <i>Trans</i> , pp. 73-4 Beyond mandate, <i>Trans</i> , p. 73
373-15	The definition of 'intellectual property' should include composite intellectual property rights which could then be amortised without dissection. (CTA, <i>Sub</i> , p. S24; <i>Trans</i> , p. 74)	Beyond mandate, <i>Sub</i> , pp. S392, S499, <i>Trans</i> , p. 75
373-35	Intellectual property should be amortised over its economic life, not legal life. (CTA, <i>Sub</i> , p. S23)	Beyond mandate, <i>Sub</i> , pp. S392, S499
373-90	This provision requires clarification. (<i>Trans</i> , p. 72)	
387-160	The guide box could be usefully expanded. (Tax Bodies, <i>Trans</i> , p. 86)	Under consideration, <i>Trans</i> , p. 86, <i>Sub</i> , p. S501
387-170	The definitions in subclauses (2) and (4) do not clarify the provisions. (CC, <i>Trans</i> , pp 82-3.)	Explanation, <i>Trans</i> , pp. 83-4
387-175	The wording in paragraph (7)(b) is difficult to follow. (CC, <i>Trans</i> , p. 84)	Under consideration, <i>Trans</i> , pp. 84-5, <i>Sub</i> , p. S501
387-195	Subclause (2) does not appear to reflect the EM. (Tax Bodies, <i>Trans</i> , p. 86)	Agree, <i>Trans</i> , p. 86, <i>Sub</i> , p. S501
387-205	It is unclear who 'you' is in subclause (4). (CC, <i>Trans</i> , p. 85)	Agree, <i>Trans</i> , pp. 85-6, <i>Sub</i> , p. S502
392-95	The EM does not reflect the legislation. (CC, <i>Trans</i> , p. 88)	Under consideration, <i>Trans</i> , pp. 88-90, <i>Sub</i> , p. S503



APPENDIX V – ATO INTERPRETATIONS AND PRACTICES IN THE REWRITE

Provisions where an ATO 'pro-revenue' interpretation has been changed by the rewrite to favour taxpayers.

No.	Proposed new section	Change
1.	104-135	The rewrite will ensure that interim liquidation distributions will be treated as part of disposal consideration of the shares if the company is dissolved within 18 months of the interim payment. In TD 95/12 the ATO indicated that no interim liquidation distributions counted as disposal consideration of the shares.
2.	116-50	The rewrite will ensure that a seller of an asset who has to repay part of the sale proceeds can reduce the disposal consideration by the repaid amount. This contrasts with the ATO position in TD 93/44.
3	108-53 108-70	The rewrite specifies that a building or a capital improvement is only treated as a separate CGT asset if it is subject to a balancing adjustment provision. Improvements that entitle owners to a deduction for capital works expenditure are no longer treated as assets separate from the land. This contrasts with the ATO position in TD 94/64.

Provisions where the rewrite has clarified the law by reflecting an ATO interpretation and whether the interpretation is pro-taxpayer or pro-revenue.

No.	Proposed new section	Clarification	Pro-taxpayer	Pro-revenue
CGT				
35	104-70	CGT event E4 does not apply to payments liable to withholding tax. <i>[TLG (CGT Subcommittee) minutes]</i>	✓	
36.	104-90	Clarify that CGT event E8 does not apply to the disposal by beneficiary of a capital interest in a trust acquired before 20 September 1985. <i>[Advice from CGT Cell]</i>	✓	
37.	104-135	Clarify for CGT event G1 that payments in kind are treated in the same way as money payments. <i>[consistent with position in TD 29]</i>		✓ [consistent with correct policy position]
38	104-150	Clarify that CGT event H1 happens on forfeiture of a deposit. <i>[TD 95/22]</i>	✓	
39.	104-180	Clarify that for the purposes of the exception to CGT event J1 the holding company of the subgroup cannot be the ultimate holding company of the wholly-owned group. <i>[Advice from CGT Cell]</i>		✓ [consistent with correct policy position]
40.	104-205	Ensure that no capital gain or loss can arise, in the case of a grant of a licence of intellectual property, if the property was acquired before 20 September 1985. <i>[Advice from CGT Cell]</i>	✓	
41.	104-215	Specify that the time for determining the status of a tax-advantaged beneficiary is when the asset passes from the deceased to the beneficiary. <i>[Advice from CGT Cell]</i>	neutral	neutral

No.	Proposed new section	Clarification	Pro-taxpayer	Pro-revenue
42.	106-5	Specify the CGT consequences of a change in the membership of a partnership. Clarify that a partner has an interest in each partnership asset when entering or leaving a partnership. <i>[IT 2540]</i>	✓	
43.	108-65	Clarify that separate asset treatment applies where post-CGT land and adjacent pre-CGT land are consolidated into one title. <i>[Advice from CGT Cell]</i> .	✓	
44.	108-70 108-75	For improvements made to pre-CGT assets [section 108-70] or pre-CGT assets for which roll-over relief may be available [section 108-75], the rewrite distinguishes between related and unrelated improvements when applying threshold tests. <i>[TD 95/58]</i>	✓	
45.	110-25	Include in the cost base non-deductible interest on borrowings to refinance a loan used to acquire a CGT asset. <i>[Advice from CGT Cell]</i> .	✓	
46.	110-25	Include in the cost base non-deductible interest on loans used to finance improvements to an asset. <i>[Advice from CGT Cell]</i> .	✓	
47.	110-25	Stipulate that recoupment of expenditure only reduces the cost base if it is not included in assessable income. <i>[Advice from CGT Cell]</i> .	✓	
48.	112-30	Require allocation, on a reasonable basis, of cost base in an asset is acquired as part of a broader transaction. <i>[Advice from CGT Cell]</i> .	✓	
49.	116-25	Clarify that the market value substitution rule does not apply to CGT events F1, F2, F4 and F5 which deal with the grant or variation of a lease. <i>[Advice from CGT Cell]</i> .	✓	
50.	118-120	Specify that <i>adjacent land</i> qualifies if it is used primarily for private or domestic purposes in association with the dwelling throughout the ownership, not merely at the time of disposal. <i>[TD 92/115]</i>		✓ [consistent with correct policy position]
51.	118-135	Extend the main residence exemption to take account of the time needed to move into a dwelling, i.e. from acquisition until it is first practicable for the individual to move into the dwelling. <i>[Hunsard, 29 September 1988, Representatives pp1308-1310]</i>	✓	
52.	118-190	Confine the income producing limitation to situations where interest on a mortgage in relation to the dwelling could have been deducted. <i>[IT 2673]</i>	✓	
53.	118-15	Exempt amounts received as compensation for illness. <i>[TR 95/35]</i>	✓	
54.	118-15	Exempt amounts received by the spouse or a relative of an injured person. <i>[TD 92/130]</i>	✓	
55.	118-20	Clarify that a capital gain is not reduced by an amount included in assessable income under section 160AQT of the 1936 Act. <i>[TD 95/15]</i>		✓ [consistent with correct policy position]
56.	118-250	Clarify that, in determining the net value of a business, assets are valued at market value. <i>[Advice from CGT Cell]</i>	neutral	neutral