TAX LAWS AMENDMENT (2008 MEASURES NO. 5) BILL 2008
Second Reading

Mr ROBERT (Fadden) (12.35 p.m.)—I rise to address the Tax Laws Amendment (2008 Measures No. 5) Bill 2008. This bill looks to address five areas of tax law. Firstly, schedule 1 looks to the operations of the GST margin scheme as it applies to sales and acquisitions of real property. It is important that the application of GST be as fair as possible, and that is why the coalition is supporting this schedule, which aims to remove a loophole from current legislation to ensure property developers are paying their fair share of GST revenue.

As it stands now, the way the margin scheme is currently operating allows for some manipulation that can dramatically decrease the level of GST payable on the transfer of real property. It is something the coalition had acknowledged as far back as the 2005 budget speech, when the then Treasurer, the member for Higgins, announced that the government would be working towards closing a range of loopholes that permitted manipulation by certain entities via elements of GST law, including the margin scheme, with the effect of reducing the GST payable on the transfer of real property. Once this problem was first raised, thankfully the changes were not rushed, and consultation and investigation were initiated to ensure there were no unintended consequences. That consultation was being finalised at the time of the 2007 federal election. There was concern that the changes could impact, without intention, other transactions that incur a GST liability. Yet, thanks to the extensive consultation from Treasury, the focus of schedule 1 of this bill is solely on real property, and the coalition is satisfied that there will be no further unintended consequence.

The coalition is also pleased to see that the retroactive elements previously announced by the Rudd government have been quite rightly abandoned. These measures will only apply to future transactions regarding real property dating from the date of royal assent, not property that is already purchased or subject to an option to purchase. The margin scheme is a method of calculating the GST payable on the sale of freehold interest in land, the sale of a stratum unit, and granting or selling a long-term lease. Normally GST is one-eleventh of the price of the supply. However, if the margin scheme is chosen to calculate the amount of GST payable for supplies of real property, the GST payable is one-eleventh of the margin for the supply. The margin for GST purposes is the difference between the purchase price and the sale price. This schedule disallows a practice that saw some manipulation of the margin scheme to reduce consequential GST liabilities.

Schedule 2 ensures the correct operation of Australian equivalents to International Financial Reporting Standards adopted in 2005 under the previous, Howard government. The adherence to the IFRS is important to ensure correct information in international markets and of course to prevent global fraud. One of the key definitions is that of ‘thin capitalisation’, which is defined as the difference between a firm whose debt to equity ratio shows greater levels of debt than equity. The change being made to schedule 2 will be of interest to both those bearing the solvency risk of any firm and of course the Australian Taxation Office. A highly geared firm has the potential to use interest payments to reduce its tax liabilities dramatically. This change will amend the levels of debt allowed to be used as deductions. It will also close the gap between whether it is more profitable to use equity or debt to fund expansion of a business.

Further, schedule 3 amends section 128F of the Income Tax Assessment Act 1936 to provide an exemption from interest withholding tax to bonds issued in Australia by state and territory government authorities. This addresses anomalies in the state and territory bond markets. Interest withholding tax is paid at the rate of 10 per cent on interest paid from Australia to nonresidents overseas. The section of the Income Tax Assessment Act in question gives an exemption to the issuers of debentures or certain other debt

instruments if issued outside Australia and dates back to changes to the act made in 1999. These exemptions did not apply to state and territory governments and the changes in schedule 3 seek to rectify this situation. As it stands now, there is a benefit for the state and territory governments to issue bonds offshore rather than raise capital within Australian borders, taking the example of the exemption for issuers outside of Australia.

Schedule 3 will amend the interest withholding tax exemption to include bonds issued within Australia and should increase liquidity and reduce the cost of borrowing for state and territory governments, which I suggest is a good thing, considering the cost of borrowing for state governments has just risen substantially and the ill-conceived unlimited bank guarantee and wholesale funding guarantee announced by the Rudd government. This has effectively made federal government bonds more attractive because they come with a full government guarantee as opposed to state government bonds, which do not come with any guarantees and are therefore less attractive. In a market, that will lead to a higher cost of borrowing for the states. As so many of our state governments move towards deficit budgets—and indeed as this federal government moves towards deficit budgets if Access Economics is to be believed today—it is an understandable consideration. The amount of state government budget debt is currently approaching $80 billion. In my state of Queensland, debt is approaching $30 billion. Interest payments are currently $5 million a day and rapidly increasing to $10 million a day, which the people of Queensland have to pay because of the Queensland Labor government.

Schedule 4 of the bill addresses the treatment of jointly held assets by fringe benefits tax. Currently, employers can use the 'otherwise deductible' rule when calculating their FBT liability to reduce the figure to nil when applying a fringe benefit to both an employee and their associate, be they a business partner, husband or wife. This is clearly unintended and it is right to have the situation addressed. This issue has arisen after the Federal Court ruling on National Australia Bank v FC of T93 where a husband and wife were receiving low-interest loans from the NAB as a fringe benefit and, as the ruling determined the husband was the sole recipient of the fringe benefit and was entitled to claim tax deductions on unreimbursed interest on the loan, the FBT liability for the NAB could be reduced to zero under the 'otherwise deductible' rule. This raised several inconsistencies with other legislation and indeed the intent of the use of the rule. Under the proposed legislation, an employer must adjust the taxable value of a fringe benefit provided jointly in relation to an income-earning asset jointly owned by an employee and their associate, so the taxable value of the fringe benefit is reduced only by the employee's percentage of interest in the asset. The 'otherwise deductible' rule will be changed to reflect the situation that is desired.

Finally, schedule 5 changes the eligible business rules for managed investment funds. The measures, of course subject to certain conditions, include a definition of the term 'investing in land' to include fixtures, chattels and movable property. The schedule also expands the range of financial instruments in which a managed investment trust can invest, whilst also introducing the following safe harbours: a two per cent safe harbour for non-trading income set at a whole-of-trust level; and a 25 per cent safe harbour for non-rental, non-trading income from investments in land, for public unit trusts investing in land or for the purpose of deriving rent. The Board of Taxation is currently conducting a review of tax arrangements applying to managed funds that operate as managed investment trusts, and the operation of division 6C is included in this review which the board is due to deliver by the middle of 2009.

Whilst the former, coalition government identified the need for action in these areas and maintained in-principle support for integrity measures, legislative action was delayed so that further consultations could be undertaken in recognition of the implications for

the property sector. The Senate Standing Committee on Economics is best placed to identify any unintended consequences of the amendments and to further examine the effect on the property sector and housing affordability generally, given that the proposal expects to raise $523 million over the forward estimates.