



28

PRIME MINISTER

FOR MEDIA

TUESDAY SEPTEMBER 28 1982

ADDRESS TO THE NATION

Nobody likes paying their taxes, but we all know that governments have to provide services of a great many kinds - for education, health, roads and communications, for the general well-being of the community - and it is important that all people contribute fairly, in accordance with their incomes, to the government revenues needed to provide them.

I am talking to you tonight because there are some people who have not been contributing fairly. They have been seeking to avoid or evade paying taxes and by doing so, they put a heavier burden on other Australians.

Two important principles are involved in fighting tax avoidance and tax evasion - principles that have come into conflict recently. The first is that in general, legislation should not be retrospective, and the second is the overriding need for governments to be fair to all Australians.

Over the last several years, the Government has maintained an unrelenting fight against tax evasion and tax avoidance and a significant number of artificial schemes have been outlawed by legislation. In recent times, this has become a contentious political matter in relation to what are known as bottom-of-the-harbour schemes.

These schemes were particularly unpleasant. Whatever the variations, they always involved three elements: first, a company was sold with an unpaid tax liability; second, the price paid for the company reflected the fact that one way or another the tax liability outstanding at the time of the sale simply would not be paid; third, those who bought the company stripped it of its assets so that it had nothing left to pay its taxes.

It was both as simple and as blatant as that. It was not a complicated tax avoidance arrangement, but a straight out case of a company being emptied of assets with intent to deny payment of tax which remained legally due.

Two groups of people gained from these transactions. These were, first, the original owners of the company, the vendor shareholders who received a much better price for their shares than would have been the case if the tax had been paid.

Second, there were the promoters, the people who arranged the deals - who received their promotion fees out of the evaded tax. A very large sum of money was involved. In many cases, the current year profits of a company involved in these schemes would be half a million dollars, and in a few cases, three or four million dollars or even more. So, we are not talking about small sums. In total, we are talking about hundreds of millions of dollars.

The Government introduced legislation in November 1980 to outlaw these schemes and to impose criminal penalties for the first time against them, carrying sentences of up to five years in gaol. We have now passed legislation to establish a special prosecutor who will prosecute those who acted illegally. The special prosecutor will have particular responsibility for action against promoters of the illegal bottom-of-the-harbour schemes.

Last week, we introduced legislation designed to recoup the tax that should have been paid from those who benefited from the schemes. This legislation is tax legislation. It is not criminal legislation. It does not carry criminal penalties. It simply will be seeking to collect the tax that should have been paid much earlier.

There is an element of retrospectivity in this legislation, and I particularly want to say something about that and about the principle of fairness to all Australians.

None of us like retrospective legislation and there is an important principle involved in that. Normally the Government would not consider it, but in these circumstances we believe that retrospectivity is justified. Retrospective tax legislation is, after all, by no means, unprecedented. There are at least two occasions - in 1936 and in 1978 - when the British Parliament passed retrospective legislation against tax avoidance, and appeals against the 1936 legislation were rejected by England's highest courts of appeal.

I and my colleagues in government - and I am sure the overall majority of Australians - are absolutely fed up with the few people who are being unfair to their fellow Australians. It is clear the Government had to make a difficult choice between supporting absolutely the principle of no retrospective legislation or maintaining its support for the principle of governing fairly for all Australians. In this instance, in relation to the bottom-of-the-harbour schemes, we made the decision that we must place the principle of fairness above the principle of retrospectivity.

The Government represents all Australians. Its duty is to govern fairly for all Australians. At elections, people divide up their votes between political parties, but once elected to office, it is the duty of governments and of Members of Parliament to represent all people. That deeply held conviction is the very foundation of my party, and to represent all people you have above all to be fair.

I hope that the legislation will be given a thoughtful but nevertheless speedy passage through the Parliament so that we can get on with the business of collecting taxes that should have been paid long ago. There is no doubt that the legislation will be passed. We will not allow a situation to exist in which some Australians need to pay more because a very few are seeking by improper means to pay less, or none.

---o0o---