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SOCIAL SECURITY

Reporter

UNIVERSITY OF N.S.W.

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Opinion

In this Issue

Negative gearing revisited

Just after witnessing the catastrophic effect on property prices of the reintroduction of negative gearing for tax purposes, we are presented with the spectre of a double whammy via the social security system.

In a clever reinterpretation of the Full Court of the Federal Court's decision in *Haldane-Stevenson*, Spender J, in *Garvey* (reported in this issue) decided that, despite the previously accepted orthodoxy, losses from one source of income can be deducted from gains from other sources to arrive at an overall net amount for the purposes of the pensions income test. His basic rationale was that this reflected 'the actual capacity of a person to maintain herself or himself'.

This is a superficially attractive argument. But should we really be crying crocodile tears over people who appear to have little net income only because they hold onto loss-making enterprises? This is aptly illustrated by the facts in *Garvey* where the applicant held on to 4 rental properties in Brisbane at a cost of \$43 305 per annum in order to obtain income of \$16 396 per annum. Why should taxpayers be subsidising these sorts of acquisitions via, of all things, the social security system?

Spender J did point out that the assets test had yet to be applied to Mr Garvey. However, with such large expenses he may well not have sufficient equity in all the properties to be precluded by the assets test from receiving a pension. (For a married homeowner with six dependent children the assets limit for a part pension is around \$300 000 depending on the ages of the

children.) After a time, the value of the pensioner's equity in his or her properties may well exceed the assets limit. However, in the meantime, assistance is obtained through the social security system (and also the tax system, depending on the date of purchase) during those difficult early years of loan repayment. This assistance is clearly not open to the vast majority of social security recipients who would be unable to afford the necessary deposit, so why should a small minority of already better off people be treated to this additional subsidy?

The other basic argument of Spender J was that an overall net income figure should be used to avoid the difficulties of identifying separate sources of income. However, His Honour permitted losses on the applicant's properties to be deducted from the applicant's wife's salary. Clearly, there could be no difficulty in distinguishing those two sources of income. In some cases this will be a difficult factual issue although not an insurmountable one. Anyway, the High Court's decision in *Harris* clearly requires the identification of separate income sources in order to arrive at the appropriate current annual rate of income from each source.

This decision highlights the need for the *Social Security Act* to contain specific provisions dealing with deductions from income. The government should urgently address this problem in a way that will prevent these sorts of inequities.

[D.M.]

Opinion

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