



Wolters Kluwer

Towards a 21st century tax system

Introduction

Wolters Kluwer, CCH is a leading multinational information services company. In Australia, we provide accurate, authoritative and timely information services to professionals working in the fields of tax, accounting, law, financial planning, medicine and health, employment and work health and safety. Our business places a high degree of importance on integrity, innovation, accountability, value creation, team work and our customers.

We welcome the opportunity to continue serving the Australian community and our customers by participating in the Australian Government's tax reform discussion.

In responding to the Australian Government's Tax Discussion Paper (Discussion Paper), we have identified a number of key issues which should be addressed in order to achieve a better tax system. This response is focused on four key topics that we believe will have a significant impact on achieving tax reform objectives.

Questions Addressed

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Topic 1: Challenges for Australia's tax system

Wolters Kluwer, CCH is focused on innovation and anticipating future needs while adopting a continuous improvement approach toward our products and services. Accordingly, we agree with the key points observed in the Discussion Paper regarding the major challenges that confront Australia's tax system, namely:

- Australia's tax system faces challenges from a changing world.
- The tax system needs to support improvements in productivity and encourage workforce participation.
- Tax reform offers one of the biggest opportunities to improve productivity and foster jobs, growth and opportunities.

As a result, it is important that Australia has a modern tax system that is able to deal with contemporary issues, yet is flexible enough to manage both foreseeable and unforeseeable changes.

Question 1: Can we address the challenges that our tax system faces by refining our current tax system? Alternatively, is more fundamental change required, and what might this look like?

Before any changes are made to Australia's tax system, it is critical that the government set and communicate clear goals and objectives, along with appropriate strategies to achieve these goals.

We note that previous challenges have been managed by refining the tax system through the introduction, amendment and repeal of tax legislation. This process has caused much of the complexity that is a current feature of Australia's tax system, and the most recent attempt at a fundamental change to Australia's tax system has resulted

in the concurrent operation of two separate Income Tax Assessment Acts and an unwieldy Administration Act.

Based on New Zealand's recent success in rewriting and updating its tax legislation, serious consideration should be given to rewriting Australia's income tax assessment law into one operational Act.

In addition, the impracticality of having the majority of the operational provisions related to tax administration in Schedule 1 to the *Taxation Administration Act 1953* also needs to be rectified. We consider that the *Taxation Administration Act 1953* needs to be re-structured so that most of the operational provisions are within the body of the Act and not within a schedule.

Submission

The government should rewrite the income tax assessment law into one operational Act.

The *Taxation Administration Act 1953* should be re-structured so that most of the operational provisions are in the body of the Act and are not contained within Schedule 1 to that Act.

The government needs to ensure that it commits to a timeline to achieve these projects. Also, sufficient resources must be committed and the process must be followed through to completion.

Topic 2: Australia's tax system

We agree with the key principles of an effective tax system as described in the Discussion Paper, namely that a well-designed tax system balances the core principles of equity, efficiency and simplicity.

Question 2: How well does Australia's utilisation of its available taxes align with the evolving structure of Australia's economy and changes in the international economy?

We do not consider that Australia is able to meet its current and future needs with the current mix or level of taxes. In addition, Australia's reliance on revenue from income taxes rather than consumption taxes may have the effect of distorting taxpayer and business behaviours, which should be driven by wider economic concerns. Of the OECD nations, only Denmark relies more heavily on income and company taxes than Australia.

One option that has been widely suggested is to increase the rate of GST and lower the rate of income taxes, as only three of 33 OECD member countries have a lower-rate consumption tax than Australia. Further, GST is easier to administer than income taxes and does not adversely impact business decisions.

However, it needs to be borne in mind that the impact of GST is generally greater on ordinary individuals than on businesses which, in most cases, are able to claim a credit for the GST payable by them. Therefore, it is important that the cost of increasing the GST rate does not fall upon Australia's most vulnerable and that these individuals are protected through the improved targeting of welfare payments.

Obviously, the tax system must be fiscally adequate to pay for the services that the government provides. Yet, at the same time, the phenomenon of "bracket creep" gradually pushes individual taxpayers into higher marginal tax rates as their earnings rise with inflation. There is an observable tendency for government to rely on bracket creep to assist with the task of budget management rather than returning excess taxes to taxpayers. Consideration should be given to redressing this by annually indexing the thresholds at which increases in the marginal tax rates for individuals apply.

In addition, the reliance on bracket creep seems to delay the more ambitious, yet meaningful, task of implementing genuine tax reform in Australia. The rapid changes in both the Australian and international economy demand a more urgent, coherent and bi-partisan approach to tax reform. For example, an outside observer would comment that the time and money involved in implementing reforms such as the mining tax (along with the consequential measures financed by the revenue that the mining tax was meant to raise) and the carbon tax, only to have them repealed by a successive government, is obviously not the best way to achieve lasting tax reform. This comment relates to the process by which those reforms were implemented and then repealed, and not to the merits or otherwise of the particular measures. It would be preferable for politicians on all sides of politics to find areas of agreement on significant tax reforms in the national interest and adopt a bi-partisan approach to tax reform.

Submission

The government should consider whether the current balance of income taxation revenue versus GST revenue is appropriate.

Consideration should be given to redressing bracket creep by annually indexing the thresholds at which increases in the marginal tax rates for individuals apply.

The rapid changes in both the Australian and the international economy demand a more urgent, coherent and bi-partisan approach to tax reform.

Topic 10: Complexity and administration

Complexity of itself is not a problem, as complex transactions often require complex laws to administer and tax them appropriately. Complexity in tax administration becomes an issue when it arises from inefficiencies and duplication, resulting in government and private resources being diverted from productive tasks.

Wolters Kluwer, CCH has been actively involved in the government's Cutting Red Tape initiative and has been working alongside the Hon Josh Frydenberg MP and the Hon Christian Porter MP to facilitate discussions and identify unnecessary and counter-productive legislation and regulations.

We have identified below a number of areas that contribute to complexity in Australia's tax system. We understand that some of the technical issues are commercially complex, however, we believe that it is possible to provide certainty in these areas without increasing complexity.

Question 56: What parts of Australia's tax system, and which group of taxpayers, are most affected by complexity? What are the main causes of complexity?

Taxpayers with limited resources are most affected by complexity. These are generally individuals, taxpayers operating small-to-medium businesses and the accountants and other professionals servicing these taxpayers. Taxpayers operating large businesses are also affected by complexity but have more scope to dedicate resources to comply with and manage their tax affairs.

Submission

The government should address the following features of the tax system that create complexity:

1. Integrity measures within provisions dealing with losses and tax consolidations that are aimed at specific, but rare, situations such as those in Subdiv 165-CC and 165-CD of the *Income Tax Assessment Act 1997*
2. Tax legislation that is not able to be applied to new kinds of economic activity and transactions, thus requiring the development of complex rules for specific situations, for example those dealing with financial arrangements and stapled securities.
3. Complex wording (eg the use of double negatives and exceptions to exceptions). For example, s 47(6) of the *Fringe Benefits Tax Assessment Act 1986* reads "Where ... (aa) the motor vehicle is not: ... (ii) a car, not being: (A) a panel van ...". Section 128B(3) of the *Income Tax Assessment Act 1936* reads "This section does not apply to: ... (ga) income that consists of: (i) the franked part of a dividend; ...", however s 128B(3A) then reads "Paragraph (3)(ga) does not apply to income consisting of a dividend ...".
4. Onerous documentation requirements. For example, the transfer pricing documentation rules in s 284-255 of Sch 1 to the *Taxation Administration Act 1953* require documentation to be prepared contemporaneously and this is more onerous than that of the international standards contained in paragraph 5.4 of the OECD Transfer Pricing guidelines.

Question 58: What system-wide approaches could have the greatest impact on reducing complexity in the tax system? Why have previous attempts to address complexity in the Australian tax system not succeeded? How might it be done in a way that is more successful?

As discussed in Question 1, we support a system wide approach where the income tax assessment law is rewritten into one operational Act. The *Taxation Administration Act 1953* needs to be re-structured so that most of the operational provisions are at the forefront of the Act.

The revised legislation should be principle-based and use simple language. Previous attempts to address complexity were diminished because the attempt was not adequately supported and was abandoned part-way through.

While we believe that Australia currently possesses the necessary level of tax expertise required to create, implement and manage this process, input from tax experts in other jurisdictions could be instructive. This could encourage a “best-practice” approach in revising the current law.

We support the government’s proposal to give the Commissioner of Taxation discretionary, remedial powers (by way of disallowable legislative instruments) to deal with unintended outcomes to ensure that the object of the law is achieved. This should provide flexibility in dealing with legislative problems without requiring further amendments, and provide more certainty for taxpayers.

Submission

The government should consider obtaining input from tax experts in other jurisdictions to support a “best practice” approach in revising Australia’s income tax assessment and tax administration laws.

The government should proceed with granting the Commissioner of Taxation a discretionary, remedial power (by way of disallowable legislative instruments) to cure outcomes that are inconsistent with the object of the tax law.

Question 59: In what ways can reforms of tax administration best assist in reducing the impact of complexity on taxpayers? Are there examples from other countries of tax administration reform to reduce the impact of complexity that Australia should adopt?

Complexity for individuals with simple tax affairs may be reduced by providing them with a standard deduction. A standard deduction would enable the ATO to assess the taxable income of individuals with simple affairs, noting that the ATO already obtains a significant amount of data about the activities of taxpayers and the income they derive from employers, financial institutions, government agencies, etc. The requirement for such taxpayers to lodge income tax returns could, as a consequence, be removed which would decrease complexity for many Australians.

The integration of technology into tax administration processes can significantly reduce complexity if it is implemented successfully. ATO initiatives that use technology to make the tax system less complex, and which also foster willing participation, are to be applauded. The introduction of various initiatives such as *e-tax* and *MyTax*, along with attempts to integrate the tax and transfer payments system through *myGov*, exemplify an approach of continuous improvement to tax administration. Other excellent initiatives include the soon to be launched mobile application

(“app”) that captures work-related deductions “on the go”, and the introduction of a single *MyTax* product for all individuals for TaxTime 2016. Attempts to further streamline information transmitted by software providers to the ATO are also a welcome means by which technology can reduce complexity.

Notwithstanding the advances the ATO has made in integrating technology into tax compliance processes, taxpayers nevertheless experience frustration with the implementation of some of those changes. An example that is frequently cited is the refresh of the ATO website in 2013. While we acknowledge that it is unreasonable to expect a change to be perfect from the outset, the ATO website refresh may demonstrate how further testing is

sometimes warranted before a technological change is released. Many taxpayers and tax professionals continue to find the ATO website frustrating when searching and attempting to access the information they need, which complicates compliance.

Improvements in the customer-service orientation of the ATO are also welcomed and assist in fostering more favourable perceptions among taxpayers in the administration of the tax laws. The ATO’s after-hours call back service for small businesses, along with the after-hours support available for AUSkey issues related to the Australian Business Register, are noteworthy examples of such improvements.

Submission

The government should introduce a standard deduction for individuals with simple tax affairs and remove the requirement for such taxpayers to lodge income tax returns.

The ATO should continue to integrate technology into tax administration and transfer payment system processes, and further streamline information transmitted by software providers to aid compliance. In addition, further concept testing by the ATO may sometimes be warranted to ensure technological changes are implemented effectively.

The government should expand the ATO’s after-hours call back service for small businesses to other taxpayer groups to accommodate shifting work patterns and to further enhance the ATO’s customer-service orientation.

Question 60: What processes or systems currently being used by businesses and individuals could the ATO better utilise to lower the compliance costs of the tax system?

The certification and endorsement of appropriate software products by the ATO would provide taxpayers with certainty regarding their tax returns and encourage other taxpayers to comply with relevant tax law through the use of

such software. In turn, this would provide the ATO with confidence regarding the accuracy of the tax returns that it receives, thereby reducing compliance costs in the tax system.

We note that the government is taking steps in this direction with the introduction of the shared-assurance model in GST software.

Submission

The government should consider endorsing appropriate tax return software and other packages developed by software providers that simplify compliance with the tax laws.

Topic 11: Tax system governance

Tax governance examines the institutions that design, implement and govern the administration of the tax system (eg parliamentary and executive bodies). It influences how changes are announced and implemented, as well as the way in which the tax system evolves.

Question 63: What changes could be made to provide greater certainty, transparency and accountability to tax policy development in Australia?

Certain basic principles underpin the Australian legal system. According to the Law Council of Australia, this includes ensuring that the law is both readily known and available, and certain and clear.

The practice of both past and present governments to legislate tax changes by announcement seems contrary to this fundamental principle. It creates uncertainty, as taxpayers are required to act without the legislative process being complete. A law cannot be said to be “readily known and available” when taxpayers are expected to act in accordance with an announced change but no legislation has been introduced into Parliament. For example, tax changes are commonly announced to be effective from 7.30pm on Federal Budget night, yet insufficient details of the change are disclosed at that time and the legislative process has yet to begin. This practice has resulted in practical problems such as the large back-log of “announced but not enacted” measures, the status of which is unclear. For example, in the 2011

Federal Budget, changes were announced to the debt/ equity integrity rules which were to be applied retrospectively to 1 July 2001. These measures have still not been enacted.

While tax policy must continue to evolve and adapt to changes both domestically and internationally, taxpayers also find it difficult and undesirable when new tax law applies retrospectively. As well as creating uncertainty, it can adversely affect previously sound business decisions, and/or current and future business operations.

Ideally, if the government intends to implement a new tax policy or rule, it should only take effect when the legislation has been enacted. Using the retrospective application of legislation to correct mischief in existing legislation can have unwanted, broader consequences. It is not desirable in today’s economic climate for taxpayers to have to regularly make business decisions affecting their tax position based on

government media releases that may not be eventually implemented. It would be preferable if laws such as that contained in recently enacted s 170B of the *Income Tax Assessment Act 1936* were not required to protect taxpayers when they have acted on the basis of announced measures which are subsequently discontinued. Indeed, the fact that s 170B was introduced accentuates the case against “legislating” by media release.

In terms of transparency, concerns arise where it is perceived that a particular taxpayer has received favourable treatment from the ATO and the details of that treatment are not disclosed, as in the case of a dispute settlement. This raises the idea of a preferential “hidden law” that is applicable to the most powerful members of the community, while the majority of taxpayers are forced to comply with the complex, official laws and then face public prosecution through the court system when they fail to comply.

Submission

The government should consider abandoning the “legislation by announcement” approach and ensure that changes in tax policy and law are only effective once legislation has been enacted.

The government should consider the mandatory disclosure of the terms of all settled tax disputes to restore faith in the transparency, and equality, of the tax system.

Question 65: Could the arrangements for developing tax policy in Australia be improved? If so, how?

There should be a clear and prescribed process for the development of new tax policies.

Submission

The process for developing tax policy should include:

- setting clear objectives for a tax policy
- outlining the rationale for a tax policy, as well as a timeframe for its implementation
- informal and formal discussions with stakeholders at each key stage of the policy development process
- a continual review of progress against set timeframes, with explanations and solutions publicly provided for any delays, and
- a post-implementation review of a tax policy against its objectives, with recommendations for improvements being made

The policy development process should include the contributions of academics, as well as other local and international tax experts, particularly to assess if stated tax policy objectives are achieved and if any modifications are required. Such experts may also review the process by which a reform was implemented to determine if there are any lessons for future reform measures.

Conclusion

Tax reform provides many challenges as well as opportunities for Australia. Genuine tax reform requires courage and commitment. However, we believe that it is only through this process that Australia can create a tax system which protects and promotes the wellbeing of Australia today and in the future.

We trust that the submissions contained in this document will prove useful in informing the debate about the future of tax reform in Australia as we work together to implement a 21st century tax system.

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