

Joint Standing Committee on Public Accounts and Audit
(JCPAA)

Government response to Report 410
Tax Administration

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BIANNUAL MEETINGS

Recommendation 2

The Government ensure that tax agents who give advice on tax evasion techniques, such as phoenixing, are subject to civil penalties, either through new legislation or enforcement of existing legislation.

There are several measures in the existing law that could potentially apply to deter advice on tax evasion techniques such as phoenixing. These include Part VIIA of the *Income Tax Assessment Act 1936* (registration of tax agents) and the draft Tax Agent Services Bill 2009 which proposes to replace that Part; Part II of the *Crimes (Taxation Offences) Act 1980*; and Division 290 in Schedule 1 to the *Taxation Administration Act 1953* (promotion and implementation of schemes). The Government has asked Treasury, in consultation with the Australian Taxation Office, to continue to monitor the effectiveness of these laws. The Government will consider further legislative measures if necessary.

COMPLEX LEGISLATION

Recommendation 3

The Government introduce legislation to require:

- *the reporting of compliance with the Best Practice Regulation Handbook in all explanatory material accompanying a regulatory proposal*
- *a summary of the requirements of the Best Practice Regulation Handbook in all explanatory material accompanying a regulatory proposal*
- *the relevant minister to table an explanation with the relevant Bill or Legislative Instrument in either House of Parliament if this reporting of compliance does not occur.*

The Government does not support this recommendation.

Introducing a legislative requirement will provide greater clarity to the Parliament and the community when legislation is tabled as to compliance by the relevant department or agency with the Government's best practice regulation requirements. However, as is noted in the JCPAA report, the best practice regulation requirements themselves are administrative not legislative.

Currently, under the Government's best practice regulation requirements, departments and agencies are required to table the Regulation Impact Statement (RIS) or Business Cost Calculator report (a report quantifying compliance costs) prepared for the decision-making stage. This is generally in the explanatory memorandum when the regulation is tabled. However, the Office of Best Practice Regulation (OBPR) assessment of the RIS is not made public until the OBPR releases its Best Practice Regulation Report. This may be up to 18 months after a proposal has been tabled.

Changes currently under consideration by the Government will lead to RISs prepared under the enhanced arrangements being made public before regulations come into effect. Similar changes are proposed to make the OBPR's assessment of compliance public when the RIS is made public.

This could have a significant impact on the development of tax proposals. By publishing RISs when policy decisions are made, the Government will be providing information on its assessment of the likely impacts of regulatory change when elements of the policy have been settled but before details of the implementation arrangements have been determined. Stakeholders will therefore be better informed earlier in the process than currently.

It is more likely, however, to have quite limited impacts – as the JCPAA point out, the Australian tax system is one of the most complex in the world. Accordingly most (if not all) of the 'changes' to tax law introduced in any particular year have very narrow impacts. Such changes, more often than not, fall under the 'significance' thresholds for requiring a RIS or Business Cost Calculator report.

Placing a legal obligation on departments and agencies to report their compliance with the best practice regulation requirements when tabling legislation may work against the self-assessment system introduced as part of the enhanced best practice regulation requirements. Agencies self-assess the impacts of all regulatory proposals and where they determine that the impact is nil or low, no further analysis is required.¹ When faced with a legal obligation, agencies may stop 'self-assessing' in favour of obtaining confirmation from the OBPR that only a preliminary assessment is required, with consequent resource implications for the OBPR.

While proposed changes to bring forward the OBPR's assessment of RISs to when the RIS is made public will enhance transparency, the Government is not convinced that adding a legislative requirement to report on compliance in explanatory material will necessarily increase transparency.

The Government does not believe it is necessary to introduce legislation to require a summary of the requirements of the *Best Practice Regulation Handbook* in all explanatory memorandum accompanying a regulatory proposal.

The *Best Practice Regulation Handbook* provides Australian Government agencies with comprehensive guidance on undertaking regulatory impact analysis and the best practice regulation requirements. This Handbook and related guidance material is publicly available on the OBPR website and on request.

Noting the low number of instruments for which RISs may be required, the OBPR does not see a need to duplicate this information in all explanatory material. Further, where an agency self-assessed and no further analysis was required, including such a summary in the explanatory memorandum may potentially be confusing.

As discussed above, the OBPR independently reports on compliance with the best practice regulation requirements and it is likely that this will occur at the same time the RIS or Business Cost Calculator report is made public in the near future. Therefore, it is unclear what will be gained by requiring the relevant minister to explain why compliance reporting has not occurred.

¹ It should be noted that where the OBPR subsequently determines that the impacts of a regulatory proposal are medium or significant, the proposal will be assessed as non-compliant with the best practice regulation requirements.

Recommendation 5

The Government and Treasury improve consultation on tax measures by:

- *increasing the number of public consultations compared with confidential consultations*
- *increasing the number of consultations conducted prior to the announcement of the policy intent*
- *increasing the use of exposure drafts of legislation, where practicable.*

The Government supports this recommendation.

On 22 August 2008, the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, announced the Government's acceptance in principle of the 26 recommendations made by the Tax Design Review Panel in its report *Better Tax Design and Implementation*. The Assistant Treasurer established the Review Panel in February 2008 to examine ways to reduce delays in the introduction of tax legislation and improve the quality of tax law changes.

In particular, the Government has accepted the following recommendations:

- Public post-announcement consultation on tax measures – Public consultation will generally be adopted for post-announcement consultations to ensure that all stakeholders have the opportunity to contribute to the process (Recommendation 7).
- Pre-announcement consultation on policy design – Consultation on tax changes will generally occur at the initial policy design stage, prior to any Government announcement (Recommendation 1).
- Two-stage public consultation after the announcement of tax measures – Post-announcement consultation on substantive tax measures will occur at two stages: (i) on the design of the announced policy; and (ii) on the draft legislation (Recommendation 6).

Recommendation 6

In the discussion paper for the review, Australia's Future Tax System, Treasury and the review panel include the topic of basing the tax system on financial relationships and economic outcomes, ahead of legal forms.

Recommendation 7

In the discussion paper for the review, Australia's Future Tax System, Treasury and the review panel include the topic of reducing the number of taxpayers who need to lodge a return, and simplifying the experience for those who need to lodge, in particular:

- *the costs and benefits of making work related expenses deductible*
- *whether tax offsets, rebates and benefits should be delivered as direct payments, rather than tax measures*
- *examining the number of tax rates and the tax free threshold*
- *improving the coverage and accuracy of the withholding system*

- *whether, if large numbers of taxpayers were no longer required to lodge returns, it would be appropriate to provide structural adjustment assistance to tax agents.*

Recommendation 8

The discussion paper for the review, Australia's Future Tax System, consider the benefits of harmonising with New Zealand's tax system, even if just for particular taxes like fringe benefits tax, or for particular classes of tax.

Response to Recommendations 6, 7 and 8

As acknowledged by the Committee, the Government has announced a comprehensive review of Australia's tax and transfer system. The Review Panel wants to ensure views and ideas from a wide cross-section of the community are considered in the development of Australia's future tax system and has recently commenced a consultation process. As this is an independent review the content of the papers it releases is a matter to be determined by the Review Panel.

The Treasurer announced that the review will be conducted in several stages with an initial discussion paper to be developed by Treasury on the architecture of the present tax and transfer systems.

The Treasury paper was released on 6 August 2008 and describes Australia's tax and transfer systems, from a factual and analytical perspective, to inform public discussion. It does not make any recommendations about the future direction of the tax and transfer systems in Australia or attempt to determine issues which the Review Panel may wish to consider as part of the review.

The Review Panel will make recommendations to enhance overall economic, social and environmental wellbeing, with a particular focus on ensuring there are appropriate incentives for:

- workforce participation and skill formation;
- individuals to save and provide for their future, including access to affordable housing;
- investment and the promotion of efficient resource allocation to enhance productivity and international competitiveness; and
- reducing tax system complexity and compliance costs.

COMPLIANCE

Recommendation 14

The ATO amend its policies to limit the practice of issuing assessments that are contingent on each other, and specify in what circumstances such assessments may be validly issued. In the absence of administrative change, the Government introduce legislation to this effect.

The Government notes that ATO Practice Statement PS LA 2006/7 sets out the circumstances in which alternative assessments may be made and does not consider that any legislative change is needed at this time.