

# F E H I L Y L O A R I N G P T Y L T D

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Committee Secretary  
Joint Committee of Public Accounts and Audit  
Department of the House of Representatives  
Parliament House  
Canberra ACT 2600  
AUSTRALIA

Dear Sir/Madam,

**Re: Inquiry reviewing "Certain Taxation Matters" within Australia**

Thank you for the opportunity to lodge a submission on this important and complex issue.

We are a firm of CPAs specialising in tax advice. The practice was established in 1983. I am a Fellow of the CPAs with a Taxation Specialist designation, a Fellow of the Taxation Institute of Australia and a Member of the Australian Institute of Company Directors. As well as working full time in the practice, I also lecture at undergraduate and postgraduate level at Curtin University in Western Australia. Like many tax consultants, I worked for many years with the ATO, leaving in 1987.

**Executive Summary**

It is my contention that the current income tax legislation is overly complex and prescriptive, making it very difficult to work with, especially for business and tax agents, because of two main factors;

- a move to self-assessing by the government and the ATO; and
- the use of the income tax legislation as a tool for implementing social, environmental and other government policy.

The move to self-assessing has relieved the Tax Office of the obligation to examine returns but increased the obligation on the taxpayer to correctly apply the ever more complex income tax legislation. In an attempt to assist taxpayers, the tax legislation has become more prescriptive and detailed. This has the opposite effect.

The Income Tax Assessment Acts (1936 and 1997) have also increasingly become the dumping ground for all manner of policy measures by successive

governments. That is not to say that the tax policy does not have a role to play in government policies but in doing this, we move further and further from an effective and efficient tax system.

The proposed solution is a move back to a modified assessment regime and the rationalisation of the income tax legislation to one Act with consideration to removing many aspects which are more appropriately dealt with by other agencies (for example, Centrelink).

## **1. SELF-ASSESSMENT**

The issues raised and questions posed in regard to any discussion on making the tax system simpler fail, in my view, to take account of the ***fundamental shifts in accountability and responsibility brought about by the move to so called “self assessment”***. I say so-called self assessment because, in my view, the obligations on taxpayers should always be to correctly disclose all tax matters. Self assessment, it seems, merely means that the ATO does not examine every return that is lodged.

It is with some concern that I note that self assessment has “relieved the Tax Office of the obligation to examine returns” but seemingly increased the obligation on the taxpayer to correctly apply the increasingly more complex income tax legislation. Whether or not the ATO chooses to look at those returns pre-issue, post-issue or not at all should not affect the diligence taxpayers apply to completing their returns. But it has had the effect of making the taxpayer “make the running” in some complex areas of tax law. This should not be the case.

It should be noted that I do not believe that this has been a deliberate move by either government or the ATO. In fact, it has probably resulted from attempts by both to alleviate the problem. But the harder they try, the worse the problem gets. This can be explained by applying my contention. If it is correct, further attempts to fix the problem will only result in more problems.

It is also a little misleading to imply that the old system (where every return was physically assessed by an assessor) and the current system (where potentially no returns are assessed but may be selected for audit after the assessment has issued) are the only two options. There is, I believe, scope for a modified assessment regime.

## **Simpler Legislation**

The ATO and Treasury are the first to admit that the amount of detailed income tax legislation has increased significantly in an apparent (futile) attempt to cover all circumstances and is largely as a result of self assessment. It has, in fact, had the opposite effect in making the legislation more complex.

It seems obvious that a pre-requisite to making the system work better is a simpler and less voluminous income tax act.

## **Assessing vs Rulings: Proactive vs Reactive**

Before the introduction of self assessment, the onus was on the ATO to be proactive in determining income tax issues as they arose (or came to the notice of assessors). It seems now that the ATO can afford to be reactive to an extent and allow taxpayers and their agents to make the running. This places an unfair burden on taxpayers and tax agents to interpret complex tax legislation.

Combined with a significantly more detailed and complex income tax legislation, the current system has placed pressure on taxpayers and advisors that cannot be sustained. This to me is the fundamental problem with self assessment - a shift in obligations and responsibilities away from the ATO, with the threat of reprisals from the ATO at audit if you get it wrong.

Despite the ATO's best efforts and intentions in providing rulings when requested, the practical issues for taxpayers and advisors mean that, for many reasons, the need for an ATO ruling may not be identified or, if it is considered, it may not be sought for any number of valid pragmatic reasons (not to do with minimizing tax). By doing this, however, the onus on the taxpayer has now meant the ATO does not have to take a position on a tax matter until after the event. The ATO response to encourage taxpayers to seek rulings is, in part, the "big stick" approach if they get it wrong. Before the introduction of self assessment, it would have been incumbent on the ATO to make decision on the matter at the time of assessment. This is probably when those matters should be resolved.

This should not be seen as a criticism of the ATO in their response to issues. Rather it highlights that, in a small number of critical issues, they are being reactive rather than proactive. The ATO has been working hard in recent years to try to make things easier for taxpayers and agents. But I think they have been trying to do so within the constraints of the current system rather than going back to look at the underlying systemic problems.

## **Efficiency Audit**

It seems to me that the shift to self assessment was perhaps too radical a response to the 1984 Efficiency Audit by the Auditor General. Maybe a more measured response could have been as follows.

- Do away with the need for basic tax returns.
- Allow a pre-issue computer check of returns using the same (or similar) parameters previously used by the assessors (and presumably now used to identify possible audit cases).
- A review of those selected returns by an ATO assessor to determine if more information is required pre-issue or a unilateral decision to amend the return is warranted.
- A requirement for those taxpayers identified to substantiate or explain any issues raised before an assessment (including any refund) issues.

This would return the status quo to where the ATO could be more proactive in determining all tax issues rather than having to be reactive in certain matters as is now the case. It would in no way reduce the obligations on taxpayers and agents to correctly identify and classify tax issues in their tax returns. Nor would it mean that the ATO could not audit a taxpayer's affairs after an assessment had issued (just as they did prior to self assessment).

Such a process would give the large majority of taxpayers and agents some comfort that returns had been assessed and relevant issues raised as appropriate before any assessment issued.

## **Refund, Assessment Turnaround Times**

While the current ATO refund turnaround time is to be commended, I am sure that most taxpayers would gladly see this extended slightly if it meant that there was a greater certainty that future audits would not give rise to any significant issues.

## **Recommendations**

I would recommend the following.

- Do away with the need for basic tax returns.

- A return to a modified pre-issue assessment regime for those that are required to lodge.
- Simpler tax laws (with the more complex and detailed tax laws a response in some way to self assessment, this could be achieved).
- This would lead to a shift in attitude that currently puts more obligation and cost on the taxpayer while reducing obligations and costs on the ATO.
- It would not seem to add to the cost or obligations of the ATO.
- It would lead to the ATO once again becoming more proactive in interpreting tax law.
- The obligations on taxpayers and agents under this regime should be no less than under self assessment.

## **2. TAX LEGISLATION AS A POLICY VEHICLE**

It is appropriate for the tax policy to reflect the broader social and fiscal policies of the government. It is my concern, however, that the income tax legislation has become the convenient dumping ground of a whole range of policies that would better be dealt with in other ways.

This matter is raised as I believe it to be an important factor in the complexity of the income tax legislation. It is not intended to go into any further details on this matter in this submission.

Thank you for the opportunity to make this submission.

Yours Sincerely

*Tony Ince*

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