

14 March 2006

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

Via email: [jcpa@aph.gov.au](mailto:jcpa@aph.gov.au)

Dear Mr Smith MP,

**Re: Inquiry reviewing “Certain Taxation Matters” within Australia**

The National Institute of Accountants (NIA) is one of the three professional accounting body with approximately 14,000 members. NIA members work in all spheres of the profession and in all sectors of the economy. Taxation is an area where a significant percentage of our members work, particularly as tax agents for individuals and small to medium sized enterprises.

The attached submission is drawn from feedback the NIA has received from members and from submissions and representations we have made to other inquiries and reviews into the tax system some of which are running currently with this Review.

The NIA is more than happy to discuss our submission with the Committee. Please contact me on (03) 8665 3114 or by fax on (03) 8665 3130 or by email on [gavan.ord@nia.org.au](mailto:gavan.ord@nia.org.au) if the Committee wishes to clarify any aspects of the attached submission.

Yours sincerely,

Gavan Ord  
General Manager - Technical Policy

Encl.

# INQUIRY REVIEWING CERTAIN TAXATION MATTERS WITHIN AUSTRALIA

## PART A

### **1. The Impact of the Interaction between self-assessment and complex legislation and rulings**

#### Introduction

Complex legislation in a self-assessment environment substantially increases the uncertainty for taxpayers and their representatives, which in turn leads to higher compliance costs for taxpayers. Self-assessment requires taxpayers and their representatives to make judgements on how the tax laws apply to their particular factual situations. This is becoming more and more difficult for many taxpayers with the increasing complexity and size of the tax laws and the various information and rulings that accompany the law. In other words, it is becoming more difficult for taxpayers and their representatives to know when they are not in compliance with the law.

This is further exacerbated for taxpayers with simple tax affairs by the interaction between the tax and welfare systems. While it is considered “politically expedient” to deliver social welfare payments through the tax system so that welfare looks more like a “tax refund”, using the tax system to deliver social welfare adds a whole new level of complexity to the tax system, particularly for those taxpayers who can least afford the advice necessary.

This complexity means that many taxpayers simply do the best they can to meet their obligations under the law. While tax law is focused at “attacking” those who pay too little tax, such a focus usually only adds complexity which impacts upon those who try to meet their obligation under the tax law. In addition most ATO compliance work is aimed at those that make errors to the detriment of the Revenue and not helping those trying meet their obligations.

For a tax system to be fair, the administration of the system must be “blind” to revenue considerations and the tax system must focus on:

- equity
- efficiency
- simplicity; and
- stability

The ATO have publicly stated that it sees its role is to help taxpayers to pay the correct amount of tax, rather than to maximise revenue collection. The NIA fully supports the ATO’s approach on this issue, however we remain vigilant to any section of the ATO that pursues a revenue bias. On the issue of revenue bias, the NIA looks forward to the Inspector-General of Taxation’s review of whether there is a revenue bias in private binding rulings.

#### Certainty of the ruling system

Rulings are an essential part of our self-assessment system, and as such they must provide certainty to taxpayers and their representatives. While rulings add to the volume of the amount of information taxpayers and their representatives

must be aware of, they are a valuable tool for taxpayers in knowing how the ATO will apply the law to a factual situation or how the ATO believe the law applies or not applies..

Many of the issues the NIA had with the rulings system and how it impacts upon self-assessment were considered by the Government in its 2004 Review of Self-Assessment and subsequently became part of the law. As many of the changes to the rulings system designed to increase certainty have just or are in the process of being implemented, the NIA does not wish to make any comment to the Committee at this time at this issue. Instead, we will be working with the ATO in implementing the changes to the rulings system that came out of the Review of Self-Assessment.

### Knowledge of ATO staff

Apart from the significant complexity and sheer volume of tax law and accompanying material and the inability of taxpayers and practitioners to be aware of all the issues in the law, another significant concern amongst our members is the apparent lack of technical knowledge of “front line” ATO staff. While this problem or perceived problem will always exist, the NIA believe more can be done to appropriately skill such ATO staff and provide them with a better understanding of commercial practice and transactions.

Examples of what the ATO could do to overcome this issue (perceived or otherwise) is for the ATO to send their staff to professional development seminars run by the professional accounting bodies and the tax associations and for ATO staff to participate in the discussion groups of such organisations. While the NIA acknowledges that it may be to its commercial advantage if the ATO were to adopt this suggestion, we believe that the ATO and staff will significantly benefit by accessing the training that is designed for tax agents and being able to network with tax agents. Such an approach should help ATO staff to get a better understanding of taxpayer/tax agent issues and *vice versa*.

### ATO website

Given the sheer volume of information on tax that taxpayers and their representatives need in a self-assessment environment with extremely complex tax law, the quality of the search facilities on the ATO website needs to be “without peer”. Members have stated that they find it difficult at times to find the material they are seeking from the ATO website, which for many tax agents is time they choose not to bill clients for. If members find the material they have been seeking some are not sure whether they have located all relevant information.

The problems with seeking information is particularly acute when seeking edited Private Binding Rulings. It has been stated to the NIA that access to publicly-available (edited) Private Binding Rulings (PBR) seems to be limited to the recipient of the PBR who has the PBR number. Given PBR is the ATO’s view on how the law applies to a particular taxpayer’s factual situation, the NIA believes it would assist compliance under a self-assessment system if such (appropriately) edited PBR’s are made easily available to the public.

### Impact of the introduction of new measures

Many of the problems with self-assessment occur when a new tax measure is implemented. The NIA acknowledges the very good work the ATO put in to developing publications and learning material to assist taxpayers implement new measures, and the educative approach to enforcement. However, there is criticism of how the ATO have handled the implementation of a number of new measures. The NIA, however, believe that the problem lies in the number of new measures introduced at any one time. While this appears contradictory to the NIA's position on supporting personal tax reform, it does however highlight the capacity of taxpayers, tax agents and the ATO to continue to adopt reforms. In other words, for taxpayers and their representative to have certainty in self-assessment, there needs to be a degree of stability in the law (having said this, the NIA is a strong advocate for personal tax reform and superannuation tax reform).

This problem also exists where the Government makes a policy announcement, but does not immediately legislate such an announcement. This can create significant uncertainty for taxpayers, tax agents and the ATO about existing laws and future laws, which is only increased by the length of time between when the announcement is made and when the measure is legislated. The greatest uncertainty exists where an announcement has effect from the date of announcement or is retrospective. Many taxpayers in this situation do not know whether to follow the existing law or act under the proposed law. While the ATO has stated that taxpayer must continue to follow the existing law until when or if it is amended, taxpayers remain confused, particularly where the amendment is in their favour.

Ideally, the Government should only make public announcements about a new law on its first reading in Parliament. If this is not possible, the Government should ensure Treasury and the Office of Parliamentary Counsel have the resources and priority to get draft such an announcement into law as quickly as possible for the Parliament to consider it into the Parliament quickly. In addition, such announcements by the Treasurer or the Assistant Treasurer should (particularly where the announcement proposes to amend an existing law) state that taxpayers must continue to follow the existing law until the new announcement is enacted.

Having stated this, the NIA does not want the consultative approach adopted by Treasury on such a announcements to be stopped or shortened to get legislation into Parliament expeditiously. It may however mean that more of those consultations are conducted on a confidential basis before the public announcement. The NIA wish to publicly acknowledge the good work the Treasury is doing in consulting on new measures.

As can be seen from this point, certainty plays a very significant role in determining taxpayer behaviour in a self-assessment environment. The Government, Treasury and the ATO must seek to add more certainty to the system so that self-assessment can work better.

### ATO Response times to PBR requests

Such uncertainty can also be created where there is a delay by the ATO of giving advice on a tax issue to a taxpayer or their representative.

Anecdotal evidence received from members and other sources indicates that there is a perception that the ATO takes a considerable period of time (in excess of Taxpayer Charter target of 28 days) to respond to complex issues, particularly complex PBR and class ruling requests.

Given that in the commercial world, there is often a very short decision making period before an opportunity passes, and the push by the ATO to make directors more aware of the need for tax advice before undertaking significant transactions, the perceived inability (for whatever reason) of the ATO to respond quickly to ruling requests on the ATO's view on the tax consequences of a particular transaction, potentially means boards are passing over commercial opportunities because of the lack of certainty from the ATO, or they are taking a risk and entering a transaction without the support of an ATO opinion.

While the NIA is satisfied that the ATO is using their best endeavours to tackle the issue of improving its response time to urgent complex ruling requests, it must be stated that as the ATO continues to raise the awareness of directors over the tax consequences of any activity, it is likely that many boards will respond by requesting certainty in the form of a PBR from the ATO, thus increasing the demand on the ATO for rulings on complex and not so complex issues. Again, certainty through the issue of timely rulings is a very necessary part of a self-assessment system.

In relation to this issue, the Inspector-General of Taxation is reviewing how the ATO have handled complex issues by reviewing how the ATO have handled three separate issues.

### Public rulings

The NIA is of the opinion that rulings, particularly public rulings should be as comprehensive as possible so that taxpayers and their representatives can readily identify a particular factual circumstance to how the ATO believe the law applies to such factual circumstance. To make a ruling as comprehensive as possible requires discussions on contenting views of the law and the ATO's response to those contenting views of the law.

In particular, we believe that practitioners benefit from rulings that are comprehensive, especially where the factual situation they are considering does not fit neatly with the factual situation in the ruling. To this end, we acknowledge the work of the ATO to address this issue in how they prepare and draft rulings.

The above paragraphs recognise that certainty can not exist for all transactions. The NIA recognises that judgements have to be made on transactions where a ruling does not exist for a variety for reasons, including the uniqueness of the transaction. Taxpayers and their representatives must always have the ability to interpret the law, even if such an interpretation is contradictory to the ATO's and this possibly leads to uncertainty.

### Objections

There is increasing concern about the number of objections that taxpayers raise against an ATO amended assessment being decided in favour of the taxpayer (by the ATO). The concern is more to do with the ability of the ATO officers (auditors) in the first instance raising an amended assessment as a result of an audit.

Going through an audit, followed by an amended assessment followed by an objection can be a traumatic and costly experience for a taxpayer. If a large percentage of objections by taxpayers to an amended assessment are being decided in favour of the taxpayer, then this raises the issue of whether the process for raising the amended assessment and audit by the ATO needs improvement.

Audit is an essential component of a self-assessment system. In fact, many NIA members would like to see the ATO take a more active approach to audit.

The Inspector General of Taxation is currently completing a scoping exercise on this issue which the NIA looks forward to making a contribution.

#### ATO charging for ruling requests

The question has been raised on a number of occasions about whether the ATO should be permitted to charge for certain advice, most recently in the Review of Self-Assessment. The argument being that if taxpayers want urgent, high quality rulings, then there should be an acknowledgement that this is costly for the ATO and therefore a user-pay system may give the ATO the financial resources it needs to provide such a service.

The NIA is opposed to taxpayers having to pay for advice from the ATO. The administration of the tax system should not allow only those with resources to get the best quality advice from the ATO. If the issue is a lack of resources for the ATO to provide such advice, then this is a serious matter for Government which be rectified through additional funding. For the self-assessment system to work within a complex law, the ATO must be properly funded to provide the rulings necessary to give some certainty over the application of the law.

Having said the above, the NIA firmly believes that, in the most part, the ATO does a very good job in administering the law and providing quality rulings in a timely manner. We submit that the Committee should acknowledge the very good work the ATO is doing in administering a complex tax system and the way the ATO is seeking to engage with the community to make the tax system "Easier, Cheaper and More Personalised".

#### **Optional Tax Returns**

The perennial issue of whether to make income tax returns for individuals with simple affairs optional should be considered by this Committee. The NIA believes that our complex system particularly work-related expenses make it very difficult for the introduction of optional tax returns. In addition, ATO research indicates that many taxpayers prefer to lodge tax returns as they see a refund as getting "something back" from the Government.

If the Government were to pursue a policy of making tax returns optional, the Government must consider the financial impact such a move would have on tax

agents (as tax agents complete at least 75% of all individual tax returns). As such, some form of industry adjustment scheme to assist agents who loose business because of such reform should be complemented.

The NIA prefer that the ATO use technology as much as possible to “pre-populate” returns with information from employers, Centrelink, banks, managed funds and share registries. This would require agreements to share such information and to share such information as quickly as possible after the close of the financial year. However, the risk in a self-assessment environment of “pre-populated” returns is that some taxpayers will believe that they will not need disclose any further information (such as sales of land) because it does not appear on the pre-populated tax return because either they believe the return is complete as it is or because the ATO has not captured the information then some taxpayers will believe they can get away with not disclosing such information.

## **2. The Application of Common Standards of Practice by the ATO across Australia**

Some members have indicated to the NIA their concern about not being able to access subject matter experts in their state. ATO policy is to concentrate such experts rather than across all ATO offices. Practitioners state that this creates particular problems where such people are in different time zones to the practitioner and there is an inability to meet “face to face” with such ATO experts.

Having said that, we do not have any evidence to suggest that there are differing standards between ATO offices. There is however a perceived problem, as discussed above with the technical competence of “front-line” ATO staff no matter which office they work at.

## **3. The level and application of penalties and the application and rate of the General Interest Charge and Shortfall Interest Charge**

Many of the concerns the NIA had with the penalties and the interest regime were addressed by the Government in the Review of Self-Assessment. In particular, the introduction of the Shortfall Interest Charge is a welcome policy initiative.

However, the NIA remains concerned about the level of the uplift for the General Interest Charge (GIC), which is seven percentage points above the base rate and the GIC is always applied in full unless it meets strict remission requirements as set by the ATO.

While the NIA understands the need for the GIC and to have the GIC set at a rate that discourages the use of public funds as an alternate source of finance, many taxpayers to whom the GIC has and will apply to, do not have the intention of using public funds as a source of finance and nor have they benefited from being late in paying their tax liability. It is therefore recommended that the Committee considers the interest regime of other tax jurisdictions where the Interest Charge is the base rate and the uplift factor is added as a penalty where a mischief has been committed. In other words, the GIC applies at the base rate at all times unless the taxpayer has committed a

mischief (such as use the unpaid tax as a source of finance). If this approach to GIC was adopted, then the arguments around the uplift factor become redundant as the uplift factor is recognised as a penalty.

If this suggestion is not adopted, the NIA recommends that full remission of the GIC should be initiated by the ATO in more circumstances, such as because of the complexity of the law, uncertainty and whether the ATO in any way contributed to the GIC being incurred.

Members of the NIA have noticed that the ATO inconsistently applies its remission of GIC policy. While we have no specific examples of such inconsistency, such anecdotal evidence has been received from a number of independent sources.

It is also of concern to the NIA that the current GIC regime does not provide an incentive for voluntary disclosures. Encouraging voluntary disclosures is an important component of the self-assessment system.

In relation to the penalty regime, we are also encouraged by the recent reforms brought about by the Review of Self-Assessment. Concerns still exist though about what is considered a “reasonably arguable position” for the penalty regime. For instance, given the sheer volume of ATO Interpretative Decisions, practitioners may inadvertently overlook an Interpretative Decision. Such complexity and voluminous amount of information on tax law should be taken into account when considering whether a taxpayer has taken a “reasonably arguable position”.

Another area of concern that has been raised with the NIA is the perception that the ATO is using the penalty regime and the GIC when negotiating a settlement to an audit. While the NIA is concerned that raising this issue will result in the ATO being less flexible in settling tax disputes, it is of concern that the ATO may be using the threat of penalties and GIC to settle disputes in their favour. This issue is being considered by the Inspector General of Taxation in more depth.

#### **4. The operation and administration of the Pay As You Go (PAYG) system**

The NIA has no comments to make on this issue at the moment.

### **PART B**

#### **Application of FBT including any double taxation consequences arising from the intersection of FBT and family tax benefits.**

The NIA is uncertain as to what the issue here is. However, there remains some concern over what is incorporated into Reportable Benefits as some benefits are not easily allocated to employees. Such issues have been raised by the professional bodies in a submission to the Treasury in 2004.

The NIA supports the policy intent behind reportable benefits as it is the best way to show the actual salary, wages and benefits a person receives from their employment, which then impacts upon Family Benefits Tax. The NIA can not see how this gives rise to “double taxation”.