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The Secretary
Senate Finance and Public Administration References Committee
S G 60
Parliament House
Canberra ACT 2600

Inquiry into Business Taxation Reform - submission

This submission is in response to the invitation to lodge written submissions for the above inquiry, and is particularly addressed to item (f) of the matters referred to the Committee, i.e. (f) options for reducing tax avoidance and minimisation.

Tax avoidance and tax minimisation will continue to be prominent features of the system as long as income tax administration is treated as a word game to be played by lawyers. So far Australian governments have only tinkered and have not dealt effectively with avoidance of income tax. The present administrative system is unjust and inequitable, also uncertain and inefficient, and provides a setting which facilitates attempts at tax avoidance and tax minimisation. Legislation to outlaw general or specific schemes has reduced tax avoidance only to a very limited extent. Changes in administration are needed, both to the administrative system generally and to the operation of the Tax Commissioner's office. To reduce tax avoidance and minimisation the following options are suggested.

1. The assessing activities of the Australian Taxation Office should be subject to an independent audit. The Tax Commissioner effectively encourages attempts at tax avoidance when he conducts negotiations in secret and arranges compromises and settlements of tax liabilities with big businesses and wealthy individuals who can afford the 'expensive legal talent' the Commissioner affects to deplore. This is an inequity of the system as small businesses and wage earners do not have the same opportunities to reduce their taxes. With settlements agreed in secret there is no defence against inertia, incompetence or corruption of Taxation officers. An independent audit of all assessing activities is needed to protect the revenue and ensure that tax legislation is fairly and evenly administered.

2. The Australian Taxation Office should be subject to continuing and comprehensive efficiency audits. With delays and uncertainty, inefficiency in the ATO is transmitted to taxpayers, increases their costs, and contributes to opportunities for tax avoidance.

3. There should be one set of accounting requirements to determine income for both public reporting and taxation purposes. The same requirements should apply to all taxpayers. Separate accounts for shareholders and the bank manager on the one hand, and for the Taxation Office on the other, are unnecessary and should not be permitted. In cases where alternative practices are allowable within the prescribed requirements the same choice should be exercised by the taxpayer for both public reporting and taxation. There appears to be no good reason why income shown in accounts prepared for financial reporting should not be the basis for income tax assessments. Adjustments for concessions should be made in the calculation of tax, not in the accounts reporting income.

(At present there is one fairly complete set of requirements for financial accounting, and another fragmentary and incomplete set of requirements from four or so sources for taxation. The Ralph option-two proposal for assessing income on a cash flow basis is a sort of half-way house, an additional complication to an already unnecessarily complicated system. Its implementation will not simplify the system, or make it more certain and just, nor will it significantly reduce opportunities for tax avoidance, if tax assessments are determined in what is essentially the same administrative system).

4. An independent Board should determine accounting requirements for both public reporting and taxation. The Board would be similar in composition and functions to accounting standards boards and would continually monitor and update accounting requirements. It should also deal with questions of interpretation as they occur. As far as possible Board determinations should be made before problems occur. At present tax accounting questions are determined retrospectively, in some cases years after the transaction.

5. Determinations of accounting requirements should have a status similar to that of delegated legislation. As determination of the taxation base is within the powers of the Parliament, statements of accounting requirements should be laid before Parliament and be subject to parliamentary disallowance.

6. Concessions to tax on reported income should also be dealt with by the Board. When the Parliament enacted the necessary legislation, requirements for calculating and accounting for concessions should be determined by the Board.

7. The Commissioner of Taxation should be responsible for assessing, collecting and accounting for tax collected. The Commissioner would not be required to issue determinations on how income was to be calculated for tax purposes. That would be the function of the Board. Complaints under the present system that the Commissioner should not both make determinations and be responsible for the level of tax collected would disappear. As income would be reported in accordance with determinations of the Board, the Commissioner and his officers would have no discretion as to what is to be included in taxable income. (Thus it would be of little consequence whether the collectors were under a statutory authority or in a government department).

8. An independent Tribunal should have the final authority for settling disputes between taxpayers and the Tax Commissioner. The Tribunal would apply requirements determined by the Board to the facts on questions before it, but would not give its own interpretations of accounting requirements. When necessary the Tribunal should ask for new determinations, or expansions or clarifications of existing requirements from the Board. The Tribunal should not develop a body of its own interpretations, the equivalent of case law. There should be only one body of requirements, that determined by the Board. If subordinate tribunals are needed to deal with the volume of disputed assessments, decisions of the subordinate tribunals should be confirmed or varied by the main Tribunal before release. The first decision given should be the final decision, and appeals should be unnecessary.

9. Offenders who did not meet accounting requirements should be dealt with by the Courts, and the Courts should also deal with any improper behaviour by the Board or Tribunal. The Courts would not have oversight of the substantial decisions on accounting requirements made by the Board, or the income determined in particular cases by the Tribunal. Board decisions would be subject to the oversight of Parliament. The Tribunal would have final authority on the factual questions before it, similar to the present tribunal dealing with income tax cases. (The procedures required of the Board and Tribunal should be set out in detail in or under legislation to avoid court cases on purely procedural questions).

Tax avoidance and tax minimisation will not be reduced if the administrative system is not changed. The present administrative system facilitates and encourages attempts at tax avoidance. Income should be determined (and income tax assessed) on the factual results of transactions expressed in figures, not by word games played through the courts. The present system is a rort for tax lawyers and tax accountants who artificially create a demand for otherwise unnecessary services. So far as they relate to tax avoidance, the Government's proposals for business taxation reform will be ineffective unless they include reform of tax administration.



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