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Mr David Elson
Director
Client Management Division
Office of State Revenue
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Submission email: karly.miller@osr.treasury.qld.gov.au

Dear Mr Elson

Consultation on Proposed Revenue Management System (RMS) Changes – Duties and Payroll Tax

Thank you for the opportunity for the Taxation Institute of Australia ('Taxation Institute') to provide its feedback and comments on the Queensland Office of State Revenue's proposed RMS changes as noted in your letter dated 21 April 2009.

The Taxation Institute is a national body of over 11,000 members, with a focus solely on taxation. Our members include tax agents, accountants, lawyers and members of the judiciary with an interest in taxation, in all its various forms, as well as officers of the ATO, Treasury and State Revenue Offices. From its inception in 1943, the Taxation Institute has been a leading advocate and consultative body on the development and implementation of taxation policy and the administration of the tax laws and has made numerous major submissions on tax reform, particularly over the last decade. In our advocacy and consultation, the Institute works closely in consultation with the Parliament of Australia (through Ministers and Parliamentary Committees), the Treasury and the ATO (as well their international counterparts), regulatory review agencies (including the Board of Taxation, Inspector General of Taxation, the Australian National Audit Office and the Tax Agents' Boards) and State and Territory Revenue authorities. We also have strong and constructive relationships with other tax professional, industry representative, and academic and research bodies, both in Australia and overseas. Our submission draws on this considerable experience.

From the timeframe described in your letter of 21 April 2009, it is understood that this opportunity to consult is confined to the administrative aspects arising from the implementation of the RMS changes. It is assumed that the drafting of legislation is already well advanced and will be tabled in Parliament without the opportunity to comment on its specific provisions.

1. Background

The RMS changes are perceived as the next step in the expansion of the Queensland Commissioner's self assessment regime. Under self assessment, taxpayers are theoretically required to have detailed knowledge of policy, procedure and the interpretation and application of

taxation laws. The Taxation Institute has long held concerns about the ability of taxpayers to know their legal rights and obligations in these circumstances. The general complexity of tax laws and the inability of taxpayers to have easy access to rulings and other related supporting and interpretative advices have meant that taxpayers cannot realistically have this knowledge.

For a mature and workable self assessment system, it is important to ensure that this responsibility of the taxpayer is balanced with a system that supports their ability to self assess accurately and voluntarily comply.

In this context, it is relevant to briefly set out some background circumstances against which advisors are required to perform the "self assessment" responsibilities imposed by that regime:

- Chapter 12 of the Queensland Duties Act 2001 provides for the registration of persons as self assessors;

- sections 444 and 451 allow the Commissioner to require a party, or a person who acts as agent for parties to instruments or transactions, to become registered as a self assessor;

- the instruments and transactions which may be the subject of self assessment and return have recently been expanded, with the objective that the Office of State Revenue itself will perform fewer assessments;

- under a self assessment regime, taxpayers and their professional advisors should expect assistance from the Tax Administrator in attaining compliance, for example in the form of a general private binding ruling facility, as exists Federally and in several Australian States – however there is no such facility in the Queensland regime; and

- at the very least, taxpayers and their professional advisors should be entitled to rely on published rulings and guidelines – however there are express qualifications and disclaimers to the contrary on the Queensland OSR's website.

While the Taxation Institute appreciates that many elements of the self assessment regime offer convenience to those who practice in remote areas or in "standard" transactions, and that these may in fact represent the vast majority of transactions, its ongoing implementation and expansion must have regard to the significant challenges facing taxpayers and practitioners generally. Those challenges include:

- increasing complexity in the tax law, with corresponding difficulty in attaining tax compliance;

- inconsistent access to assistance from regulators in attaining compliance, especially in multi-jurisdictional matters;

- a self assessment regime which (because clients will now rely on advisors to identify the amount of liability, rather than the Commissioner) effectively imposes the risk of interest liability on the advisor, if their self assessment differs from the Commissioner's view; and

- a rate of interest that far exceeds the real cost of funds and so operates as a penalty which often cannot be recovered from clients.

With that background, it is the Taxation Institute's view that a self assessment regime, which is "one sided" in the efficiencies and advantages it offers, should not be mandatory. In this regard, it is noted that in the outline of RMS changes the Commissioner proposes to reserve to himself discretion to exclude some tax payers and advisors from those changes. The grounds for exclusion described in your letter are confined to circumstances where there is an absence of technological infrastructure. As you will see from the comments below, the Taxation Institute believes that there should be wider grounds for exclusion from the RMS changes.

2. Duties Changes

2.1 Timing of Endorsements

Presently, advisors might receive bank cheques or hold money in trust sufficient to pay anticipated assessments. They have been at liberty to make endorsements on documents required for settlements, with the knowledge that they are adequately in funds to pay the assessment later, on the due date of their return.

The proposal in question seems to require that no endorsement can be made until payment is actually received by the Commissioner. Certainly for "paper return" self assessors it appears that endorsements cannot be made until the Office of State Revenue issues a "stamping number". These processes may result in significant delays, and hence inefficiencies and risks in the conveyance process, if for example a bank cheque is received but cannot be converted into cleared funds and transmitted to the Commissioner in time for an endorsement to be made on documents required for a settlement.

Accordingly, the Taxation Institute queries why self assessors must await actual payment of the assessment to the Commissioner, if they already hold sufficient funds to enable them to make the payment by the actual due date prescribed by the Duties Act. It should be sufficient that they have "logged" the transaction online (as the changes propose), with payment to follow in the timeframe prescribed by the legislation, and not on an accelerated date imposed by an administrative process.

Further, as noted in the Office of State Revenue letter, it seems that a self assessor will not be able to collate and process multiple transactions at a convenient time (say once a week, but on an individual basis as the changes propose) if payment must occur before any endorsements can be made.

2.2 Operating Accounts

It is assumed that the Commissioner has consulted with the Queensland Law Society Inc, to ensure that the proposed direct payments can be made from solicitors' trust accounts, without breaching the legislation governing the operation of those accounts.

Accountants, customarily, would not operate trust accounts or handle client funds through their own bank account. The proposed new payment regime may therefore unfairly disadvantage accountants in assisting their clients with stamp duty compliance. Presently, accountants can make a physical lodgement with the Commissioner, receive an assessment, and then requisition a cheque from their client in satisfaction of that assessment.

Although the changes contemplate that a "confirmation page" will issue for an online lodgement, and may be handed to a client for payment, this is available for self assessors only, and is a distinctly less convenient process.

2.3 Physical Lodgements and Payments

Following on from the previous issue, it is unclear from the RMS changes whether physical lodgements will continue to be available for accountants, as well as for lawyers and in-house professionals. Physical lodgements should remain available generally, even if the expectation (or experience) is that the vast majority of matters would be handled on a self assessment basis.

2.4 Regulatory Issues

There are now many international regulatory rules that impose significant restrictions on the taxation assistance which accountants can offer their clients. Examples include the US Sarbanes Oxley requirements, and their French equivalent. Those regulations may apply, even where there is an obscure or even unknown connection to a US or French associated company.

The substance of these regulations is that if an accounting firm with an audit responsibility for a client attends to payment of the client's taxation liability, or even simply determines the client's tax liability (as would occur for a self assessment), then the firm will have breached or compromised its required independence. For this reason it remains essential that advisors are able to make a physical lodgement and obtain an assessment from the Commissioner, because they may otherwise be prohibited from making a "self assessment" affecting particular clients.

2.5 Time Inconvenience

Presently, there is a greater convenience for self assessors to collate a weekly return, rather than attending to comprehensive assessments, calculations, payments and endorsements "in real time".

As noted above, under the proposed changes it seems that a self assessor is not able to collate and process multiple transactions at a convenient time, if payment must occur before endorsements can be made.

It is anticipated that for many taxpayers and advisors the proposed changes will not be more efficient, and will consume more resources and time.

3. Payroll Tax changes

In contrast to duty, payroll tax compliance involves a once a month return, often carried out by the taxpayer itself without the direct involvement of advisors. The proposed changes for payroll tax appear to confer greater convenience for those taxpayers.

However, if for some reason a taxpayer cannot "interface" with the proposed RMS, then the Commissioner should be prepared to accommodate exceptions on a case by case basis, and allow paper lodgements if that reflects the balance of convenience. Accordingly, the adoption of RMS changes should not be mandatorily imposed, and the discretion to allow paper lodgements should not be exercised in only narrow circumstances.

4. E-business facilitation

If for some reason a taxpayer cannot "interface" with the proposed E-business changes, then the Commissioner should be prepared to accommodate exceptions on a case by case basis, and allow physical payments of tax if that reflects the balance of convenience. Accordingly, the adoption of E-business facilities should not be mandatorily imposed, and the discretion to allow physical payments should not be exercised in only narrow circumstances.

5. Conclusion

As outlined above, the proposed RMS changes arise in the context of a self assessment regime which applies to a wide range of instruments and transactions, unsupported by a private binding rulings system, and where public rulings are subject to disclaimer. The consequence is that advisors themselves will often risk becoming liable for interest (effectively at a penalty rate) or penalty tax.

The audit and assessment of tax shortfalls (which might be disputed) may occur months or years after a transaction. In many circumstances these interest and penalty charges can never be passed on to the individual taxpayer, and so the practitioners who facilitate the regime for the Commissioner will bear an unfair cost.

The RMS changes confer obvious advantages for the Commissioner, and also for many taxpayers and advisors. It can be expected that the vast majority of standard transactions can and will be processed in a regime that includes the changes that are proposed. However every instrument, transaction, taxpayer or advisor will not be in the "standard" category every time. While such exceptions will be small in number, their inability or reluctance to participate would be based on

strict regulatory restrictions, or risk exposures that a fair system should not make them responsible for.

It is noted that in the outline of RMS changes the Commissioner already contemplates a discretion to exclude some taxpayers and advisors from the changes. It is the Taxation Institute's view that changes should not be mandatory, and if a taxpayer or an advisor finds them to be burdensome, then they should be excluded without need for the favourable exercise of a discretion. For these reasons, the Commissioner should confirm that the facility for paper lodgements and physical payments will continue to be available.

If you require any further information or assistance in respect of our submission, please contact the Taxation Institute's Senior Tax Counsel, Dr Michael Dirkis, on 02 8223 0011.

Yours faithfully

David Williams
Vice President