



THE TAX INSTITUTE

THE MARK OF EXPERTISE

10 February 2016

Mr Tom Reid
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Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

By email: taxlawdesign@treasury.gov.au

Dear Mr Reid,

Miscellaneous Amendments to Taxation and Superannuation Laws 2016

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the *Tax and Superannuation Laws Amendments (Measures for a later sitting) Bill: Miscellaneous amendments Exposure Draft (Exposure Draft)*.

Exposure Draft

Our comments are limited to the proposed amendments in Part 1 of the Schedule # in the Exposure Draft. The proposed amendments in Part 1 extend the offshore information notice rules currently contained in section 264A of the *Income Tax Assessment Act 1936* (Cth) (**1936 Act**) and section 108A of the *Petroleum Resource Rent Tax Assessment Act 1987* (Cth) (**1997 Act**) and inserts them into the *Taxation Administration Act 1953* (Cth) (**TAA**) by way of new Subdivision 353-B.

This change will result in the 'offshore information notice' rules being extended to cover all tax-related liabilities administered by the Commissioner of Taxation and to create a uniform statutory regime for such notices. As a result of the change in policy to a uniform regime to cover all taxes, a failure to comply with a notice in respect of one type of tax-related liability may result in the inadmissibility in evidence of the information or document in Part IVC¹ proceedings relating to any tax-related liability where the information or document subject to the new Subdivision 353-B notice is relevant to the actual disputed assessment. The consequences of a failure to comply will no longer be limited to proceedings in respect of the tax-related liability under which Act the notice was issued as is currently the case for income tax and petroleum resource rent tax assessments.

¹ TAA

For example, if information or a document was not provided in response to a notice issued in the course of an income tax audit, if that information or document is also relevant for separate Part IVC proceedings related to a GST assessment, whether issued at the same time or at a later time, by default the information or notice may also be rendered inadmissible in that instance as well.

In our view, if this is a deliberate policy shift to broaden the consequences of non-compliance, it would be useful if the Explanatory Memorandum (**EM**) made it clear that not only will the proposed new Subdivision 353-B cover all tax-related liabilities but also that non-compliance with a notice could have consequences in Part IVC proceedings for any tax-related liabilities. In so doing, taxpayers and their advisers will be made aware of the potentially broader consequences in the event a new Subdivision 353-B notice is not complied with in the context of any Part IVC proceedings.

Explanatory Memorandum

We note some minor edits that should be rectified in the EM:

- i) There is an incomplete sentence at the end of the second paragraph of paragraph 1.7 in the EM.
- ii) Paragraph 1.30 refers to a number of items in the Exposure Draft that relate to amending references to section 250-150 of the 1997 Act contained in the provisions referred to in Items 33 and 37 to 44. Paragraph 1.30 also refers to Item 36. However, Item 36 inserts the word 'not' at relevant places in the notes in section 40-525 of the 1997 Act. As such, the commentary in paragraph 1.30 is not relevant to Item 36. We do however consider that a short paragraph specifically explaining the change contained in Item 36 should be inserted into the EM.
- iii) There is a minor typographical error in paragraph 1.44 – the second 'on' should be replaced with 'of'.
- iv) There is a minor typographical error in paragraph 1.67 – a space is required between the words 'that' and 'has' in the third line of the paragraph.

Other matter

We note that care and maintenance bills, such as the Exposure Draft, provide the opportunity to undertake care and maintenance of the laws pertaining to the Australian taxation system. Reference is made in the EM² to the recommendations made in 2008 by the Tax Design Review Panel³ which included a recommendation to give greater priority to care and maintenance of the tax system.

Care and maintenance bills offer the opportunity to codify into the law matters contained in legislative instruments. While legislative instruments certainly have their

² See paragraph 1.3

³ http://archive.treasury.gov.au/documents/1342/PDF/tax_design_review_panel_report.pdf

place and offer a faster solution than moving through the legislative amendment process, amendment of the law for matters initially addressed by legislative instruments will contribute to less complexity in the law by having an issue contained in one single place (namely, the law), rather than in multiple places.

In this vein, we recommend Treasury make use of such bills in the future to amend legislation which is currently supported by a legislative instrument. While we are not suggesting Treasury needs to amend the current Exposure Draft for matters in legislative instruments currently on foot, we strongly suggest that this be considered in future, particularly as shortly the Commissioner's power to modify tax laws⁴ will be introduced which will likely result in even more legislative instruments being created.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely



Arthur Athanasiou
President

⁴ <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Commissioners-power-to-modify-law>