



## THE TAX INSTITUTE

30 August 2017

Michael Andrew AO  
Chair  
Black Economy Taskforce  
The Treasury  
Level 6, 120 Collins St, Melbourne VIC 3000

By email: [Blackeconomy@treasury.gov.au](mailto:Blackeconomy@treasury.gov.au)

Dear Mr Andrew,

### **Black Economy Taskforce: Additional Policy Ideas**

The Tax Institute welcomes the opportunity to make a submission to Treasury in relation to the paper entitled "Black Economy Taskforce: Additional Policy Ideas" (**Consultation Paper**).

### **Discussion**

Our discussion below uses the numbering of the additional policy ideas outlined in the Consultation Paper.

We have only commented on the additional policy ideas that we consider are appropriate for us to comment on.

### ***Additional Policy idea no.6: TPRS extension***

Third party reporting has proven to be an effective measure of ensuring taxpayer compliance with their taxation obligations. We support the extension of the TPRS to additional sectors, for example, the security industry, provided there is evidence of significant non-compliance in the relevant sector to support the extension.

There does not appear to be any policy reason why government entities that are currently excluded (or partially excluded) from the reporting arrangements that commenced on 1 July 2017 should not be required to report payments they make to businesses for providing services. Similarly, there does not appear to be any reason why the third-party reporting obligations could not be extended to all government entities as suggested in the Consultation Paper. To be effective, reporting would need to be done electronically to enable ease of matching by the ATO.

Any extension of TPRS beyond the building and construction, courier and cleaning industries needs to be well targeted to ensure that the reporting arrangements will not significantly increase the compliance burden on taxpayers and tax agents. Any increased burden will have to be balanced against the benefits of increased compliance.

This is particularly relevant to any proposal imposing obligations on householders in relation to their owner-builder or home improvement activities. The previous Prescribed Payments System required householders to forward a record of payments made under construction contracts of more than \$10,000 to the ATO. An Australian National Audit Office performance audit of the ATO reported that there were significant obstacles for the ATO in enforcing this aspect of the legislation and any attempt to do so would provide a poor return on investment (refer The Auditor-General Audit Report No. 14, 1998-99).

***Additional Policy idea no.7: An Alternative to the TPRS: payroll tax reporting***

Requiring payroll tax returns to be provided to the ATO appears to be a relatively simple way of identifying payments to contractors. However, it could have limited value depending on the payroll tax threshold (which as between different states and territories) and would need to be accompanied by a harmonised definition of contractor to be effective.

***Additional Policy idea no.8: A new class of strict liability offences***

In our view, strict liability offences should only ever be the exception, never the norm. There needs to be a solid policy basis for imposing strict liability offences. In some circumstances, offences may be appropriately drafted as strict liability offences. However, without any further details, it is not possible to comment further. This proposal would need significant consultation in relation to any proposed changes to the offences regime.

***Additional Policy idea no.9: A specialist tax tribunal***

This idea appears to be revisiting the past. Previously, there was a quasi-specialist tax tribunal of the Administrative Appeals Tribunal (ie the Taxation Appeals Division). This structure was then changed to a unified multi-disciplinary structure.

We support the establishment of a specialist tax tribunal provided that access to the current judicial channels are still available. Further, when implementing this policy idea, we need to ensure that we take note of history, so we are not simply going back to the previous system.

***Additional Policy idea no.10: Tax privacy provisions***

Current tax and other legislation provides for information sharing between the ATO and various departments on a broad range of matters. The overarching principle is (and

should be) that the information is required for the proper administration of the relevant laws.

In our opinion, whether the balance of information sharing between the ATO and other departments is appropriately balanced needs to be assessed on a department by department basis. Further, the exact information being shared between departments would need to be assessed to determine whether it is consistent with the overarching principle.

***Additional Policy idea no.11: Reverse onus of proof for some offences***

The Tax Institute is firmly of the view that the onus of proof should continue to be protected and should not be reversed for any offences. It is a fundamental principle of the Australian legal system and should remain untouched.

***Additional Policy idea no. 13: Working across borders***

Our observation is that revenue authorities across the world are cooperating and sharing information more than ever before. It is understood that this extends to sharing financial data that could be linked to the Black Economy. The Tax Institute supports extending that cooperation to the extent that there are gaps relevant to the Black Economy, provided that appropriate safeguards are implemented.

***Additional Policy idea no. 14: Cooperation with the States and Territories***

There is significant scope for greater cooperation between the Commonwealth and the States and Territories in policy and regulatory harmonisation. A good start would be harmonising definitions for payroll tax across all jurisdictions, and PAYG and Superannuation Guarantee at the Federal level.

Members have also expressed frustration at the red tape that small businesses have to go through when dealing across different state and territory jurisdictions. In this regard, the idea of a 'one stop shop' for things like registration, licencing and reporting obligations is strongly supported.

***Additional Policy idea no. 17: ATO industry and union partnerships***

The use of industry partnerships has proven a successful strategy employed by the ATO in the past and should continue. One example is the implementation of GST, which would never have been a success without the significant influence and support of industry partnerships, business and professional associations. Another example is the development and publication of industry benchmarks enabling taxpayers and their advisers to 'self-assess' whether their business activities were within acceptable parameters.

### ***Additional Policy idea no.18: Tax agent behaviour***

In our opinion, the Tax Practitioners' Board is performing its task in this regard in a satisfactory manner with the resources that it has. However, we query whether the Board has sufficient resources.

The Tax Institute firmly believes that the majority of tax agents and tax professionals are competent and law abiding. Further, The Tax Institute is well aware that it is not acceptable for tax accountants to cast a blind eye over their clients' tax affairs or help them break the law. This is reflected in our Code of Conduct and reinforced with our members. Regrettably, in our view, the comment in the Consultation Paper in relation to the "message to the professional bodies" is misguided and offensive.

### ***Additional Policy idea no. 19: Name and shame***

The Tax Institute does not support returning to the practice of naming and shaming tax evaders. While it may act as a deterrent as the Consultation Paper suggests, we consider the privacy implications and the potential financial and personal impacts far outweigh any perceived benefit.

### ***Additional Policy idea no. 23: Use of proxies to value businesses and transactions***

The Tax Institute does not support the use of proxies in the way contemplated in the Consultation Paper. Assessments should not be raised in an arbitrary way based on 'imputed assumed values'. Rather, assessments need to have a sound basis in law. Further, the ATO has the ability to raise assessments (including default assessments) using available data. Courts have supported this approach provided there is a reasonable basis for the assessment.

### ***Additional Policy idea no.24: Requiring non-cash payment of wages***

The Tax Institute does not support the requirement for all wages to be paid electronically. If appropriate records are maintained, taxpayers and employers should not be penalised for using cash.

This idea has the potential to adversely affect employers, employees and industries that are not causing any issues for the black economy. Further, not all employees or employers would have the administrative systems to deal with non-cash payment of wages.

### ***Additional Policy idea no.30: Government procurement: A good tax record***

We support this idea in principle. However, careful consideration will have to be given in relation to how "a good tax record" is assessed.

The list included in the Consultation Paper is a good starting point for assessing whether or not a firm has a good tax record. However, in terms of the requirement for tax reporting

and obligations to be fulfilled on time, we consider that this should be redrafted. For example, there needs to be some recognition that an unintentional breach by a day or two does not give a taxpayer a “bad tax record”.

***Additional Policy idea no. 36: Vendor reporting requirements and incentives***

In our opinion, the compliance burden associated with requiring vendors to disclose all cash-paid renovations will be too high and cannot be supported.

However, we do support the idea of limiting deductions for renovations to those that can be substantiated by a valid receipt or tax invoice. We do not support a cap on those deductions.

In our opinion, the idea of extending the TPRS to renovation payments is flawed and likely to be unenforceable for the reasons outlined in Additional Policy Idea no.6 above.

***Additional Policy idea no. 38: Minimum tax assessments for high risk businesses***

We do not support any policy which involves a “rule of thumb” tax assessment. The ATO can (and does) use “rule of thumb” assessments and industry benchmarks to direct its compliance activity. However, it should not be used to issue assessments which must have a sound basis at law.

***Additional Policy idea no.41: Receipts***

In our opinion, the compliance burden associated with this idea is too high and cannot be supported. The best way to address the problem is to enforce substantiation requirements on taxpayers wishing to claim deductions.

***Additional Policy idea no. 42: High effective marginal tax rates***

The Tax Institute recognises that high effective marginal tax rates are likely to contribute to the problems associated with the black economy and beyond. Further, the Tax Institute supports the reduction in personal marginal tax rates. However, any reduction would have to be part of a larger reform package, as simply reducing the rates is unlikely to resolve the compliance issues associated with the black economy.

***Additional Policy idea no. 43: Other educational and behavioural channels***

We support all the forms of additional tax education listed in the Consultation Paper. A strategy employed in some countries is to arrange educational visits for all new business registrants to ensure that they “get it right” from the start. Some countries also use SMS messages and the like to alert **all** businesses (not only new businesses) to upcoming lodgement and payment obligations. We suggest that the proliferation of technology would make this idea efficient and cost effective.

#### ***Additional Policy idea no. 44: The cultural challenge***

As outlined above, our members are well aware of their obligations as tax agents and tax professionals. We also have a Code of Conduct which our members are required to adhere to.

As a professional body, we continue to provide further education to ensure our members are up to date in relation to tax law changes. In our opinion, a key role for us is the continued education of our members.

#### ***Additional Policy idea no. 47: Sham contracting***

In our view, the personal services income rules do need to be clarified and better enforced. In this regard, the definitions of employer and contractor should be revisited.

We recommend that further education and guidance to provide clarity is required to assist employers (especially small and medium enterprises) to identify employees versus contractors. To most businesses, especially SMEs, the definitions are not entirely clear. There are still many grey areas in relation to these definitions. Further, the multi-factor test can hinder drawing a clear line between an employee versus contractor and independent contractor. Whilst the ATO is to be commended for developing the online decision model, the outcome can be manipulated as it very much depends on the answers and data that the user puts into the system.

We recommend that consideration be given to aligning the definition of the terms employee and contractor for pay as you go withholding, superannuation guarantee and any other relevant areas. In time, all Commonwealth and State statutes should have harmonised definitions as recommended above. This would reduce complexity, reduce compliance costs and increase clarity regarding these terms.

#### ***Additional Policy idea no. 48: Phoenixing***

The Tax Institute strongly supports any measures to stamp out phoenix activity including those outlined in the Consultation Paper. A major challenge is identifying who actually is the 'controlling mind' behind any company so that action (eg for personal liability) can be taken against that person. In this regard, a 'fit and proper person' test for becoming a director should be rigorously enforced for all companies to help in reducing the use of 'strawman directors'. However, like any measure, it will only be successful if appropriately enforced.

#### ***Additional Policy idea no. 49: Illegal tobacco***

There is no doubt that there is significant GST and corporate tax leakage from the illegal tobacco trade. The Tax Institute considers the only effective way to address the problem of illegal tobacco is to have one agency with responsibility for compliance. This is preferable to the current position where agencies - some at the federal level (eg

ATO, Border Protection, etc) and others at the state and territory levels are responsible for enforcing different elements of compliance activities.

***Additional Policy idea no.53: Security services***

The Tax Institute supports including the security industry in TPRS provided there is evidence of sufficient non-compliance in the industry.

***Additional Policy idea no. 54: Combatting thriving pockets of crime and illegality***

The Tax Institute agrees that a better coordinated and focussed effort is needed to attack the black economy. The establishment of an entirely new agency is likely to be very expensive and unwieldy in a practical sense and therefore is not recommended.

We understand that there has been better cooperation between existing agencies but without any major breakthroughs. To secure better outcomes a reasonable compromise position may be the establishment of a standing black economy taskforce along the lines of the Financial Crimes Taskforce.

If you would like to discuss any of the above, please contact either myself or Tax Counsel, Angie Ananda, on 02 8223 0011.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Matthew Pawson', with a long horizontal flourish extending to the right.

**Matthew Pawson**  
President