



THE TAX INSTITUTE

10 November 2017

The Manager
Small Business Entities and Industries Concessions Unit
The Treasury
Langton Crescent
PARKES, ACT 2600

By email: Blackecobudget1718@treasury.gov.au

Dear Sir/Madam:

2017-18 Budget Measures

The Tax Institute welcomes the opportunity to make a submission in relation to the 2017-18 Budget Measures in relation to banning sales suppression technology and extending the taxable payment reporting system (**TPRS**).

These measures are encompassed in the exposure draft Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Bill 2017 (**Bill**) and the accompanying exposure draft explanatory material (**Explanatory Material**).

Discussion

As outlined in our previous submission dated 26 June 2017 in relation to the Black Economy Taskforce Interim Report (**June Submission**) (refer Annexure A), The Tax Institute supports banning the manufacture, distribution, possession, use and sale of sales suppression technology.

In this regard, we support the introduction of the offences designed to deter the use and distribution of sales suppression technology as outlined in the Bill.

As outlined in our June Submission and our submission dated 30 August 2017 in response to the paper entitled 'Black Economy Taskforce: Additional Policy Ideas' (**August Submission**) (refer Annexure B), The Tax Institute supports the extension of the TPRS to additional sectors provided that there is evidence of significant non-compliance in the relevant sector to support the extension and that appropriate measures to ensure that non-offenders are not adversely burdened with onerous compliance obligations are considered.

We assume that the courier and cleaning sectors have been selected based on evidence of significant non-compliance that will justify the inevitable increased compliance burden on taxpayers and agents. On that basis, we support the proposed extension of the TPRS as outlined in the Bill.

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 stylized, flowing script.

Matthew Pawson
President

ANNEXURE A

June Submission



THE TAX INSTITUTE

26 June 2017

Mr Michael Andrew AO
Chair, The Board of Taxation
Black Economy Taskforce
C/- The Treasury
Langton Crescent
PARKES ACT 2600

By email: taxboard@treasury.gov.au

Dear Mr Andrew

Re: Black Economy Taskforce: Interim Report – March 2017

The Tax Institute appreciates the opportunity to provide feedback in respect of the Black Economy Taskforce Interim Report dated March 2017 (**Interim Report**). Our comments in relation to the Interim Report are set out below.

Summary

In summary, The Tax Institute recognises that the black economy undermines the tax system. Further, we consider that a broad range of measures need to be introduced to successfully deal with the black economy.

Interim Report Recommendations

We have extracted the key initial recommendations from the Interim Report below and provided our comments on each of the recommendations.

Black Economy Taskforce: Interim Report March 2017	The Tax Institute comments
<p>1. Access to Government procurement opportunities should be limited to firms which have a good tax record (and do not engage in bribery).</p> <p>Access to Australian Government procurement opportunities should be limited to firms which have a good tax record and do not engage in bribery or corruption...</p>	<p><i>We support this recommendation in principle. However, careful consideration will be needed in relation to how “a good tax record” is assessed. Clear criteria should be set and applied in respect to firms pursuing these opportunities.</i></p>

<p>2. Tax (and other) incentives for small businesses who adopt and invest in non-cash business models.</p> <p>The Taskforce should consult on the idea of providing tax and other incentives for small businesses who adopt a non-cash business model...</p>	<p><i>Whilst the concept of a cashless society would greatly inhibit the black economy, from a social access point of view, a cashless society could be very prejudicial to disadvantaged groups. We would be interested in discussing what "other incentives" are being considered.</i></p>
<p>3. Expansion of the Taxable Payment Reporting System</p> <p>The Taxable Payment Reporting System (TPRS), which currently only applies to the building and construction industry, should be expanded to the cleaning and courier sectors. The Taskforce will consider whether the TPRS should be applied more broadly in its Final Report.</p>	<p><i>We support this recommendation although overseas experience indicates that withholding systems are more effective than reporting regimes in improving compliance in cash industries. The industries previously covered by the Prescribed Payments System, which was abolished on the introduction of GST on 1 July 2000, would be a good place to start any examination of expanding the TPRS. Any expansion of the TPRS needs to have regard to the cost of increasing the compliance burden on taxpayers and tax agents.</i></p>
<p>4. Deductibility of cash wages and contractor payments</p> <p>Businesses should not be able to claim deductions on cash wage payment where they did not make or report Pay As You Go (PAYG) payments, issue payment summaries or statements of earnings, or make applicable superannuation contributions. Similarly, businesses should not be able to claim deductions for payments to contractors where a valid Australian Business Number (ABN) is not quoted and the payer has not withheld part of the payment under the 'no-ABN withholding' requirements. These payments should not be included in cost bases for capital gains tax or depreciation purposes...</p>	<p><i>We support the proposal to deny deductions in circumstances where there is a failure to comply with the PAYG and ABN laws.</i></p>
<p>5. An immediate ban on sales suppression technology</p> <p>A ban on sales suppression technology. This technology allows businesses to hide cash takings to avoid paying income tax.</p>	<p><i>We support this recommendation.</i></p>

<p>6. Business registration integrity and modernisation</p> <p>Australia needs a robust, real-time business identification and verification system in order to reduce red tape, generate valuable data for government and businesses ... and improve delivery of relevant services. The Taskforce will work with relevant agencies on ways to rationalise business registries and strengthen business registration and verification arrangements (for example, to address the misuse of ABNs).</p>	<p><i>The current registration requirements place an unacceptable burden on businesses (particularly new businesses). Any improvements that lead to better co-ordination and information sharing between agencies is a positive step provided it does not place too great a compliance burden on businesses and agents who are responsible for ensuring the real time reporting requirements are satisfied.</i></p>
<p>7. Government co-operation</p> <p>The Government should work cooperatively with state, territory and local governments, given their common interest in countering the black economy.</p>	<p><i>We support this recommendation.</i></p>
<p>8. Tax literacy training for trade and small business people</p> <p>The Government should consult with the states and territories on the idea of including tax literacy modules in vocational education training (VET), small business courses and in new migrant communities...</p>	<p><i>We support additional training. However, we note that the training would need to be additional to any current support already available to be of any value.</i></p>
<p>9. Funding for ATO activities</p> <p>The provision of funding to the Australian Taxation Office audit and compliance programs to better target black economy activities, including by strengthening its use of technology, buttress its ABN monitoring and public education activities.</p>	<p><i>We support this recommendation.</i></p>

Policy Options for Consultation

We have extracted sections of the policy options for consultation outlined in the Interim Report below and provided our comments.

Black Economy Taskforce: Interim Report March 2017	The Tax Institute comments
<p>1. Regulatory Burdens Affecting small business</p> <p>This is summed up by the comment that 'government should not make it more difficult to comply than it needs to be'. This is not only a tax issue, but also applies to the complexity of our welfare system. Stakeholders have said they want to see a 'one stop shop' across all</p>	<p><i>We support the policy objective of reducing regulatory burdens. This should extend to the harmonisation of definitions and other legislative issues facing businesses that deal across jurisdictions. As the Interim</i></p>

<p>federal agencies and different levels of government for their regulatory compliance activities....</p>	<p><i>Report notes, businesses tend to comply and stay inside the system if it is made easier for them to comply.</i></p>
<p>2. Possible cash payment limit across the economy</p> <p>The Taskforce intends to examine the idea of an economy-wide cash payment limit in more detail, including through public consultation. We recognise that both costs and benefits will need to be considered, including alternative ways of achieving the same objective. The level of any cash payment limit will require careful consideration (however \$10,000 is a possible option). Wider payment system policy considerations will also need to be taken into account.</p>	<p><i>Although the introduction of such a measure has some attraction, compliance would be difficult to enforce. The Interim Report states that a number of overseas countries have implemented measures to impose cash payment limits. It would be beneficial to understand what enforcement measures those countries have put in place and what agency or agencies have responsibility for enforcing the measures.</i></p>
<p>3. A sharing economy reporting regime</p> <p>New and emerging sharing economy operators should be encouraged or required to make early contact with regulatory authorities (employment, consumer, tax) to obtain advice on their compliance with relevant legal requirements. They should also be encouraged to adopt robust internal governance standards which established sharing economy operators have, in many cases, put in place.</p>	<p><i>We understand that considerable activity occurs in the 'sharing economy' across a large range of industries. It is not isolated to certain 'operators' as seems to be suggested in the Interim Report. Whilst the idea of a reporting regime for these activities has merit, it is important that any proposal will need to be equally enforced for both onshore and offshore participants.</i></p>
<p>4. A possible bright line test for the hobby-business income distinction</p> <p>The idea would be to establish a threshold below which any income would be deemed to be hobby-related and not taxable. Any income above the threshold would be considered business-related (or be subject to the business-hobby test which applies now).</p>	<p><i>We think this approach should be considered in detail. It would have the obvious benefit of reducing compliance burdens. However, it should be carefully considered whether the threshold should be different across different hobby sectors. A key issue in the hobby space is that reward for effort is not necessarily commensurate with reasonable commercial expectations, nor is it uniformly equitable across sectors.</i></p>
<p>5. Lowering the GST Threshold</p> <p>Given technological developments since the tax was introduced, the view has been put to the Taskforce that the current GST threshold (\$75,000) may be too high...</p>	<p><i>The choice of threshold is a crucial element of any GST design. The revenue raised by a lower threshold needs to be weighed against the administrative costs for both the ATO and traders. The belief that the higher the threshold the greater</i></p>

	<p><i>the revenue foregone needs to be tested. The fact that a business is registered does not guarantee compliance. We believe that a large number of taxpayers would have anecdotes of being offered GST inclusive and exclusive prices by tradesmen working on their private premises.</i></p>
<p>6. Limited use of amnesties</p> <p>The Taskforce intends to look at two types of amnesties. The first would apply to vulnerable employees who may feel they are trapped in the black economy. While the individual's primary tax liability would stand, any penalty could be waived.</p> <p>...</p> <p>A second possible amnesty would focus on small cash-only businesses who choose to adopt e-payment sales equipment. It would offer them a minimum period (for example, 6 months) for them to report their black economy activities. While their primary tax liability would continue to apply, they could receive a (higher) discount on any penalties (than are available now).</p>	<p><i>We support both of these proposed amnesties. Any measures to assist voluntary compliance are welcome. Whilst invariably not being 100% successful, there will be a fundamental core of affected taxpayers who would make use of the amnesty measures to "do the right thing" if they are available.</i></p>
<p>7. Withholding arrangements</p> <p>The Taskforce will consult on the broader application of withholding arrangements, including the existing PAYG system. In our stakeholder consultations, some have expressed the view that better use could be made of the PAYG system to counter sham contracting. Consideration could be given to a bright line test to differentiate genuinely independent contractors from others (this could take a number of forms, including the number of days worked for a particular client in any year).</p>	<p><i>We support this option. Determining whether a worker is an employee or contractor is one of the most complex issues faced by businesses (particularly small businesses). Whilst the ATO has attempted to assist in this regard by providing decision tools, these have their limitation (the answer you get depends on the responses you make to the various questions). Any bright line test should apply across various regulatory agencies and different jurisdictions. However, in any application of new bright line tests, it should be remembered that no single characteristic of an arrangement is absolutely determinative of the status of a taxpayer as an employee or a contractor.</i></p>

Issues intended to be looked at more closely in the Final Report

We have extracted sections of the issues identified in the Interim Report to be looked at more closely in the final report and provide our comments below.

<p>1. Procurement/Responsible Supply Chain Management</p> <p>Procurement officers play a critical role in directly and indirectly influencing commercial practices....The Taskforce will consider ways to improve supply chain management practices in its Final Report. Strengthened procurement officer accountabilities (including the idea of making them responsible officers under the Corporations Act) will be considered. There may also be scope for tax and other regulatory authorities to publicise instances of egregious supplier practices (for example, exploitation of vulnerable employees).</p>	<p><i>No comment.</i></p>
<p>2. Social Norms/Changing The Social Contract</p> <p>Black economy behaviours are powerfully influenced by social norms.... We intend to outline elements of an effective, anti-black economy campaign in the Final Report.</p>	<p><i>As the Interim Report shows, social norms are an important factor in influencing 'black economy' behaviour involving non-compliance with taxation, labour laws, employment, exploitation of workers and illegal activities. Given this diversity, any campaign needs to be multi-faceted to be successful.</i></p>
<p>3. Consumer-focussed Action</p> <p>.... We intend to examine the merits of consumer-focussed sanctions, including the loss of consumer protections, warranties and legal rights for people who make cash payments without obtaining a valid receipt.</p>	<p><i>No Comment.</i></p>
<p>4. Whistleblowers</p> <p>Various government agencies have whistleblower programs or reporting services in place where members of the public can report information on suspected fraud, tax evasion and other misconduct or breaches of relevant legislation. These have been effective to a degree, but should be better targeted, relaunched and rebranded to become more user friendly.</p>	<p><i>We support the Taskforce working with Treasury to develop policy proposals with respect to Whistleblowers.</i></p>
<p>5. Sectoral and Other Targeted Strategies</p> <p>We intend to focus in detail on high-risk sectors in our Final Report. High-risk sectors identified by the ATO include: building and construction, restaurants and cafes and hair and beauty salons. Our initial consultations have highlighted problems in the</p>	<p><i>We support this approach. The publication by the ATO of benchmarks in certain high-risk industries is a good platform to build on in this regard.</i></p>

<p>hairdressing sector (particularly mobile operators), child care sector, disability services, aged care, labour hire, horticulture and abattoirs. Offshore wagering is another high risk industry ... Some sectors are also at specific risk for GST fraud, for example the precious metals industry and property development...</p> <p>Targeted strategies might also be appropriate in other areas. Property owners should take some responsibility for activities that take place on their premises or land. ... Consideration might be given to sanctions for owners where blatantly illegal activities are involved and some degree of knowledge of these activities (or wilful blindness) can reasonably be imputed. Some other industries are also developing strategies to deal with black economy activity in their sector, for example through licensing or codes....</p>	
<p>6. Voluntary Compliance</p> <p>We encourage the ATO to continue its efforts to inform taxpayers of possible audit risks they face. The ATO publishes small business benchmarks, developed for a wide range of sectors, which suggest what 'average' taxpayers should be earning. These could be given greater prominence. New technologies should also be explored. A possible approach would be to expand and promote the use of apps and tools for small business which set out the provisions of the relevant industrial award (an initiative which has had a positive impact in the hair and beauty sector). Apps could also be developed for employees, allowing them to confirm that they are being paid at the correct wage rate and that the right amount of superannuation contributions are being made.</p>	<p><i>We support measures designed to encourage the ATO to continue its efforts to inform taxpayers about possible audit risks and develop technology to make compliance easier.</i></p>
<p>7. Education</p> <p>Education should play a stronger role in informing students of their tax obligations. Tax and financial literacy modules, for example, could be included in VET curricula...</p>	<p><i>We support the policy of increasing tax education for students to promote future compliance.</i></p>
<p>8. Working with other Governments: State and Local</p> <p>An effective response to the black economy will require cooperation across different levels of government. We intend to open a dialogue with the States and Territories on how best to work with them....</p>	<p><i>We support policy harmonisation as it could lead to simplification (see above – our comments in relation to Recommendation 1: 'Regulatory Burdens').</i></p>

<p>9. Working with Industry Associations and Tax Professionals</p> <p>.... Industry conduct, including compliance with the law, tends to improve when associations are formed and the majority of businesses in the industry are members. The ATO already works effectively with certain industry and professional associations.</p>	<p><i>We agree with the compliance benefits arising from the association of business in the same industry space. This is further enhanced by the voluntary adoption of professional codes of conduct.</i></p>
<p>10. Non-Cash Black Economy Payment Methods</p> <p>While cash can facilitate black economy and illegal behaviour, non-cash payment methods can also be used, including cryptocurrencies, certain commodities (for example the black market trade in cigarettes, both smuggled manufactured cigarettes and 'chop chop'), as well as money laundering practices such as 'cuckoo smurfing'. ... If the community moves away from cash, or limits on cash payments are put in place, these alternatives may become more popular.</p>	<p><i>No Comment.</i></p>
<p>11. Vulnerable and Other Groups</p> <p>Particular social groups, including the elderly, those on lower incomes and those in regional communities, rely more on cash than other parts of the community. Any move away from cash as a means of payment could have adverse implications for them.</p>	<p><i>No comment.</i></p>
<p>12. Prosecutions</p> <p>The successful prosecution and conviction of egregious black economy participants is desirable in its own right and also acts as a deterrent for others.</p>	<p><i>We acknowledge that successful prosecution acts as a deterrent but only if it is publicised widely to influence behaviours beyond the persons convicted.</i></p>
<p>13. Options for Using Biometric Data</p> <p>Biometrics such as fingerprints, palm prints, iris and facial structure are unique physical attributes that can be used for identity verification purposes. ...The Taskforce will consider whether increased used of biometrics (subject to privacy protections) would assist to reduce black economy participation, along with a broader look at the issue of digital identities which some initial consultations have noted should be considered.</p>	<p><i>No comment.</i></p>
<p>14. A Data Strategy for The Black Economy</p> <p>While a great deal of work is taking place on the use of data (being led by the Digital Transformation Office) there may be value in developing a dedicated black economy strategy for data collection, use and analysis. The ATO's existing</p>	<p><i>Subject to sufficient privacy protections being in place, we support data matching.</i></p>

<p>data initiatives would form a central part of this, but there may be opportunities to build on these, taking advantage of emerging technologies and techniques. An integrated, multi-agency approach in this area should be considered, taking leading-edge international examples into account. Matching of tax, welfare and visa records already takes place in Australia to some extent but this should be expanded and modernised.</p>	
<p>15. Creating an Institutional Legacy</p> <p>The black economy is a whole-of-government, whole-of-society problem, and is not limited to tax. In our Final Report, we will make recommendations on the machinery of government....consideration should be given to developing long-term whole-of-government teams and operations.....</p>	<p><i>We agree that the only chance of success in tackling the problems with the black economy is if a whole-of-government (at all levels) approach is adopted.</i></p>

If you would like to discuss our submission, please contact either me or Tax Counsel, Angie Ananda, on 02 8223 0011.

Yours sincerely



Matthew Pawson
President

ANNEXURE B

August Submission



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

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