



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