

Taxpayers Australia

2012-13 Pre-Budget

Submission



1. Executive Summary

Taxpayers Australia welcomes the opportunity to submit recommendations in relation to framing of the 2012-13 Federal Budget. We are of the view that the government must implement measures, in both the short and medium term, which will deliver a tax system with the following features:

- an equitable distribution of the taxation burden amongst taxpayers,
- simplicity, to enable taxpayers to ascertain their liability with reasonable certainty,
- costs of compliance which do not place an unfair burden on any taxpayer, and
- sufficient flexibility to deal with rapid change.

With these objectives in mind, for the 2012-13 financial year, the recommendations in this submission will focus on the following areas:

- Maximisation of superannuation benefits
 - Concessional contributions caps
 - The 10% rule
 - Excess contributions tax
- Personal income taxes
 - Investment income
 - Personal tax deductions
- Small business
 - Clean Energy Act 2011
 - Loss carry-back
- Companies
 - Division 7A ITAA 1936
- Administration of the tax laws
 - A single tax Act
 - Delays with amending legislation
 - Inspector General of Taxation

We would be pleased to provide comment on any future draft legislation or policy documentation arising from the 2012-13 Federal Budget.

2. Superannuation

We believe it is generally agreed that all reasonable and equitable measures designed to increase the level of superannuation savings available to Australian citizens should be implemented wherever possible. The long-term benefit is, of course, in a self-sufficient retiree being less reliant on the public purse.

The current interaction between the superannuation and taxation laws provide significant impediments to the creation of superannuation benefits which are sufficient to sustain a person in their retirement. This is particularly so for persons currently aged more than 50 years, as they have limited opportunity to obtain the full benefits of the superannuation guarantee system in particular the scheduled increases in minimum contribution levels.

2.1 Concessional contribution caps

For persons aged 50 and over a concessional contribution cap of \$50,000 applies until the end of the 2011-12 year. Thereafter it is intended that the cap of \$50,000 will only be available to persons with superannuation account balances of less than \$500,000.

We believe that the account balance maximum of \$500,000 should be reviewed. As life expectancies increase, greater amounts of superannuation will be required by retirees. The adoption of a \$500,000 maximum appears arbitrary and unnecessarily inhibits the ability of older Australians to provide for their retirement. We also believe that legislation which imposes an account balance maximum must be drafted in clear and simple terms to ensure that inadvertent breaches of the law are minimised.

Recommendation: *that the maximum superannuation account balance for the purposes of the concessional contribution cap as it applies to persons 50 years of age and older be increased to at least \$1 million, or such other amount as may be concluded as adequate for the 'average' Australian, by an appropriately constituted review panel.*

2.2 The 10% rule

In order to obtain a deduction for personal superannuation contributions it is necessary, broadly, that an individual derives less than 10% of their earnings from employment sources. This rule discriminates against persons who derive their income from a mixture of employed and self-employed activities an increasingly common occurrence as the incidence of part-time work grows during uncertain economic times.

In order to encourage persons in this situation to improve the level of their superannuation benefits we believe the 10% rule should be reviewed. It is acknowledged that abolition of the 10% rule would have significant adverse budgetary implications however, active consideration should be given to a significant increase in the level of income which may be derived from employment activities to, say, 25%.

Recommendation: *the level of employment income which may be derived without loss of deductibility for personal superannuation contributions should be significantly increased (perhaps to 25%).*

2.3 Excess contribution tax

Currently there are severe penalties for breaches of the concessional and non-concessional contributions caps. It is accepted that there must be sanctions for breaches of the caps in certain circumstances. However, we submit that the penalty regime is excessive (an aggregate tax rate of 93% being possible) and too inflexible in cases of inadvertent breaches of the rules.

There is presently a narrow discretion available to the Commissioner of Taxation to disregard a breach or re-allocate contributions to other years. The circumstances in which the discretion might be favourably exercised should be expanded.

The reforms adopted from 1 July 2011, whilst welcome, are too narrow in that relief from excess contribution tax is only possible where:

- the contributions are concessional,
- the breach occurs on or after 1 July 2011,
- it is the first breach of the concessional contribution cap by the taxpayer, and
- the maximum amount by which the cap is breached is \$10,000.

Recommendation: *expand the availability of relief from excess contribution tax by: the inclusion of relief in the case of non-concessional contribution cap breaches and widen the circumstances in which the Commissioner of Taxation could be expected to favourably exercise his discretion.*

3. Personal Taxes

3.1 Investment income

Current government policy is to provide tax relief for taxpayers earning income from interest bearing deposits by granting a 50% reduction in tax payable on interest derived up to \$1,000. This initiative was designed to create an incentive for Australian to boost their savings. We support this objective but question why the concession is limited to income from interest bearing deposits. Investments occur in many different forms with the nature of an investment often being driven by such things as individual opportunities, risk profiles and the age of the taxpayer.

Recommendation 14 of the Henry Review of the tax system stated: Provide a 40% savings income discount to individuals for non-business related:

1. *Net interest income,*
2. *Net residential rental income (including related interest expenses)*
3. *Capital gains (and losses), and*
4. *Interest expenses related to listed shares held by individuals as non-business investments.*

In conjunction with introducing the discount, further consideration should be given to how the boundaries between discounted and non-discounted amounts are best drawn to achieve certainty, reduce compliance costs, and prevent labour and other income being converted into discounted income. Further consideration should also be given to addressing existing tax law boundaries to the treatment of individuals owning shares in order to address uncertainties about when the shares are held on capital account (and subject to capital gains tax) and on revenue account (and taxed as ordinary income)

This recommendation by the Henry Review was made in the context of a wider review which contemplated changes to the capital gains tax regime. However, it is a reflection of the fact that a strong case can be made for concessional tax treatment of investment returns generally in order to encourage wealth creation for all Australians. Further, it can be logically argued that distortion of returns from different types of investment due to the operation of the tax laws, should be discouraged.

Recommendation: *that the tax concession which is intended to be available in respect of interest income be expanded to include income derived from other forms of investment.*

3.2 Personal tax deductions

It is currently intended that an optional standard deduction for work related expenses be introduced from the 2012-13 year. The deduction levels have been set at \$500 for the 2012-13 year and \$1,000 thereafter.

The objective has been described by the government as being *'to reduce the burden on taxpayers to comply with the record keeping requirement of the tax law; particularly where apportioning costs between income and non-income earning purposes is required....and to avoid the complexity of determining whether a particular expense was incurred in earning income or in managing one's tax affairs'*.

The deduction levels adopted by the government must be seen in the context of the level of deductions claimed under the current system. The Henry Review of the tax system report that the mean deduction for car expenses claimed by taxpayers with income of \$40,000 in the 2006-07 year was \$2,000.

Standard deductions set at the proposed levels are likely to have a low rate of take-up and require many taxpayers to undertake lengthy analysis to determine whether or not to utilise the standard deduction.

Recommendation: *review the proposal to introduce optional standard deductions to better ascertain whether the arrangements to be implemented will achieve the desired outcome, or whether the standard deduction must be lifted in order to do so.*

4. Small Business

4.1 Clean Energy Act 2011

The recent introduction of 18 pieces of interlocking legislation will result in a tax being imposed on carbon emissions from the 2012-13 year. In recognition of the direct and indirect costs which will be incurred as a result of the carbon tax the federal government has announced a range of compensation measures including:

- Large emitters – free carbon permits in order to reduce the initial cost impact on the manufacturing and resource industries
- Individual taxpayers – personal tax cuts including an increase in the tax-free threshold to \$18,200 and subsequently \$19,400
- Self-funded retirees – various arrangements such as increases to the Senior Australians Tax Offset and lump sum Clean Energy Advance payments.

Nowhere is there direct compensation for small business, a sector which employs approximately 50% of labour within Australia. It is intended that the amount of immediate write-off for the acquisition of depreciating assets be increased to \$6,500 for small business. However, the direct connection between additional tax deductions which may become available at some future time and the increased costs arising from a carbon tax which will arise almost immediately is tenuous. The only other identifiable concessions for small business are the somewhat vague Energy Efficient Information Grants programme and a Clean Technology Advice programme.

The small business sector represents the segment of the economy which is most likely to be vulnerable to the impact of the carbon tax. Small business will typically be less able to pass on the increased costs incurred in delivering goods and services. It is also likely that the cost of plant and equipment will increase as manufacturers alter designs to be more environmentally friendly. This will inevitably increase costs which will to a substantial extent have to be absorbed by the small business sector.

Recommendation: that the government review compensation available to small business in respect of the carbon tax, with a view to providing:

1. Tax relief, or
2. Direct compensation payments.

4.2 Loss carry-back

The global financial crisis has created challenges for both large and small business, often in relation to working capital funding. In this regard small business is at a disadvantage. It cannot go to the market and effect a capital raising or in the majority of cases exercise sufficient influence to encourage lending institutions to provide finance. Small business funding is typically limited to tightly controlled bank lending and self funding.

Under current rules losses of prior years can only be carried forward (subject to certain rules) for offset against profits in later years. However, utilisation of the losses during the loss period (by way of a carry-back regime) would be vastly more beneficial to small business as the refund of previously paid taxes would supplement cash flows at the time the business is in most need of support.

Loss carry-back regimes have been successfully operated over many years in jurisdictions such as the United Kingdom and the United States of America.

Recommendation: that a business designated as a 'small business' be entitled to carry-back tax losses for a defined period, say, three years.

5. Companies

5.1 Division 7A ITAA 1936

It is acknowledged that a mechanism is required to penalise shareholders who seek to extract profits from private companies without paying the tax which would otherwise be payable if a dividend had been declared. However, if the objective of tax legislation is to provide certainty for taxpayers and to produce a fair and equitable outcome for taxpayers and the revenue, Division 7A fails the test.

The Division has been the subject of constant amendments since being introduced in 1997, and yet uncertainty as to the operation of many aspects of the law remain. For example: the current debate regarding the circumstances in which an unpaid present entitlement due to a corporate beneficiary of a trust attracts the operation of Division 7A by being considered a loan under the extended definition of the term which is adopted by the Division.

Recommendation: that Division 7A be re-written in more simple and prescriptive terms. This should be coordinated with the re-write of Division 6 ITAA36 which is currently at the consultative stage.

6. Administration of the tax law

6.1 A single tax Act

For many years the Australian tax laws have been split between the 1936 and 1997 Acts. The continuation of this unwieldy arrangement cannot be justified. The volume and complexity of Australia's tax laws make it imperative that consolidation of the law into a single Act be pursued as soon as possible. The abandonment of the tax re-write project (which was designed to create a single Act) has resulted in significant inefficiencies and costs for taxpayers, their advisors and the Taxation Office.

Recommendation: that the government establish a working group made up of representatives of treasury and the private sector to pursue consolidation of the tax laws into a single act.

6.2 Delays with amending legislation

It is common for draft legislation amending the tax laws to be introduced many months, and in some cases years, after the proposed change has been announced. Given that the announcement is usually the date from which the amendment to the law will apply, there is an inherent unfairness for taxpayers who seek to arrange their affairs in accordance with the new rules but have nothing more than perhaps a press release upon which to base decisions. If the timetable for the introduction of amending legislation is not met, the ability to back-date the law to the date of the announcement should be forfeited.

Recommendation: *the government legislate a maximum period between the announcement of proposed changes to the tax law and the introduction of amending legislation in situations where the legislation is intended to apply from the date of the announcement.*

6.3 Inspector General of Taxation (IGOT)

The IGOT oversight of the Taxation Office is vital to the proper administration of the tax laws. The IGOT has pursued many key issues including:

- Review into the ATO's change program
- Review into the implications of any delayed or changed ATO advice on significant issues (referred to commonly as 'ATO u-turns')

These are examples of situations where an independent review of Tax Office activities was essential in order to provide taxpayers with a measure of faith that there was a level playing field between themselves and the tax office. A current review being conducted by the IGOT is of similar magnitude – *Review into the ATOs use of Benchmarks to target the cash economy*. This important work is carried out by the IGOT by what might be described as a skeleton staff and within a modest budget. These factors limit the effectiveness of the IGOT's work and delay the implementation of reforms.

Recommendation: *the government provide an increased budget allocation for the IGOT to enable reviews to be carried out more rapidly and efficiently.*