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Via email

16 January 2009

Dear Ms Roff

2009-10 Pre-Budget SUBMISSION

Taxpayers Australia are pleased to provide a submission to Treasury in response the Government's call for input into the 2009-10 Budget.

The appended document sets out our considerations for inclusion in the 2009-10 Budget.

Should you wish to discuss any aspect of this submission please contact Ms Heather Schache on 1300 657 572.

Kind regards

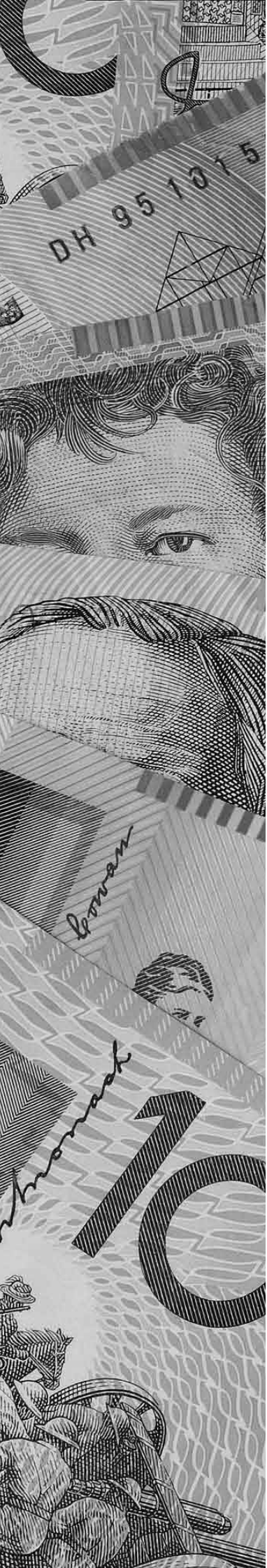
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Taxpayers Australia Inc

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Taxpayers Australia Inc

Taxpayers Australia Inc (formerly known as Australian Taxpayers Associations) was established in 1919 and is a not-for-profit organisation committed to educating, informing and representing business and individual taxpayers alike.

We are not affiliated with any political party or any pressure group, and regularly make submissions to the Government on taxation and superannuation issues on behalf of our members and all Australian taxpayers. We are represented on major consultative forums with the Australian Taxation Office.

Taxpayers Australia Inc is also a founding member of the World Taxpayers Associations and the Asia Pacific Taxpayers Union.

Our aim is to educate and inform taxpayers via our expert publications, online information, media and seminars on tax and superannuation issues and to bring to members the latest and most effective tax information.

Our members include tax advisers, accountants, tax agents, financial planners, business people, corporations, investors, students and individual taxpayers to whom we provide up-to-date information in plain English.

Executive summary

Taxpayers Australia recommends a number of reforms for consideration by the Government when forming the Budget.

Taxpayers Australia look forward to discussing the issues and recommendations raised in this submission with Government and Treasury.

Our recommendations cover the following.

- 1. Income tax**
- 2. Tax thresholds and offsets**
- 3. Fringe Benefits Tax**
- 4. Goods and Services Tax**
- 5. Superannuation and Retirement**

Should you wish to discuss any aspect of this submission please contact **Heather Schache, General Manager, Taxation and Superannuation Publications**, Taxpayers Australia Inc on 1300 657 572.

Introduction: Taxation issues

The Australian tax system is complex and in certain areas imposes a heavy tax burden compared to the regimes of other developed countries.

The 2009-10 Budget will inevitably be framed in a manner which forms part of Government response to the global financial crisis which presently threatens the Australian economy. Government will clearly be seeking to further stimulate the economy, and in this context Taxpayers Australia puts forward recommendations in the commentary that follows

1. Income tax

Our recommendations cover aspects of both personal and corporate taxation.

1.1 Personal income tax

The implementation of tax cuts is a practical and immediate way of encouraging the consumer spending necessary to drive the economy.

The 2009 Commonwealth Budget indicated that tax cuts would occur from 1 July 2009, 2010 and 2011 (although the Government has indicated that the last of these tax cuts is presently unlikely).

It is possible that the 2009 tax cuts, together with other Government initiatives, will not be sufficient to maintain momentum in the economy throughout the 2009-10 year. In the event there are indications that this is the case, the 2010 tax cuts should be brought forward to, say, 1 January 2010, to provide additional stimulus.

Taxpayers Australia has for some time advocated a policy which eliminates "bracket creep" by automatically indexing income thresholds and tax offsets annually. In the current climate this may be a matter for the medium to long term and within the domain of the "Future Tax System" review, however it remains an objective which we believe should be pursued.

Taxpayers Australia recommend:

- *a more aggressive use of tax cuts as a means of stimulating the economy, and*
- *pursuit of a policy whereby indexation is applied to eliminate the effects of "bracket creep" on individual taxpayers.*

1.2 Corporate income tax

There has been a global trend towards reduced corporate tax rates in recent years which has resulted in Australia being generally considered a high tax jurisdiction.

The KPMG International 2008 Survey of global corporate tax rates concluded that the average rate is 25.9%, significantly below the 30% rate applied in Australia.

In addition to the higher tax rate, Australia has a broader corporate tax base than many comparable countries, principally due to:

- the modest concessions available in respect of
 - accelerated write-off for investment in new plant and equipment, and
 - expenditure in research and development,
- the absence of any periodic tax deduction in respect of purchased intangibles, and
- the inability of corporate taxpayers to carry-back tax losses.

Whilst all of these issues require active consideration, we believe the most urgent, in the current climate, is the inability to carry-back tax losses.

The global financial crisis has engulfed Australia with a speed and impact which no business proprietor could reasonably have anticipated. Businesses which have traded profitably and paid corporate taxes in recent years may now be incurring significant losses and looking for assistance to fund their activities and maintain employment.

Recognising that most businesses are subject to cyclical factors, often including issues beyond their control, there is generally a logic to the availability of a loss carry-back regime. In the current economic conditions companies incurring significant losses would be greatly assisted by an ability to recover taxes paid in prior years.

Specific rules would have to be developed for a loss carry-back regime, including the number of years of 'carry back', however, there is ample international precedent as a significant number of OECD countries have adopted this approach.

Taxpayers Australia recommend:

- ***a commitment to a reduction in the corporate tax rate, perhaps to 25%, and***
- ***a narrowing of the corporate tax base by addressing the three issues raised above, with the introduction of a loss carry-back regime being an urgent priority.***

1.3 Capital allowance deductions

There is an inconsistency in the capital allowance deduction regime, depending upon whether the taxpayer is in receipt of income derived from an asset (but not carrying on a business), is a 'small business entity' or is another business entity.

Under the previous tax regime, taxpayers were typically allowed an immediate deduction for assets that cost \$300 or less, where the asset was used to produce assessable income. As a consequence of the enactment of the *New Business Tax System (Miscellaneous) Act No. 1 2000* the immediate deduction for items costing \$300 or less was removed, with an exception for assets used to produce non-business assessable income.

Taxpayers operating under the small business entity regime may access an immediate deduction for those assets that cost less than \$1,000. Other business taxpayers are limited to an immediate write-off of only \$100, a concessional threshold granted by the Commissioner of Taxation in PS LA 2003/8.

The \$100 concessional amount referred to in PS LA 2003/8 includes GST bringing the real value down to \$90.91. This threshold does not reflect commercial reality as it would be common for significantly greater amounts to be expended on items which did not meet the standards required to be considered an asset for accounting purposes. Small items of office equipment would be a common example.

Taxpayers Australia recommend that legislation be adopted to allow all business taxpayers an immediate deduction for expenditure incurred on 'small' assets up to a value of \$1,000.

1.4 Capital works deduction

Where traveller accommodation or other 'qualifying' buildings commenced construction after 26 February 1992, (such as commercial or residential premises which have been used for income producing purposes and for which a claim has been made under Division 43 ITAA97), the taxpayer selling the building or leasing such a building must inform the purchaser of the amount of qualifying expenditure and the tax deductible balance remaining, to enable the acquirer to ascertain the deduction that may be available to them. This notice must be given to the transferee within six months after the end of the year of income in which the disposal occurred. The transferee must retain the notice for five years after the earlier of either the transferee ceasing to be the owner of the building, or the building is destroyed.

However, even though s262A (4AF) of the ITAA36 requires the transferor to supply such a notice, there is no penalty prescribed for failing to do so. It appears that if the transferor fails to supply the required notice, the only avenue available to the transferee is to obtain a valuation of the construction costs by an appropriately qualified person (such as a quantity surveyor). This can be an expensive exercise for the taxpayer and might subsequently result in disputation with the Tax Office.

The relevant historical data is available to the Tax Office from the records of the vendor.

Taxpayers Australia recommend that:

- *penalties be imposed on a vendor who fails to provide the necessary information in respect of construction expenditure and the unrecouped balance thereof, or*
- *the Commissioner be obliged by statute to provide such information to the taxpayer entitled to claim deductions in respect of the capital works.*

1.5 Losses and death

It is accepted practice that revenue and capital losses lapse on the death of an individual taxpayer, whereas losses arising in a company or trust may be carried forward to offset against future income provided the applicable loss recoupment rules are satisfied.

Consideration should be given to a deceased estate having access to losses unrecouped at the date of death, pursuant to a discrete loss recoupment regime.

There is precedent for tax concessions which would have been available to a taxpayer at the date of death to transfer to the deceased estate and/or beneficiaries of the estate. Specifically, this is provided for in the small business CGT concessions which enable any concession which would have been available to the deceased to be accessed by the estate and/or beneficiaries for up to two years. It would seem equitable for such an approach to apply to tax losses.

Taxpayers Australia recommends that legislation be developed to enable tax losses of an individual taxpayer unrecouped at the date of death to be available to the estate and/or beneficiaries.

1.6 Prepayment rules

The current prepayment rules (except for small business entities and taxpayers who incur non-business expenditure) require taxpayers to apportion those expenses that span more than one financial year for the purposes of determining when deductions are available.

For example, annual insurance of \$5,000 due and payable on 15 January 2008 must be apportioned as $\$5,000 \times 199/365$ (year ending 30 June 2008) and $\$5,000 \times 166/365$ (2009 year).

There are very few exceptions to this rule and therefore a significant compliance burden is placed on taxpayers to apply the rule to many items of expenditure.

A compelling case can be made to abandon the prepayment rule where the period of prepayment does not exceed 13 months; alternatively a de minimus rule might be adopted, eg. the rule only applies to items of expenditure in excess of, say, \$10,000.

Taxpayers Australia recommend that the prepayment rule be abandoned in respect of expenditures which do not apply to a period beyond 13 months.

2. Tax thresholds and offsets

2.1 Luxury car threshold

The current luxury car threshold bears no resemblance to commercial reality and arguably acts as a disincentive to elements of the car industry at a time when that industry is in need of significant support (something acknowledged by the Government).

The current threshold of \$57,180 results in the luxury car tax and capital allowance deduction limits applying to a range of vehicles which might be commonly used by small to medium businesses and by families.

The Government has adopted an amount of \$75,000 for the purposes of its 'Fuel efficient car limit' when determining exemption from the luxury car tax.

Taxpayers Australia recommend an increase in the current threshold at which luxury car tax is payable to a minimum of \$75,000.

3. Fringe Benefits Tax (FBT)

Taxpayers Australia is of the view that the FBT regime is in urgent need of comprehensive review.

The 'Future Tax System' review currently being conducted will no doubt address the question of whether FBT should be levied upon employers or whether the tax cost should be borne by the employee receiving the benefit.

This debate has occurred periodically since the recommendations of the 'Review of Business Taxation' were tabled in July 1999. It is fundamental and hopefully resolution will be achieved when the current tax review is completed.

In the interim, we believe there are certain aspects of the FBT law which require amendment as outlined below.

3.1 FBT and childcare

An FBT exemption currently exists for childcare provided by an employer on their business premises. The requirement that the care be carried out on the employer's premises unfairly advantages larger employers as they are better placed to provide the facilities and bear the additional costs.

In the interests of equity and to assist smaller businesses to attract and retain staff, the exemption should be extended to the provision of childcare on premises other than the employer's business premises.

Taxpayers Australia recommends changing the FBT treatment of childcare by removing the requirement that the childcare be provided on the employer's business premises and extending the FBT exemption to cover reimbursements of employee expenditure for childcare.

3.2 FBT and the long service leave exemption

Currently an exemption applies to long service leave awards granted for service of 15 years or more provided the award does not exceed the statutory limit of \$1,000 plus \$100 for each additional year of service.

The FBT legislation denies the exemption where the award exceeds the statutory limits. For example, if a long service leave award of \$1,005 is provided to an employee at 15 years, the exemption does not apply and FBT is levied on the full \$1,005.

Taxpayers Australia recommends that where the award is in excess of the \$1,000 threshold the exemption be applied to the first \$1,000.

4. Goods and Services Tax (GST)

Since its introduction the GST legislation has in many respects been complex and difficult to interpret, which has caused considerable difficulties for taxpayers, their advisers and the Tax Office.

There have been many instances where the Tax Office have issued lengthy rulings in order to provide guidance where the relevant legislation is unclear or deficient; an example being GSTR 2005/6, which deals predominantly with services supplied to recipients outside Australia.

In this regard, the review presently being carried out by the Board of Taxation ('Review of the Legal Framework for the Administration of the Goods and Services Tax') is welcome.

Taxpayers Australia believe there are many aspects of the GST law which require urgent attention. Some of our concerns will no doubt fall within the parameters of the Board's review, however, the terms of the review are only to 'identify ways to reduce compliance costs, streamline and improve the operation of the GST and remove any anomalies'. We have therefore set out below our major concerns, notwithstanding that some may ultimately be the subject of recommendations from the Board upon completion of their review:

4.1 Certainty for taxpayers – reliance on rulings

For a taxpayer to obtain the protection of a GST ruling it is necessary that, broadly, a ruling which applied to the taxpayer is altered by the Commissioner, which results in an underpayment of GST due to the taxpayer relying on the original ruling.

This raises questions such as, what constitutes an 'alteration' to a ruling and whether it is necessary for the taxpayer to demonstrate that they actively 'relied' on a particular ruling (which would seem to be the case). This is quite different to the position in relation to income tax. Division 357 of Schedule 1 to the TAA 1953 provides that 'a ruling binds the Commissioner if it applies to you and you act in accordance with it'. There would seem to be no logic supporting the different approaches adopted by the respective laws.

Taxpayers Australia recommend that the law should be amended to ensure that GST rulings bind the Commissioner in the same manner as do income tax rulings dealt with in terms of Division 357 of Schedule 1 to the TAA 1953.

4.2 Residential Premises

When considering whether a supply of residential premises has occurred, there is a difference between the clear words contained in the relevant provisions (s40-65) and the Tax Office approach (GSTR 2000/20). Section 40-65 of the ITAA 97 states that:

'A sale of real property is input taxed, but only to the extent that the property is

residential premises to be used predominantly for residential accommodation.'

In *Toyama Pty Ltd v Landmark Building Developments Pty Ltd* (2006 ATC 4160), the New South Wales Supreme Court interpreted s40-65 on the basis that it is necessary to consider the intended use of the property ('to be used...') by the purchaser in order to determine whether a supply of residential premises would occur. This approach would seem to correctly interpret the statute.

In GSTR 2000/20 the Tax Office maintains that it is the physical characteristics of the premises i.e. capable of providing residential accommodation, which will determine whether the premises are 'residential'.

Following the decision in the Toyama case referred to above, the Tax Office indicated that they would continue to apply GSTR 2000/20, notwithstanding the views expressed by the Supreme Court.

The Tax Office approach might be considered practical in that it removes the need to consider the intentions of the purchaser in relation to the premises in order to determine whether an input taxed supply has occurred. However, it appears to be clearly contrary to the law.

Taxpayers Australia recommend that if the approach adopted in GSTR 2000/20 reflects the Governments intention in relation to this aspect of the law, then appropriate legislative changes should occur without delay.

4.3 'Export' of things other than goods and real property

Section 38-190 of the GSTA identifies those things, principally services for consumption outside Australia, which constitute GST-free supplies.

This legislation is extremely difficult to interpret, and has necessitated the issuing of lengthy rulings, for example GSTR 2005/6 (104 pages) and GSTR 2007/2 (98 pages), to provide taxpayers with some guidance as to how the Tax Office will apply the provisions.

Compliance for resident taxpayers supplying services to non-residents and non-residents supplying services to resident taxpayers is unfairly difficult and potentially costly in view of the fact that expert advice is often required in order to interpret the legislation.

Taxpayers Australia recommend that the law should be redrafted in a manner designed to ensure that the supply of services to and from non-residents which have no tax-presence in Australia are GST-free.

5 Superannuation and Retirement

5.1. Contributions

5.1.1 Personal concessional contribution should be easier

The Government should not distinguish between employer and personal concessional contributions and therefore should abolish the 10% rule for the substantially self-employed.

Thus, anyone who is eligible should be able to make concessional contributions to superannuation within the current single concessional cap of \$50,000 (or \$100,000 transitional). Their SG contribution plus salary sacrifice to super plus personal concessional contribution to super must not exceed the concessional contribution cap to avoid additional tax.

The current arrangements of having to meet the 10% rule for eligibility are not 'saver friendly'.

Allowing deductibility for personal contributions would benefit those employees whose employers limit or do not provide for salary sacrifice contributions and who are at a disadvantage compared with employees who do have access to salary sacrifice arrangements.

Abolishing the 10% rule will simplify the superannuation system and result in all superannuants being treated equally with respect to access to concessional contributions.

5.1.2 Super Contribution ineligibility if 65 or over and not working

The work test that determines eligibility of members to contribute often places unnecessary constraints on non-working members after they have reached 65. This is arbitrary and in much the same way as a work test for eligibility to contribute was abolished a couple of years ago, consideration should be given to eliminating this restriction or at least phasing it out.

5.1.3 Salary sacrifice

Provide all salary recipients the right to salary sacrifice to superannuation as a normal part of remuneration with adequate safeguards for employees' salary and benefits. This should be a universal right not an arbitrary one provided at the discretion of the employer.

5.1.4 Excluding foreign fund transfers from contribution caps

Transfers from overseas superannuation funds fall within the definition of contributions for taxation and superannuation purposes, and are therefore subject to the contribution

caps established under the new Better Super regime.

Applying these caps may make it onerous, if not impossible, for individuals to transfer their retirement savings into Australia, as there will be situations where overseas superannuation funds will not permit partial transfers of benefits.

Taxpayers Australia recommend that such transfers be exempted from the non-concessional contributions cap and any amount elected to be treated as applicable fund earnings should be exempted from the applicable concessional contributions cap.

5.2 Pension commutations

5.2.1 Permit the rollover of existing complying pensions (defined benefit and market linked) to account based pensions

Members who had commenced these pensions in order to meet the Reasonable Benefit Limit rules for rebatable pensions are prevented from using the new account based pension standard and this is a bone of contention for these members.

The previous Government claimed that the funds industry would face problems if this was permitted but this argument is not sustainable. In any event this is certainly not the case for SMSFs.

Taxpayers Australia recommend that the existing restriction on rolling over non-commutable income streams into account based pensions should be lifted or at least a window of opportunity provided for this to occur for those who want to pursue such a course.

5.3 Savings

5.3.1 Assistance for low super account members

A current major problem with Better Super is that many pre-retirees, not to mention current retirees, face a major shortfall with their super account balances.

Better Super encourages those with the capacity to do so to contribute. This is highly desirable. However, it does not address the problem of significant numbers who do not have adequate savings. The next level down in the socio-economic scale needs assistance.

The means tested co-contribution provides 150% of the member's after tax contribution and this percentage should be increased through improved targeting of low income contributors with the aim of growing their savings levels.

A further adjustment to the current scheme should include the raising of the current lower income threshold to at least \$40,000. This would result in a greater number of full co-contribution entitlements being generated for lower income contributors.

The age limit should also be increased to align with the current 75 age limit for contributions.

A means tested arrangement might also be introduced to allow for a more substantial co-contribution for those with low savings in superannuation.

The equitable inclusion of the self-employed into the co-contribution scheme from 1 July 2007 should be again extended to include unpaid individuals such as parents raising a family, carers, students and the unemployed.

Low income taxpayers who make a salary sacrifice to super in addition to their current 9% SG level should be rewarded through:

- co-contribution payments; and
- potentially lower or nil contribution tax.

One of the major factors limiting take up of the co-contribution is the poor savings capacity of members who are most in need. A targeted approach aimed at low income and/or low account balance members might result in a greater effectiveness of the government's co-contribution largesse.

Finally, in the interests of increasing retirement savings for low super account members, contribution taxes should be exempt for this group on concessional contribution amounts that exceed the SG level- up to the contribution cap. (Consolidation of the individual's superannuation will be necessary and a tax incentive may speed up the process! Income test may be necessary.)

6. Taxation & franking credit refunds

6.1 Franking credit refunds

Ensure the retention of the franking credit regime particularly for retirement savings and retirement income purposes. Many retirees and retirement savers are heavily dependent on imputation credits. Retirement savings is a very long term endeavour and changes made by the stroke of the pen can have deleterious effects on retirement savings and retirement income strategies particularly if they resulted in the abolition of imputation credits.