

Have Your Say

Formal submission by Melvyn M Posner FCA

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My submission is divided into three parts:

- **SPECIFIC SECTOR-BASED ISSUE- INSOLVENCY**
- **BROAD ISSUES**
- **TAX DEDUCTIONS- BUSINESS**
- **TAX DEDUCTIONS INDIVIDUALS**

SPECIFIC SECTOR-BASED ISSUE- INSOLVENCY

I was an official liquidator and trustee in bankruptcy with an insolvency practice in. My practice was exclusively small businesses and personal insolvency. I have more than 30 years insolvency experience.

I am no longer in practice and now live in Sydney.

I noted that when companies failed there was nearly always a significant amount owing to the ATO for PAYG deducted from employee wages and salaries which had not been remitted to the ATO and superannuation which had not been paid. GST could also be a significant liability. Often there were no or little assets and these amounts were never paid

The business was using the employees' entitlements and monies collected on behalf of the ATO as a source of working capital. And when the business was placed in liquidation or administration there were no funds for creditors and the liabilities were unpaid.

The ATO issues a notice (221p I think) to the directors indicating that if they do not pay the outstanding PAYE deduction they will become personally liable unless they appoint a liquidator or the company is placed in administration or liquidation.

Why are companies given credit for superannuation and PAYG? The Law should provide they are trust funds and there is no reason the company should not pay immediately. They should not be holding on to these monies to fund the company's cash flow.

With EFT it would just be a couple of extra clicks when they do the payroll to transfer by EFT the amounts deducted for PAYG and the Superannuation contributions. If the company could not do this it means that do not have the funds to meet their payroll obligations and should not be trading. Simple as that! The law should be changed so PAYG deductions and superannuation should be paid at the same time as the payroll is paid.

Similar consideration should be given to GST. Why should businesses have the use of funds collected on behalf of the government?

I appreciate that if such changes were brought in in one hit it would have an adverse on a number of businesses that use the delay in payment to fund their cash. Flow. However, consideration should be given to introducing the changes progressively and at a date in the future to give businesses time to adjust.

In reality if they do not have sufficient recourses to pay these monies when they are due and cannot borrow from a bank they are insolvent and should not be trading. The ATO and employees (in respect of superannuation entitlements) should not be in the business of funding business that is the role of the banks.

I also believe when an administrator/liquidator is appointed and there is unpaid PAYG and superannuation and there are assets, funds should be set aside and not used up to pay the administrator. I expect the law would have to provide that they are trust funds to enable this to happen. It seems crazy that the government pays out on GEERS when there funds to pay these liabilities but they have been used up by the administrator or liquidator. In fact this means that the government is paying the liquidator/administrator's fees.

BROAD ISSUES

Consideration of changes to the tax system cannot just tinker but all issues must be considered and must include:

- Superannuation
- Capital gains tax
- Negative gearing
- Treatment of taxpayers residence
- Business deductions
- Abolish franking credits.

I have not commented specifically on the reasons these issues are important as am sure others more skilled then me have submitted their comments. However, I make the following comments, which may be different to the points generally raised.

Unfortunately the tax review process can become political and issues are not dealt with because of powerful lobby groups.

One example negative gearing and capital gains tax. These issues affect a large proportion of taxpayers, including MP's and the lobbyists, particularly the more wealthy that do not want to see changes.

Normal voting procedures or business practice one would expect a person to declare if they have a conflict of interest. How can an MP who owns negative geared property or properties or would be impacted by a change in capital gains tax or superannuation rules vote in favour for what my be best for the country when it would hit him or her and their family financially.

TAX DEDUCTIONS- BUSINESS

We have a system, which encourages taxpayers and accountants to come up with as many expenses as possible to deduct from their income to reduce their taxable income.

For example two professionals say a doctor or accountant may have the same gross fees but very different taxable income.

Professional A runs his practice modestly and ends up with a much higher taxable income than professional B.

Professional B he/she has their spouse, lover or child or all of them on the parole performing some sort of assistance to the business. They even have a car provided. The possibilities go on and on. And of course there may monies borrowed for share trading or a property or properties negatively geared. The possibilities are endless. They keep accountants very busy dreaming up new ideas to help their client pay little or no tax.

I do not have a solution but there needs to be a mechanism to ensure that deductions are reasonable and the a realistic amount of tax is paid on the revenue earned.

TAX DEDUCTIONS INDIVIDUALS

We need to work towards changing the system so that the “average” taxpayer does not need to lodge a tax return. Some possibilities:

- Put a stop to many of the deductions claimed for work related expenses. If it is “work related” then the employer should be paying the expense and it and claim the deduction or perhaps treat the payment as a salary sacrifice.
- If Australia had the UK system whereby different sources of income was assessed under different schedules there would be a number of benefits. Income from employment would be assessed under a different schedule to income or losses relating to property
Under this system income from a business or employment would be assessed under different schedules and a loss incurred under one could be carried forward but not applied to reduce income from employment.

These changes would also result in most taxpayers who are employees not being required to lodge an income tax return in relation to their employment income.

Of course employees who had income other than from their employment would lodge a return for their business income, which would be assessed under a different schedule lodging income tax return.

The above changes would eliminate the need for a large proportion of taxpayers whose only income relates to their employment to lodge an Income return.

Any income from interest I understand is tracked by the ATO automatically and can be assessed