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Re:think – Tax Discussion Paper Submission

25 JUNE 2015

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25 June 2015

Mr Roger Brake
General Manager
Tax White Paper Task Force
The Treasury
Langton Crescent
PARKES ACT 2600

By email: bettertax@treasury.gov.au

Dear Roger,

Re:think - Tax Discussion Paper

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the *Re:think – Tax Discussion Paper* (**Discussion Paper**).

The Tax Institute has long argued for a simpler, fairer and more efficient tax system and has for some time called for a mature debate on holistic tax reform. The Discussion Paper provides a platform for a broad-ranging debate about the future of our tax system.

The Tax Institute is Australia's leading professional association in tax and as such is well positioned to provide sound insight to the tax reform debate in Australia. Our submission focuses on the main areas we consider are a priority for reform.

I look forward to discussing our submission with you. Please do not hesitate to contact us on 02 8223 0011 in the first instance.

Yours sincerely

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Executive Summary

Below is a summary of areas we believe the Government should focus on as a priority to form part of the package of tax policy reform proposals in the Tax Reform White Paper. As such:

Broad policy objective

The Government should adopt a policy of shifting away from being dependent on income tax for the bulk of revenue collections towards more simple and efficient consumption taxes.

In light of this, the Government should undertake a comprehensive review of the current exemptions and special rules in the current GST law to determine their ongoing necessity/appropriateness and to ensure that the simplicity and efficiency that is sacrificed by the presence of these exceptions is still justified.

Individual taxation issues

- A transparent marginal tax rate system should apply to individual taxpayers.
- In the short term, a standard deduction for work-related expenses should be introduced together with the option to claim actual expenses properly substantiated for employees with expenses above the standard deduction threshold. This would make it much simpler for employees to comply with their individual tax obligations.
- Any change to negative gearing should be assessed against complexity likely to be created and should only be made after being thoroughly considered.

Fringe benefits tax

The Tax Institute recommends the Government address the inequity in the FBT system caused by the application of tax at a rate equivalent to the highest marginal tax rate and the significant administration costs in the current system.

Superannuation

The Tax Institute recommends that changes to the taxation of superannuation should be made only with bi-partisan support.

General business tax issues

- The Tax Institute recommends the Government maintain a single-tier system for the corporate tax rate and reduce the corporate tax rate for all corporate tax entities.
- The dividend imputation system encourages the payment of corporate tax and preserves integrity in the system. Any change to the dividend imputation system should not be at the expense of these benefits.
- A more simple set of loss rules for companies and trusts should be implemented.

Small business tax issues

The Tax Institute recommends Division 6 of the *Income Tax Assessment Act 1936* (Cth) and the small business CGT concessions be reviewed and simplified.

Not-for-profit sector tax issues

The Government should address the significant regulatory burden for entities in the not-for-profit sector due to a lack of harmonisation between State/Territory and Federal administrative requirements and review the policy settings for the provision of tax concessions for not-for-profits.

Goods and services tax

See the *Broad Policy Objective* above.

State taxes

The Tax Institute recommends that uniformity in State and Territory legislation should be pursued as well as simplification of the administrative burden from complying with these taxes by introducing a centralised collection agency.

Complexity, administration and tax system governance

- The Tax Institute recommends that complexity in the Australian tax system be reduced by implementation of improved processes around policy development and law design, including the development of an agreed procedure for tax law consultation.
- The Tax Institute encourages the Government to seek opportunities to develop and adopt new technologies for use in improving administration.
- The Tax Institute recommends the re-write of the *Income Tax Assessment Act 1936* (Cth) be completed.

Overview

The right tax system for Australia's future will stimulate productivity and economic growth. To achieve this, complexity and impediments to growth need to be removed and a simpler, fairer and more efficient tax system needs to be designed. The current tax system is very complex with a variety of taxes applying to a range of different bases. Fixing one part only will not of itself give rise to the amount of reform required for real, structural change. As such, a package of reforms is required.

We urge the Government to take a thoroughly considered approach to tax reform through the Tax Reform White Paper process to determine what should be the appropriate tax mix for Australia to provide a sustainable source of revenue to meet Government spending requirements. In so doing, we urge the Government to consider adopting a policy of shifting Australia's dependence on income tax for the bulk of revenue collections towards more simple and efficient consumption taxes (such as the GST). Such a shift will ease the heavy dependence Australia's current tax system has on individual and corporate income tax, will create a simpler tax system to implement and regulate, and will provide the Government with more sustainable revenue collections.

The Tax Institute endorses the Government's pursuit of designing a tax system with 'lower, simpler and fairer' taxes. We endorse both simplicity and fairness as objectives, though in practice a variety of ideas about 'fairness' exist, not all of which are easy to reconcile with simplicity. The Tax Institute also supports in principle the aspiration for 'lower' taxes.

Inevitably though, views on how low or high the total tax burden should be depend largely on views on how much money governments should spend. The Discussion Paper does not address Government spending at all, so The Tax Institute does not comment in this submission on how much money is desirable for governments to take out of private ownership to fund Government spending. However, if all levels of government are to continue to spend at anywhere near the levels to which we have become accustomed, the tax system will have to deliver a large, reliable and sustainable flow of revenue for the foreseeable future.

In this context, our submission seeks to identify ways in which the system can be improved as a vehicle for raising revenue in a simpler, fairer way while recognising that achieving equity in the tax system can at times be at odds with the goal of simplicity. It also seeks to address the deadweight costs of compliance and enforcement, and distortions and disincentives in the system, all of which are inherently detrimental to our system. Less tax distortions mean higher productivity to fund higher living standards involving more private consumption of goods and services.

Individual taxation issues

- A transparent marginal tax rate system should apply to individual taxpayers.
- In the short term, a standard deduction for work-related expenses should be introduced together with the option to claim actual expenses properly substantiated for employees with expenses above the standard deduction threshold. This would make it much simpler for employees to comply with their individual tax obligations.
- Any change to negative gearing should be assessed against complexity likely to be created and should only be made after being thoroughly considered.

1. Overview

There are a variety of issues which affect the taxation of individuals. The long-term objective for reforming the taxation of individuals should be to remove the need for as many individuals as possible to lodge a tax return. Ideally, this would be achieved by ensuring a final withholding tax on salary and wages and investment income applies, modifying the current regime for deductions for work expenses together with a compensating adjustment to the applicable marginal rates and a separate regime to recognise donations made to deductible gift recipients.

We discuss some of the more important issues below.

2. Marginal rate taxation

The taxable income of individuals is taxed at progressive marginal rates including a tax-free threshold. However, the rate of tax an individual may pay at a certain level of income is impacted by a variety of levies and tax offsets that may apply. That is, the headline marginal rate that may apply can differ greatly to the effective rate of tax ultimately paid by the individual.

For example, the Medicare levy of 2% is added to an individual's applicable rate of tax and an additional 1 – 1.5% may be added depending on whether the individual must also pay the Medicare levy surcharge[1]. For high income earners earning over $180,000, a temporary Budget repair levy of 2% also applies.

Similarly, low income earners may be entitled to a low income tax offset and may also be relieved from paying the Medicare levy. Marginal rates are also impacted by HELP repayments and the withdrawal of social security at particular levels of income.

[1] Because they do not have sufficient private patient hospital insurance.

Levies and tax offsets affecting the marginal rate of tax that applies to an individual make it difficult for an individual to clearly identify which tax bracket they fall into and therefore what tax rate they face and as such should be consolidated into the headline marginal rates.

In addition, the impact of bracket creep is to push individual taxpayers up to higher effective tax rates, in turn reducing their purchasing power and the incentive to work to achieve higher levels of income.

The Tax Institute supports the application of a transparent marginal tax rate system to individual taxpayers. As such, we recommend the Government review the factors that contribute to making the marginal tax rate system non-transparent, for example the Medicare levy and surcharge, and suggest they could be addressed by changes to the marginal tax rate system.

Ideally, those separate factors would be abolished, with the relevant policy objectives (if still valid) being achieved by altering marginal rates. To the extent this cannot be done, the complexity ought to be reduced as much as possible.

This may include, for example, introducing a new lower income tier above the tax-free threshold at which neither the Medicare levy needs to be paid nor is a low income tax offset required to be provided. Rather, the income level and applicable rate of tax at each income bracket could already take these factors into account. These changes will lead to increased transparency and simplicity with regard to the taxation of individuals.

3. Standard deduction for employees

A myriad of work-related expenses are available to employees to deduct against their assessable income derived from their employment to the extent that they are able to navigate the rules to determine the expenses they are eligible to claim.

The regime for the availability of deductions adds complexity to the taxation of individuals (and to the tax law) and also imposes additional compliance costs on individuals wanting to claim expenses in that they have to comply with strict substantiation rules, particularly where there is a private component to the relevant expense. Determining the extent to which, if at all, certain expenses satisfy the nexus test with income adds to complexity.

Examples of common work-related expenses claimed that have some complexity associated with them include home office expenses, telephone and internet usage expenses and motor vehicle expenses. These expenses are generally associated with the use of private assets for income-producing purposes.

The Australian Taxation Office (**ATO**) has issued a raft of guidance on work-related expense deductions generally and for employees in specific industries to assist them to understand what they may be entitled to claim. The fact the ATO has to issue such guidance is evidence that the rules around deductibility of work-related expenses can be complex and are not easy to navigate by individual taxpayers without assistance.

Comparable jurisdictions

Certain comparable international jurisdictions operate more simple systems for individuals with simple tax affairs. We refer to the table in the *Australia's Future Tax System – Report to the Treasurer* (**Henry Review**) released in December 2009 for a summary of this comparison[2].

For example, the UK operates a relatively simple self-assessment system where, broadly, tax is deducted from wages, pensions and savings[3] at source similar in nature to a 'final withholding' tax. Only individuals who derive other types of income, such as untaxed income or taxable capital gains, or who fall into certain categories of taxpayer, are required to lodge a tax return, meaning that a significant body of taxpayers are relieved from the requirement to lodge[4]. Employment-related expenses may be claimed in limited circumstances dependent on whether the taxpayer's claim is for more or less than £2,500[5].

New Zealand does not require individuals whose earnings are limited to salary, wages, dividends and interest income to lodge a tax return[6]. No deduction is allowed for work-related expenses incurred by employees. Other countries either provide very limited or narrow circumstances where work-related expenses can be claimed while others, like New Zealand, do not permit them at all.

Both the UK and New Zealand systems offer forms of simple regimes for individuals. Australia could draw on elements of these countries' systems to model its own system for individuals.

Standard deduction

The Henry Review found that the scope of work-related expenses in Australia is broad by comparison to other countries and consequently recommended the introduction of a standard deduction to cover the cost of work-related expenses (and the cost of managing personal tax affairs) with taxpayers afforded the choice to take the standard deduction or claim actual expenses where the claims exceed the standard deduction with full substantiation[7].

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[2] See the table entitled *Box A1-2: International comparison of deductions for WREs* in Part 2 Vol 1 at p54.
[3] https://www.gov.uk/self-assessment-tax-returns/overview
[4] https://www.gov.uk/self-assessment-tax-returns/who-must-send-a-tax-return
[5] https://www.gov.uk/tax-relief-for-employees/how-to-claim; for claims under this amount, if you do not otherwise fill in a self-assessment tax return, a taxpayer may be able to make the claim by telephone or there is a simple 'P87' online form to claim tax relief; otherwise claims are made through the (relatively simple) self-assessment tax return form.
[6] http://www.ird.govt.nz/income-tax-individual/end-year/ir3/
[7] Refer to p56 and Recommendation 11 on p57 in Part 2 Vol 1.

The Tax Institute supports Recommendation 11 of the Henry Review and recommends that, as a first step towards simplification, the Government should consider introducing a standard deduction for work-related expenses, while retaining the ability to claim actual expenses with full substantiation above a nominated threshold. A change in this area will be significant for individual taxpayers and is a step in the direction towards alleviating the compliance burden for many individual taxpayers. This would also help simplify tax matters for many individuals.

To assist with administration, the standard deduction could be factored into the 'Tax Tables' the ATO issues that employers use to determine how much tax to withhold from salary and wages via the Pay As You Go Withholding system. Automatically factoring in the standard deduction to amounts of tax withheld from employees would help to alleviate the compliance burden for individuals.

An alternative - no deduction for work-related expenses

Making a variety of deductions available to employees retains complexity in the law itself. In addition, as recognised in the Discussion Paper[8], the availability of a standard deduction could mean that even employees who do not incur any work-related expenses may still claim this deduction, reducing their taxable income where they may not have otherwise been eligible and accordingly giving rise to a cost to the revenue.

Both of these issues could be addressed by removing deductions for work-related expenses altogether from the system (similar to New Zealand) and making a suitable adjustment to marginal tax rates to reflect this. While The Tax Institute does not recommend Australia move to such a system in the short term, it may warrant further consideration for reform in the longer term.

View

The Tax Institute's view is that, in the short term, the introduction of a standard deduction[9] would make it much simpler for employees to comply with their individual tax obligations. Employees with expenses above the standard deduction threshold should also be provided with the option to claim their actual expenses properly substantiated should they wish. This is in line with the current trend towards simplifying compliance for individual taxpayers with initiatives such as the introduction of pre-filling and more recently 'MyTax'.

4. Negative Gearing

Negative gearing arises when a taxpayer has borrowed money to acquire an asset and the costs associated with holding that asset exceed the income derived from the asset. This issue is raised in the Discussion Paper in the context of 'investment properties[10]'.

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[8] See p55 at Box 3.5
[9] As suggested in the Discussion Paper at p55
[10] See p63

However, it can arise where the costs of gearing and holding any type of asset exceed income derived from the asset.

As a result of excess costs arising from these investments being deductible for income tax purposes, taxpayers are able to shelter income from sources other than their investments, such as employment income. This is perceived to give rise to a distortion in the tax system in favour of individuals. This perception is exacerbated in the instance where the individual is also entitled to claim the 50% CGT discount upon disposal if the investment qualifies as a capital asset for income tax purposes. However, as the Discussion Paper points out, the perceived tax advantage comes from the availability of the 50% CGT discount and not as a result of gearing[11].

From a tax system perspective, allowing investors to claim deductions for interest expenses (and other costs) associated with making and holding investments in capital assets ensures consistent treatment between debt and equity financing in the tax system[12].

However, in addition to claiming deductions, eligible individual investors disposing of capital assets are also entitled to a 50% reduction in the taxable capital gain contributing to an overall reduction in the tax cost of investing in capital assets.

Hence, the real issue arises from the ability of eligible investors to claim <u>both</u> a discount on a capital gain realised on the sale of a capital asset in addition to deductions[13] for the costs incurred in holding a geared asset sheltering income from sources other than the holding of the asset.

Addressing the perceived distortion

The perceived distortion could be addressed in a number of alternative ways that we suggest Treasury could explore, including:

a) Quarantining losses on revenue account from the investment such that they are deductible only against income from the investment – this option creates complexity and would require extensive record-keeping and hence is at odds with the goal of achieving simplicity in the tax system;

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[11] P66 Box 4.2 of the Discussion Paper

[12] See p66 Box 4.2 of the Discussion Paper

[13] In theory, such gearing deductions are allowable in full on the basis that total income from the investment (not including discounted capital gains on sale proceeds) over the long term will exceed or at least equal total deductions from the investment. If gearing deductions are being claimed in full in other circumstances, then there is problem with enforcement of the existing law which could usefully be addressed in conjunction with any proposal to alter the law. In considering alterations to the law, attention should be given to whether the alterations ought to apply equally to those whose investments do become tax positive overall (disregarding discounted capital gains on sale proceeds) as to those whose investments never become tax positive.

b) Pro-rating losses on revenue account against income and any capital gain derived from the investment asset - this option creates complexity and would require extensive record-keeping and hence is at odds with the goal of achieving simplicity in the tax system;

c) Treating capital assets against which interest deductions are claimed as on revenue account – this option would result in the re-characterisation of the asset as a revenue asset with the full gain derived on disposal of the asset being taxable.

Recognising that many classes of assets may be negatively geared, further complexity will be introduced into the system if changes are only made in relation to negatively geared investment properties and not for other investment assets.

Any change proposed to be made must be weighed against the level of complexity that will likely be introduced into the system from the change, particularly if only certain types of investments are targeted by the change, and against the overall backdrop of equalising the tax treatment of the returns from savings in the tax system.

Fringe benefits tax

The Tax Institute recommends the Government address the inequity in the FBT system caused by the application of tax at a rate equivalent to the highest marginal tax rate and the significant administration costs in the current system.

1. General

Fringe benefits tax (**FBT**) is a tax that was introduced into Australia's tax system thirty years ago and has not been subject to a wholesale review since. FBT was a tax system designed to capture non-cash benefits provided by employers to employees that were not, in practice, being captured adequately by the provisions that existed within the income tax system. The tax is charged at a rate equivalent to the highest marginal tax rate (including the Medicare levy and temporary Budget repair levy) and includes a grossing-up mechanism to uplift the taxable values to a tax-inclusive amount (gross or pre-tax equivalent value).

The liability for FBT lies with employers. The cost of FBT can generally only be passed on to/recouped from employees where fringe benefits form part of a salary packaging arrangement[14], or are otherwise factored into the total cost of employment. Fewer employers are permitting their employees to enter into comprehensive salary packaging of fringe benefits due to the administrative burden of managing such arrangements. Accordingly, the incidence of FBT generally remains, at least to some extent, with the employer.

FBT is a very comprehensive and highly prescriptive tax. Based on our members' experience, there is a significant amount of work required to administer a wide range of benefits where a majority of revenue comes from only a few benefits eg car fringe benefits.

There are two fundamental concerns with the operation of the current FBT system: the inequity caused by the application of tax at a rate equivalent to the highest marginal tax rate and the significant administration costs associated with the level of complexity inherent in the system. There are also a number of concessions that are made available under the FBT targeted at specific situations or specific taxpayers that may no longer be appropriate, for example exemptions for newspapers and periodicals used for work (section 58 H of the *Fringe Benefits Tax Assessment Act 1986* (Cth)) and safety awards (section 58R). We note that in the last 5 years, integrity measures have been introduced resulting in the removal of certain concessions mainly affecting salary packaging benefits. See also our comments in relation to specific FBT concessions for not-for-profit entities below.

[14] Over the past decade, the concessions that facilitated salary packaging have been steadily eliminated or reduced by Government, such as cars, living away from home allowances, in –house benefits and on-site canteen meals.

2. Inequity of the applicable FBT rate

The inequity of the FBT rate can be illustrated by comparing the total cost of paying a cash bonus to the total cost of providing an equivalent non-cash benefit such as a gift card. For example, if an employee whose marginal tax rate is 39% (including Medicare levy) is paid an after-tax cash bonus of $5,000, the cost to the employer is $8,197 (being the gross pre-tax amount to achieve an after-tax cash amount to the employee of $5,000). However, if the employee is to be provided with a $5,000 gift card, the cost to the employer is $9,434 (being $5,000 cost of the gift card plus $4,434 FBT). The difference in cost of $1,237 in this example arises because the cash bonus is taxed at the employee's actual marginal tax rate of 39%, whereas the non-cash benefit is taxed (via FBT) at the top marginal rate of 47%.

3. Administrative costs of FBT

The complexity of the FBT rules is such that very few employers would be able to prepare an FBT return accurately without the assistance of a registered tax agent. The costs to taxpayers of engaging external advisers for assistance are compounded by the amount of time that must be spent in analysing all manner of transactions that might potentially give rise to fringe benefits, in valuing the different types of fringe benefits using complex rules and in agreeing on positions to be taken on unclear areas of the law.

The ATO has consistently declined to provide clear guidance on various terms that affect whether benefits are subject to FBT, such as the term 'minor, infrequent and irregular' which is part of the definition of exempt car benefits. Accordingly, the lack of clarity leads to different taxpayers and their advisers making different subjective judgements about what falls into or outside of the FBT regime. This leads to inconsistent outcomes as some will decide on a higher threshold for inclusion in the FBT regime, whereas others will decide on a lower, more conservative, threshold.

The Tax Institute recommends the Government address the inequity in the FBT system caused by the application of tax at a rate equivalent to the highest marginal tax rate and the significant administration costs in the current system.

4. Alternative option

An alternative to addressing the issues discussed above in the current system would be to tax employees on benefits received in the income tax system. Any residual benefits unable to easily be taxed in the income tax system (for example benefits not regarded as 'remuneration benefits', such as most business based meal or recreation entertainment) could be left to the FBT system to capture. This would result in much of the tax burden shifting to employees and away from employers but would result in a more equitable outcome as the tax paid would align with the employee's marginal rate (although it may increase the administrative effort required by the employer).

Should the Government consider a more dramatic overhaul of FBT as outlined above is required, we recommend the New Zealand system be closely examined as a possible framework for Australia. Such a change could allow for some fringe benefits (though not all) to be taxed at marginal rates commensurate with an employee's marginal rate (for example 'remuneration benefits'). This would go some way to addressing the inequity in the current system of applying an equivalent of the highest marginal rate only.

We note there are less administrative hurdles to moving the taxation of benefits to employees today than there were when the system was first implemented. In particular, the 'reportable fringe benefits' system means that much if not all of the burden of re-integrating many fringe benefits back into the employee's taxable income is already occurring. There are also legislative hurdles to overcome, which may be resolved with careful drafting[15]. However, transferring collection of FBT from the employer to the employee does not necessarily resolve our fundamental concerns.

Any proposed change to FBT would not be satisfactory unless the inequity in the system was addressed and the overall administrative burden was reduced, contributing to simplification in the system. Simplification of the valuation rules, a reduction in the number of declarations required to be made and the introduction of safe harbours[16] would all positively contribute to simplifying the system and reducing the administrative burden. However, we need to be cautious of any changes made to ensure we do not return to a system where employees are responsible for self-assessing and calculating benefit values that could lead to widespread tax leakage and non-compliance, factors which necessitated the introduction of the FBT system in the first place.

[15] And for example, inclusion of appropriate valuation rules.

[16] The ATO has established a Safe Harbours Working Group to consider appropriate safe harbours for FBT.

Superannuation

The Tax Institute recommends that changes to the taxation of superannuation should be made only with bi-partisan support.

1. Overview

The Tax Institute is of the view that substantial changes to the taxation of superannuation should be made only with bi-partisan support. We acknowledge there are aspects of the system that are inefficient and complex. In a number of ways, inefficiency and complexity in the superannuation system are interrelated. Current integrity measures may not be operating optimally due to their complexity and the thresholds that have been set. The best mechanism for how to address these aspects of the superannuation tax system requires further consideration.

2. Inequities in the superannuation tax system

Taxation of superannuation is too onerous for some lower income earners and is perceived as facilitating accumulation of wealth beyond the extent necessary for higher income earners for the purposes of the system. However, these apparent inequities or inefficiencies cannot be considered in isolation of the social security system or the objectives of the superannuation system. Any changes to the taxation of superannuation need to consider the objectives of the retirement incomes policy for Australia and its interaction with the provision of social security benefits.

Any reform measures to address these apparent inequities should not be based solely on the impact on revenue. Any increase in taxation for higher income earners should be generally commensurate with an improved position for lower income earners (which will have a revenue cost) such that there is an overall improvement in the operation of the retirement incomes system – not just increased taxation revenue.

Any reform measures should be made bearing in mind that the 2007 changes to the superannuation tax system have not yet been borne out. We acknowledge that there is a group of superannuants who had the benefit of the pre-2007 regime where contributions into superannuation were unlimited, and who now have no tax impost on their benefits. Some of these superannuants have significant retirement savings in their superannuation funds paying tax-free pensions and with tax-free income on the superannuation investments supporting the pensions.

However, contribution caps were introduced following the 2007 changes and there are now limited opportunities for current taxpayers to contribute significant wealth into superannuation. Accordingly, any new superannuation tax measures should take into account the current limited opportunities for channelling significant wealth into superannuation savings and how this may bear out over the longer term.

a) System is onerous for lower income earners

There is an underlying concern that the application of the 15% concessional tax rate does not incentivise superannuation contributions and operates to penalise lower income earners, for example, those below the marginal tax-free threshold.

A taxpayer earning less than $18,200 per annum is under the tax-free threshold and any superannuation contributions paid for them are taxed at 15%. This means they pay 15% more tax on their superannuation contributions than they do on their ordinary salary and wages. These taxpayers are not incentivised by the tax system to contribute to superannuation. As such, the taxation of superannuation tax system preferences higher income earners over lower income earners.

Existing methods to compensate low income earners in this context should be evaluated and consideration should be given to whether low income earners would be likely to increase contributions into superannuation if they were given a tax incentive to do so.

Superannuation guarantee (**SG**) contributions which employers are compelled to make for a broad range of employees, including for contractors and casual employees, seek to address the lack of incentive to contribute to superannuation for low income earners. Those earning less than $5,400 per annum (assuming they receive less than $450 per month) are not incentivised or compelled, because compulsory SG contributions do not apply.

The co-contribution scheme also seeks to address the inequity that arises under the superannuation tax system, however the operation of the scheme is complex and the thresholds applying to this scheme require evaluation. Under this scheme, taxpayers earning less than $49,488 a year (for the 2014-15 income year) who make an after-tax superannuation contribution are entitled to a co-contribution from the Federal Government to their superannuation fund. Any taxpayer earning less than $34,488 (for the 2014-15 income year) is entitled to a co-contribution of $0.50 (50 cents) for every after-tax dollar the taxpayer contributes to superannuation, up to a maximum of $500 a year. So, for example, if a taxpayer makes a $1,000 non-concessional contribution and their income is less than $34,488 (for the 2014-15 income year), then their super fund account will receive a $500 tax-free contribution from the Government. Work tests and age tests apply to this scheme which impose a level of complexity for the operation of the scheme.

Low income-earning taxpayers in any given year will include long term genuine low income earners, people temporarily on low incomes who may be expected in future to be higher earners, and low income earners in high income households. The Government's policy should articulate whether it wishes to encourage all of these taxpayers, or only some, to contribute comparatively small amounts to superannuation, whether it is expected that such contributions will have a material effect on the wellbeing in retirement of such persons or cause material savings to the taxpayer funded welfare budget, and thus the policy rationale for the incentives being provided.

b) System is attractive to higher income earners

Higher income earners who may benefit up to 30% (assuming their income for superannuation guarantee surcharge purposes does not exceed $300,000) because their marginal tax rate is 45% are likely to be incentivised by the lower tax rate that applies to their superannuation. Compulsory SG contributions may not be as relevant for these taxpayers because they are otherwise incentivised to contribute to superannuation. Some higher income earners may fall into the 'self-employed' category and therefore not be subject to the compulsory system of SG contributions.

Many taxpayers in this higher income bracket are therefore incentivised to pay more into superannuation by way of 'salary sacrifice' than their compulsory SG contributions would otherwise provide. (There is no comparable tax incentive for low income earners to salary sacrifice additional superannuation contributions.)

In response, the Government introduced Division 293 of the *Income Tax Assessment Act 1997* (Cth) to give effect to the 2012-13 Federal Budget measure *Superannuation - reduction of higher tax concession for contributions of very high income earners.* Division 293 currently applies to impose an additional contributions tax of up to 15% on before-tax or concessional contributions made by or on behalf of taxpayers where their income for surcharge purposes (including the superannuation contributions) exceeds $300,000. For example, for a taxpayer who earns $335,000 (income for surcharge purposes) who contributes $35,000 of that income as a concessional contribution, they will effectively pay a 30% superannuation contributions tax.

Division 293 is a relatively complex model for attempting to address perceived inequities in the taxation of superannuation contributions, and the thresholds for its operation should be revisited.

3. Complexities in the superannuation tax system

Any proposed change to the taxation of superannuation should positively contribute to the simplification of administration. We have noted below a number of irritants in the superannuation tax system at present.

The '10% rule' (section 290-160) limits deductibility of personal contributions despite contribution caps already restricting this concession. In practice, this means some taxpayers are unable to make a deductible contribution and may have no employer contributions. As this is a 'bright line' test and applies to the completed year of income, some taxpayers discover they are ineligible after they contribute. The 10% rule costs a considerable amount to administer and requires significant documentation to be completed, neither of which add any value. Superannuation funds would be saved an unnecessary cost and impediment if this rule was repealed.

Section 290-170 (re deducting personal contributions) requires a notice be given and that the contribution is still with the receiving fund. This would be easier to administer if contributions could always be treated as either concessional or non-concessional contributions.

The taxation rules that allow a benefit to be grossed up when a member dies are usually called anti-detriment rules. In effect, the fund can recover this extra payment via a tax deduction that operates to give them a deduction that is worth that amount in tax. These rules are complex and probably apply more broadly than originally contemplated.

The taxation of death benefits is complex and in some cases imposes obligations on executors to be collectors of tax on superannuation benefits. The rate of tax and the decision as to who is in fact a beneficiary will in practice vary thereby delivering different outcomes.

For self-managed super funds (**SMSF**), the 'residency of the fund' rules are problematic once any member becomes a non-resident. An example is the 'active member' test which can mean that a fund is non-complying because a member is a non-resident[17], the member has made a contribution to the fund, and either there are no other active members or their balance is over 50% of the active members. Even if the non-resident members have a small balance relative to the assets of the SMSF, the simple acceptance of contributions, if there are no other active members, will result in the fund failing the definition of an 'Australian Superannuation Fund[18]' and it will therefore be non-complying. This outcome is inexplicable in terms of both policy and the scale of the consequences.

Taxation of funds in pension phase can depend on whether the fund is in full or partial pension phase, the method chosen to calculate the exemption, whether a loss is revenue or a capital gain, and whether a deduction is a statutory deduction or a general deduction.

The deduction for insurance provisions give funds a number of options and are therefore complex. Insurance payouts can have variable taxation outcomes based on years of service, who is receiving the payment, and the components of the benefit.

[17] For example, someone temporarily leaving Australia for a long-term but not permanent job.

[18] Section 295-95(2)

General business tax issues

- The Tax Institute recommends the Government maintain a single-tier system for the corporate tax rate and reduce the corporate tax rate for all corporate tax entities.
- The dividend imputation system encourages the payment of corporate tax and preserves integrity in the system. Any change to the dividend imputation system should not be at the expense of these benefits.
- A more simple set of loss rules for companies and trusts should be implemented.

1. General

As part of the Tax Reform White Paper process, the Government needs to consider the appropriate tax mix for Australia to provide a sustainable source of revenue to meet Government spending requirements. As a result of the current tax mix, Australia is heavily reliant on income taxes (including corporate taxes). This is out-of-step with Australia's major trading partners whose tax systems rely more heavily on broad-based consumption taxes.

Treasury recently analysed the efficiency of various taxes in its paper entitled *Understanding the Economy-Wide Efficiency and Incidence of Major Australian Taxes*[19]. The evidence in this paper supports the view that changing the tax mix to favour the more efficient taxes will promote economic activity.

In this regard, The Tax Institute is of the view that the Government should adopt a policy of shifting away from being dependent on income tax (including corporate tax) for the bulk of revenue collections towards more simple and efficient consumption taxes.

2. Corporate tax rate

The Tax Institute is of the view that a single corporate tax rate should apply to all incorporated entities regardless of size. Creation of a two-tiered system involving a lower corporate tax rate applicable to smaller corporate entities and a higher corporate tax rate for larger corporate tax entities will introduce an unnecessary level of complexity into the Australian tax system[20] (for example, in relation to franking of dividends[21]). It also would create a disincentive for business to expand and would provide an opportunity for some businesses to deliberately engage in strategies to

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[19] Treasury Working Paper, April 2015

[20] The complexity would not arise if the corporate tax rate cut was provided across the board.

[21] The 2015-16 Federal Budget measure *Growing Jobs and Small Business – tax cuts for small business* proposes to leave the franking credit rate for distribution at 30% even though qualifying small businesses will pay tax at a rate of 28.5%.

ensure they do not exceed the 'threshold[22]' that distinguishes between small and large businesses (potentially ultimately resulting in tax avoidance). Giving every corporate entity a 28.5% tax rate for a certain amount of taxable income, beyond which the higher rate would apply would resolve this issue, but may produce alternate concerns around splitting business income and so forth. In this regard, a single corporate tax rate is clearly the simplest regime.

Also, Australia should have a headline corporate tax rate that is in step with its major trading partners. The current rate of 30% does not put Australia in this position. Therefore, The Tax Institute is of the view that the corporate tax rate should be reduced.

An alternative source of revenue to compensate for the perceived loss of revenue that may result from a rate cut may need to be found. In this regard, a shift in the tax mix away from relying on corporate tax towards relying on more broad-based indirect taxes[23] should assist to compensate for the reduction in corporate tax revenue collections if the corporate tax rate is reduced. Appropriate modifications to the imputation system could provide another way to fund the reduction in the corporate tax rate.

Nevertheless, any change to the corporate tax rate needs to be considered in conjunction with any proposed changes to the dividend imputation system which are discussed below.

3. Dividend imputation system

The imputation system was introduced some thirty years ago to relieve the double taxation on franked dividends that arose from the operation of the classical system. As a result of the operation of Australia's dividend imputation system, there is incentive for Australian registered corporations to pay corporate income tax in Australia. This positively influences tax revenue collection from Australian corporate taxpayers.

Another virtue of the dividend imputation system is that it makes it much less attractive for companies to avoid tax. Any corporate tax avoided will later be recouped at the (domestic) shareholder level to the extent that profits are distributed as dividends.

Through the Tax White Paper process, the Government should give due consideration to whether the dividend imputation system should be retained, amended or replaced with an alternative to address double taxation of franked dividends.

In the event the Government determines that the imputation system should be replaced, any alternative system would have to satisfy certain benchmarks, including

[22] The strategies that could be employed depend on how the threshold delineating between large and small businesses is defined (eg turnover, asset value, taxable income etc)

[23] The objectives of the *Intergovernmental Agreement on the reform of Commonwealth-State Financial relations will also need to be taken into account.*

relieving double taxation. In this regard, The Tax Institute does not support a return to the classical system.

When the classical system was in force, the tax regime became burdened with an 'undistributed profits tax' that was effectively a penalty for corporate reinvestment in productive assets, among various other anti-avoidance rules. If the revenue mix is to be changed so as to depend on taxing dividends without the benefit of imputation credits, inevitably, revenue pressures towards some form of undistributed profits tax are likely to emerge. Even with the current imputation system, there are anti-avoidance type rules like Division 7A in place, but those rules do not provide such a distortion against business investment as did the undistributed profits tax.

Nor is the continuing practice of enacting such anti-avoidance rules evidence against the beneficial effect of imputation on the tax system. By way of example, as has been recognised in Parliament, by the Commissioner and in the Federal Court, when an anti-avoidance regime (Division 6C of the *Income Tax Assessment Act 1936* (Cth)) was introduced to negate the perceived mischief involving the use of trusts, that introduction was made despite recognition that "…the very significant changes to company tax arrangements ultimately decided on by the Government [i.e. imputation] will reduce the incentive to use trusts[24]…".

Examination of the current system

The future of the dividend imputation system was examined in some detail in the Henry Review. A range of issues were explored in detail in Sections B2-3 and B2-4 of Part 2 Volume 1 of the report. We draw out those issues below.

a) Benefits of imputation

It was noted in the Henry Review that the dividend imputation system has less impact on company financing and distribution choices when compared to the classical system[25]. It may also encourage business investment domestically by reducing the cost of capital for domestic companies.

Australian companies regularly offer the value of the franking credits to be received with frankable distributions as part of the return on investment and disclose this in their product disclosure statement (see for example Class Ruling CR 2012/101). This means they are able to return a certain amount to investors comprised of cash and franking credits, requiring them to draw less on their cash reserves, in turn reducing the cost of capital.

[24] See paragraph 44, *Elecnet (Aust) Pty Ltd (Trustee) v FC of* T 2015 ATC 20-507
[25] P192 Part 2, Vol 1

b) Integrity benefits of imputation

A dividend imputation system encourages the payment of corporate tax and the distribution of profits to shareholders. Australian registered corporations are incentivised to pay corporate income tax in Australia as a result of the operation of Australia's dividend imputation system. This positively influences tax revenue collection from Australian corporate taxpayers and therefore assists to increase revenue collection in Australia, given that corporate income tax paid is effectively a 'forward payment' of income tax payable by shareholders.

Members note experiences with publicly owned clients encouraged to pay corporate tax simply in order to be able to pay franked dividends. In one particular instance, a listed public company that was regarded by the market as an attractive investment because it paid a regular fully franked dividend was about to run short of franking credits. In order to maintain its franking account it revalued its trading stock up, so as to create assessable income and pay tax to generate franking credits.

Australian resident shareholders are subject to 'top-up' tax up to their applicable marginal tax rate[26]. In addition, where only partially franked or unfranked dividends are paid, there is a (perceived) increased tax cost at the individual level for Australian resident shareholders[27].

We recognise the positive impact the imputation system has on ensuring integrity in the corporate tax system.

c) Creation of bias

It was noted in the Henry Review that the existence of the dividend imputation system in Australia provides an incentive for companies with foreign operations and a significant proportion of Australian resident shareholders to shift foreign profits into Australia, subject them to tax and pay out franked dividends[28]. Similarly, majority domestically owned companies are discouraged from shifting profits offshore[29], hence potentially having the effect of protecting Australia's corporate tax base from erosion by shifting profits offshore.

The Henry Review also noted[30] that Australian resident shareholders would generally not receive a franking credit with dividends paid out of profits derived by an Australian company from its foreign investments as a result of these profits generally being

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[26] Non-resident shareholders are not subject to 'top-up' tax in Australia, though they may face taxation in their home jurisdiction without necessarily receiving a credit for underlying Australian tax paid by the company on a franked dividend received.

[27] For a non-resident shareholder, unfranked dividends are subject to withholding tax and in the case of residents in a treaty partner country, at treaty rates which typically apply at a rate lower than corporate tax.

[28] P195 Part 2, Vol 1

[29] Ibid

[30] P196 Part 2, Vol 1

exempt in the hands of the Australian company and no imputation credit being available for any foreign income or withholding tax paid.

In particular, it was noted:

> *From the perspective of Australian companies, the non-creditability of foreign taxes may increase the required return for offshore investment, discouraging such investments and encouraging a domestically-orientated investment focus. From the perspective of Australian shareholders, the tax benefit of franked dividends may encourage them to invest more of their savings in Australian companies that invest domestically in preference to other Australian or foreign companies or other assets (a savings portfolio bias)[31].*

Whether this perceived bias should be addressed depends on whether the Government would prefer to protect domestic investment or encourage offshore investment.

d) International experience

The Henry Review compared[32] Australia to some of its major trading partners (and other countries) to illustrate the international trend away from operating an imputation system. Apart from New Zealand, the comparator countries either operated a full exemption system or partly exempt dividends from tax at the individual shareholder level (partial inclusion system).

Opportunities for amending the dividend imputation system

There are certain aspects of the dividend imputation system that could be amended. For example, the burden of the anti-franking credit trading measures could be reduced by enacting that any taxpayer who would be subject to the top marginal tax rate if they did not derive any dividends is automatically a qualified person in respect of whatever dividends they receive directly or indirectly. Arguably any Australian resident company should also automatically be a qualified person[33].

Alternative use of revenue savings should dividend imputation system be removed

We acknowledge that in considering the future of the imputation system, it is necessary to also have regard to possible alternative uses of the revenue savings that would result from terminating the system. In this regard, we believe that the only potential viable alternative would involve deploying the revenue savings within the corporate tax system, rather than, for example, funding an across the board reduction in individual tax rates.

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[31] Ibid

[32] See Table B2-3 at p192 Part 2, Vol 1

[33] The definition of 'qualified person' should not be left to depend on legislation that has been repealed for almost a decade and have been otherwise inoperative for over 12 years, but that is a separate issue.

If the revenue savings were used to significantly reduce the corporate tax rate, this would increase the international competitiveness of our corporate tax rate and as such assist in attracting additional foreign equity capital. The revenue savings could also be applied to reduce the tax rate applicable to individuals in respect of dividend income. Though the revenue savings from the removal of dividend imputation would likely be negated through the reduction of tax rates, the resulting lower corporate tax rate would act to encourage foreign investment.

However, unless detailed economic modelling evidences that these foreign capital related benefits are likely to more than compensate for the adverse impacts of dismantling the imputation system, we believe that the system should be retained.

4. Losses

Australia has some of the world's most complicated loss integrity rules, many of which were put in place prior to tax consolidation and deal with problems that have largely been resolved by more recent developments. These rules need to be considered in many circumstances including corporate restructures and can impede potential efficiency-driven restructures. They contribute to complexity in the tax system.

It does not seem appropriate that, for example, due to a change in ownership of a large corporate group which happens to have losses, without a real change of control, that the losses are disallowed unless a same business test is met.

As such, we query the appropriateness of the 'continuity of ownership[34]' and 'same business' test rules as they currently apply given their current restrictiveness and whether the integrity concerns the rules sought to address are still at issue following recent amendments to corporate taxation (for example the introduction of consolidation). In the event the Government determines loss integrity measures are still required, we recommend a more simple set of rules be implemented in place of the current complicated tests. For example, there may be scope to simplify the same business test by providing one test to determine if the same business has been maintained rather than three (the 'same business test' in section 165-13, the 'new transactions' test in s165-210(2)(b) and the 'bad debt deductions' test s165-126).

In addition, we query the appropriateness of the complex trust loss rules, particularly as there are no concessional ownership tracing rules available for trusts nor is there an alternative 'same business' test for most trusts.

We support the concept of a 'loss carry-back' measure and that the Government should consider reintroducing a form of 'loss carry-back' measure. Such a measure will ensure that, within limitation, the tax system will impose the same overall tax liability regardless of the tax year in which a company produces its income or loss, acting as a natural regulator for both business and Government by smoothing tax collections.

[34] In particular the loss duplication rules contained in Divisions 165-CC and Div 165-CD of the *Income Tax Assessment Act 1997* (Cth)

Small business tax issues

The Tax Institute recommends Division 6 of the *Income Tax Assessment Act 1936* (Cth) and the small business CGT concessions be reviewed and simplified.

1. General

There are a range of matters stemming from the tax system that affect small businesses, such as:

- the appropriateness of current tax policy settings intended to support small businesses, and resulting regulatory requirements; and
- ensuring Australian Taxation Office (ATO) practices and procedures do not impose an undue burden on or cost for small business.

Furthermore, some benefits within the tax law are difficult for small businesses to access due to the complexity of the rules and the prohibitive cost of obtaining sophisticated tax advice to ensure the correct tax outcomes are achieved (for example tax consolidation, share buy-backs, and certain fringe benefits tax concessions). Also, as discussed below, the various capital gains tax concessions are complex and give rise to attempts to satisfy the eligibility rules resulting in disputes with the ATO.

In order to reform the taxation rules applying to small businesses, there should be a focus on:

- simplifying existing tax laws including in respect of business structures;
- streamlining definitions and access to small business concessions where possible;
- greater harmonisation between small business definitions in State/Territory and Federal tax laws; and
- providing greater resources to organisations such as the Inspector-General of Taxation that assist in identifying areas in which ATO processes and interactions with small business can be simplified.

In this regard, there needs to be balance between the concessions provided for small businesses and the complexity the availability of concessions brings.

2. Trust tax reform – Division 6 Re-write

The Tax Institute has long called for urgent reform of the rules contained in Division 6 of the *Income Tax Assessment Act 1936* (Cth) governing the taxation of trusts in order to provide certainty to the many businesses (including small to medium enterprises) across Australia that operate through trusts. Reform of these rules is essential to provide taxpayers that use trusts with certainty in relation to their income tax obligations, reduce compliance costs and prevent outcomes under current laws that are inconsistent with the Government's policy intent.

Our members have repeatedly nominated this area of law as creating the greatest compliance difficulties and being most in need of legislative clarification. An example is provided by way of the series of examples (Examples 2.26 to 2.31 at paragraph 2.169 included in the Explanatory Memorandum to *Tax Laws Amendment (2011 Measures No. 5) Act 2011*(Cth) to demonstrate the combined operation of the streaming provisions in Division 6 and Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997* (Cth). This series of examples alone demonstrates just how complex it can be to apply Division 6.

The Discussion Paper points to a variety of underlying problems in the law highlighted by recent court decisions, such as income received by trusts not retaining its character when distributed to beneficiaries and makes specific reference to *Commissioner of Taxation v Bamford* (2010) 240 CLR 481[35].

We also refer to a draft Productivity Commission report entitled *Business Set-up, Transfer and Closure* released on 21 May 2015 in which a draft recommendation has been included that:

> *The White Paper on the Reform of Australia's Tax System should consider in particular:*
> *• the taxation of trusts used primarily for business purposes*[36].

This recommendation, if finalised, should encourage the Government to address the taxation of trusts as a matter of priority.

There are many outstanding issues that relate to the taxation of trusts whose resolution was contingent on those particular issues being dealt with in the context of the taxation of managed investment trusts (**MIT**), such as the taxation of fixed trusts that are not MITs. We strongly encourage the Government to forge ahead with resolving those specific issues at a minimum in the event there is no appetite for broader reform.

Based on the above, we strongly recommend the Government prioritise the review of Division 6 as part of its blueprint for reforming Australia's tax system.

3. Small business CGT concessions

The current small business CGT concessions are very complex in nature. The provisions are so complex that it is difficult for a small business to confirm that they qualify for a concession under the rules. As such, this area should be a focus for reform.

[35] See p112 of the Discussion Paper
[36] Draft Recommendation 4.1

The original purpose for introducing these concessions was to assist small business owners to prepare for retirement. Many small business owners rely on their small business as a vehicle to fund their retirement absent available resources to put into superannuation because they instead reinvest in their business.

The cost of complying with these rules is very high. Seeking advice on whether the concessions apply can prove too costly for some taxpayers due to the complexity of the rules. The concessions are also a significant area of audit activity, particularly as the ATO audits each time a taxpayer claims one of the concessions.

The rules are intended to provide a simple tax concession to small businesses, but they have become so complex that taxpayers often find it is not worth their while trying to determine if the concessions apply or find they do not apply.

We provide a relevant example below:

> *Assume a company that operates a business has a net worth $6.5 million. It has 2 shareholders. Mr A has 55% of the shares in the company. Mr B has 45% of the shares in the Company.*
>
> *In applying the Maximum Net Asset Value test, Mr A's Net value includes 100% of the value of the company (i.e. $6.5 million) and therefore fails the test. Assuming a zero cost base, his tax liability is 55% of $6.5 million multiplied by the 50% CGT discount by marginal rates (49%) = $884,813 leaving A with an after tax sale proceeds of $2,690,187 ($3,575,000-$884,813).*
>
> *The 45% shareholder (Mr B) has access to all of the concessions[37]. He pays no tax. After tax position is $2,925,000 (i.e. 45% of $6.5m). Why would you want to be a 55% shareholder?*

Another relevant example demonstrating the complexity is where the cost base adjustment rules in section 104-71 are applied at the unit holder level and when the underlying gain in the unit trust attracts the small business CGT concessions.

There is also a detailed discussion at Part 12.4 of the draft Productivity Commission report entitled *Business Set-up, Transfer and Closure* in relation to the CGT concessions that apply to small business. The Commission has made the draft recommendation (Recommendation 12.2) that:

> *The current small business capital gains tax concessions should be rationalised. The White Paper on the Reform of Australia's Tax System should consider the recommendations of the Henry Tax Review relating to small business capital gains tax relief with a view to the effectiveness of implementation, avoidance of unintended consequences and ensuring consistency with broader tax policy.*

[37] To illustrate that Mr A will be worse off after tax than Mr B because of the negative effect of the 'control percentage' threshold and the 'connected entity' test, in this example we assume the Commissioner would exercise his discretion contained in section 328-125(6) in Mr B's favour and regard Mr A as having control over the company, not Mr B.

A potential trade-off for removing these concessions would be to have a significantly lower tax rate applying for qualifying small businesses, but this may add complexity to the system by creating a tiered taxation structure and may not achieve the desired policy outcome of assisting small business owners to fund their retirement.

In light of the above, the policy intent for providing these concessions should be reviewed with a view to simplifying the rules and making them easier to apply and to ensure they operate to provide relief to small business owners as intended. In the context of any review of these concessions, we do note that the retirement and rollover concessions (or something similar) should be retained.

4. Division 7A

We welcome the release of the Board of Taxation's report entitled *Post Implementation Review of Division 7A of Part III of the Income Tax Assessment Act 1936*. Though we broadly support the approach the Board of Taxation has taken in the review, we have not had time to consider the recommendations made in any detail.

Not-for-profit sector tax issues

The Government should address the significant regulatory burden for entities in the not-for-profit sector due to a lack of harmonisation between State/Territory and Federal administrative requirements and review the policy settings for the provision of tax concessions for not-for-profits.

Disclosure

The Tax Institute makes the following submission on behalf of our members in the tax profession, as Australia's leading professional association in tax. In the interests of full disclosure, while The Tax Institute is also registered as a charity with the Australian Charities and Not-for-Profits Commission (**ACNC**), we do not make this submission in that capacity.

1. Administrative arrangements

a) General

There is a range of issues affecting the administration of the not-for-profit (**NFP**) sector. These range from approving NFP entities for registration and tax exemption through to the monitoring of NFP entities once registered to ensure they meet ongoing registration requirements.

There is significant regulatory complexity and duplication for entities in the NFP sector due to a lack of harmonisation between State/Territory and Federal administrative requirements.

Currently, NFP entities intending to apply for endorsement for tax concessions[38] with the ATO must first apply for an Australian Business Number (**ABN**). Separately, an entity that qualifies as a 'charity', must register with the ACNC. There are several registration steps an NFP may need to go through as some tax concessions are only available once an NFP has registered as a charity with the ACNC.

The ACNC is a federal coordinating body focused on maintaining and enhancing public confidence in the NFP sector through increased accountability and transparency as well as deregulation in the NFP sector[39]. The ACNC should be retained and its purview should be expanded to encompass all NFPs.

[38] This includes income tax exemption; FBT exemption or rebate; GST concessions; deductible gift recipient status and eligibility for franking credit refunds.

[39] Refer to the objects of the ACNC detailed on the ACNC website www.acnc.gov.au

If the ACNC is abolished and its functions are returned to the ATO, there needs to be a clear separation between the division determining eligibility for concessions, and the division carrying out enforcement. Should this occur, a well-considered and managed transition that would not create uncertainty for NFPs would also be required.

b) Public availability of registration information

Currently, the Australian Business Register (**ABR**) website displays a record of the registrations and endorsements an NFP entity has received, including registration with the ACNC as a charity[40].

When information that affects an NFP's registration changes, it is required to advise the ABR to have the public record updated. However, there are often delays in processing this information and inconsistencies occur.

In the event the ACNC is abolished, there is a draft proposal to create a 'self-reporting and self-management' environment requiring charities to maintain a publicly available website featuring certain information[41]. This is likely to impose additional compliance costs and inconsistency in the information made available. In this regard, The Tax Institute recommends there be a single Government-maintained website similar to or part of the ABR where NFPs can upload and update their own information. Alternatively, the ACNC register could be used to replace the ABR insofar as it applies to NFPs.

c) Uniform set of eligibility criteria

Consideration should be given to the development of a uniform set of eligibility criteria to determine whether an NFP entity is eligible for all tax concessions available in the Federal tax system[42]. Also, carve-outs for certain entities[43] should apply uniformly for all available tax concessions.

Endorsement by the ACNC as a charity should also determine the entity's charitable status for the purpose of eligibility for tax concessions.

d) State/Territory Requirements

There should be streamlining of administrative requirements for NFPs that operate in multiple jurisdictions. That is, the relevant State and Territory bodies should rely on

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[40] Note the ACNC also maintains a separate register of charities.

[41] Refer to the *Options Paper – Australia's charities and not-for-profits* issued by the Department of Social Services in July 2014

[42] We note that the term "registered charity" has been introduced into Item 1.1 of section 50-5 of the *Income Tax Assessment Act 1997* (Cth) in place of referencing a "charitable institution" or "charitable fund", indicating that there is a move towards removing the distinction between "charitable institution" and "charitable fund" in the income tax law.

[43] For example, subsections 65J(1)(b) and (baa) of the *Fringe Benefits Tax Assessment Act 1986* (Cth) which refer to government-related charities.

determinations made by the ACNC as to an entity's charitable status for Federal tax purposes and there should be co-ordination of reporting requirements at both the Federal and State/Territory level.

2. Availability of tax concessions and competitive neutrality

The Productivity Commission in its 2010 Report[44] recommended that a detailed examination of the tax concessions provided to NFPs be undertaken measured against the 'value for money' in procurement guidelines. The main benefit from change would be an "improved assessment of 'value for money' in Government funding and procurement decision-making".

a) Income Tax exemption

The Productivity Commission concluded that the provision of income tax exemptions are 'not significantly distortionary as NFPs have an incentive to maximise the returns on their commercial activities that they then put towards achieving their community purpose[45].'

This proposition is consistent with our members' observations and the Government should accept that the tax concessions provided to not-for-profit entities do not result in the inefficient allocation of economic resources.

b) FBT exemption/rebate

The Henry Review recommended[46] that fringe benefits tax concessions provided to NFPs be 'reconfigured' as they provide NFPs (such as hospitals) with a competitive advantage in the labour market. Accordingly, one of the principles the Henry Review expounded to underpin tax concessions for NFPs is that 'they should not undermine competitive neutrality where NFPs operate in commercial markets[47].

The FBT concessions have a distortionary effect in the marketplace in that the concessions have become a critical tool available to NFPs to remain competitive with the private sector in being able to attract, retain and reward staff[48].

We acknowledge that Treasury established the Not-For-Profit Tax Concession Working Group (**NFP Working Group**) in 2012 to consider whether there are better ways for the Government to deliver the current set of tax concessions to the NFP sector. The NFP Working Group recommended that the FBT concessions for NFPs be replaced with an alternative support payment to eligible NFPs (limited to salary packaging

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[44] Recommendation 8.1 of the *Contribution of the Not-For-Profit Sector – Productivity Commission Research Report*, January 2010 (**PC NFP Report**)
[45] See p197 of the PC NFP Report
[46] Recommendation 9(e) of the Henry Review
[47] Henry Review Part 2 Vol 1 p206
[48] We note the 2015-16 Federal Budget announcement to cap salary sacrificed meal entertainment expenditure at $5,000 which will affect NFP employees.

arrangements)[49]. The recommendation was made acknowledging the reliance many NFPs have on being able to offer FBT concessions as part of salary packaging where removing the concessions without recommending an alternative offer of support would have a significant impact on employers in the NFP sector.

In light of the above, The Tax Institute supports the Productivity Commission's Recommendation 8.1 of a review, which should draw on the work already undertaken by the NFP Working Group.

If, after a review is undertaken, the Government determines that some/all of the FBT concessions should be removed, appropriate transitional rules for phasing out the concessions would need to be made available to the NFP sector given their ingrained dependence that has developed over time on being able to provide these benefits to employees. This view is consistent with the recommendation in the Henry Review[50] that the caps be phased out over a ten year transition period.

c) Endorsement as a DGR

The Government should review and clarify the policy intent behind bestowing deductible gift recipient (**DGR**) status on a particular entity. Australia's DGR framework is an antiquated system that has evolved over time in an ad hoc manner (when adding categories and types of entities eligible to obtain DGR status).

The policy intention behind DGR endorsement should be restated, be it to confirm the original policy intent or modify it to be consistent with the modern day purposes of the NFP sector. Clarification of the policy intent will set out the scope for the intended application of the DGR regime.

[49] Recommendation 12 of the NFP Working Group's report issued in May 2013

[50] Recommendation 43(a)

Goods and services tax

The Government should undertake a comprehensive review of the current exemptions and special rules in the current GST law to determine their ongoing necessity/appropriateness and to ensure that the simplicity and efficiency that is sacrificed by the presence of these exceptions is still justified.

1. Overview

The Tax Institute is of the view that serious consideration needs to be given to a broadening of the base to which the goods and services tax (**GST**) applies and to whether the 10% rate is an appropriate rate to maintain going forward.

By comparison, Australia has one of the lowest rates of GST among Organisation for Economic Co-operation and Development (**OECD**) countries and a smaller than average base (due to the number of exemptions) than other OECD countries with a GST or VAT[51].

As part of the Tax Reform White Paper process, the Government needs to consider what should be the appropriate tax mix for Australia to provide a sustainable source of revenue to meet Government spending requirements, particularly given the increasing mobility of capital and an increasingly competitive global environment. Currently all revenue raised by the GST is distributed to the States and Territories. In the event there is a change to the GST, it follows that the requirement for transfer payments from the Federal Government to the States and Territories will also need to be considered. These issues should be considered concurrently with the review of Federal financial relations in the context of the work associated with the *Reform of the Federation White Paper*.

As such, consideration also needs to be given to the role of the GST in the context of the broader Federal and State tax mix.

In the event that Australia shifts towards a greater reliance on consumption taxes, it will be critical that any inequities arising are adequately addressed.

2. Consumption taxes – the GST

Consumption taxes are generally regarded as efficient taxes due to their broad base. However, introducing exemptions brings complexity and detracts from the efficiency and simplicity offered by a broad-based consumption tax. The economic incidence of the GST largely falls on the consumer even though the legal obligation to remit the tax falls on suppliers making taxable supplies.

[51] P132 of the Discussion Paper

As noted in the Discussion Paper[52], a consumption tax such as the GST is by definition a 'proportional tax' on the basis that the rate of tax that applies is constant. However, it is often regarded as a 'regressive tax' when the amount of GST paid by an individual consumer is considered in relation to their income level. This is a misnomer because this is a perceived characterisation of the GST, not a technically correct one.

Since being implemented 15 years ago, the GST has not been the subject of any form of wholesale review. Only piecemeal amendments have been made (with a few more amendments once the handful of GST-related un-enacted measures the current Government has agreed to proceed with are enacted).

Although the Board of Taxation undertook a review of the legal framework for administration of the GST in 2008[53] which highlighted a number of individual policy-related matters, it did not review the policy framework of the GST or the role of the GST in the context of the broader Australian tax system. The Tax White Paper process now provides the opportunity for that review to take place.

The Government's Tax Reform White Paper should address the much larger question of the role of the GST in Australia's tax system and the flow-on effects from a potential broadening of the GST base and/or change to the rate[54].

Some of the exemptions of goods and services from being subject to GST (both in terms of GST-free treatment and input taxed treatment as contained in Chapter 3 of the *A New Tax System (Goods and Services Act) 1999* (Cth) (**GST Act**) and the 'special rules' (Chapter 4 of the GST Act) that apply to other goods and services, are more desirable than others, but all add complexities to the GST law.

There are also other areas that represent 'gaps' in the law where certain goods and services fall outside the GST net, such as the supply of certain online/digital goods and services supplied directly to consumers from non-residents which will be addressed by the proposed amendment to the application of GST in the 2015-16 Federal Budget. These gaps in part arise due to rapid changes that have occurred since the introduction of the GST in the way goods and services are now supplied to Australian consumers. The Government should ensure the GST law keeps pace with the changes in consumption patterns, methods of consumption and the wider economy.

We recommend the Government undertake a comprehensive review of the exemptions and special rules in the current GST law to determine their ongoing necessity/appropriateness and to ensure that the simplicity and efficiency that is sacrificed by the presence of these exceptions is still justified. However, there are

[52] Box 2.3 at p32 of the Discussion Paper
[53] Refer to Board of Taxation's report http://www.taxboard.gov.au/content/reviews_and_consultations/legal_framework_for_administration_of_gst/report/downloads/legal_framework_for_administration_of_gst_report.pdf
[54] Changes to the rate and base are subject to the operation of the *A New Tax System (Managing the GST rate and Base) Act 1999* (Cth)

many factors that will need to be taken into account, including the original reasoning for the exemption or special rule in order to assess the ongoing necessity/appropriateness of certain exceptions. There will also be compliance costs for taxpayers to take into account and perhaps the need for grandfathering in some cases in the event of a proposed change.

3. GST in the broader context

The Tax Institute urges the Government to adopt in its Tax Reform White Paper a policy of shifting away from being dependent on income tax for the bulk of revenue collections towards more simple and efficient consumption taxes such as the GST. Such a shift will ease the presently adverse effect of Australia's current tax rates on individuals and corporate entities; will create a simpler tax system to implement[55] and regulate; and will provide the Government with more sustainable revenue collections[56]. In addition, concerns around issues such as the shifting of profits out of Australia to escape the income tax net may be reduced if Australia were to increase its reliance on more sustainable revenue bases such as consumption.

The objectives of the reforms in the *Intergovernmental Agreement on the Reform of Commonwealth - State Financial Relations* (**IGA**) agreed to by all the States and Territories and Federal Government in April 1999 were for:

- The achievement of a new national tax system, including the elimination of a number of existing inefficient taxes which are impeding economic activity;
- The provision to the State and Territory governments of revenue from a more robust tax base that can be expected to grow over time; and
- An improvement in the financial position of all State and Territory governments, once the transitional changes have been completed, relative to that which would have existed had the current arrangements continued[57].

As a result, currently, GST revenue flows to the States and Territories to fund their activities. However, we note that overall GST revenue to GDP has reduced over time[58].

Should a policy decision be made to make any changes to the scope and application of the GST, the objectives of the IGA should be factored in. Increased revenue from a broadening of the GST base and/or increase to the rate would flow to the States and Territories and as such should better position the States and Territories to repeal more inefficient taxes, which is an important part of the overall reform agenda.

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[55] See discussion above re broadening the base.

[56] Refer to the discussion in the Henry Review at Part 2 Vol 1 pp274-275 in relation to the sustainability and stability of a broad-based consumption tax, which also noted the likely potential slight decline in revenue over the next 40-50 year period and the 'less robust' nature of the current GST because it doesn't cover the full consumption base.

[57] See page 2 of the *Intergovernmental Agreement on the Reform of Commonwealth - State Financial Relations* (**IGA**)

[58] See p140 of the Discussion Paper

That is, with the Commonwealth in the lead, the States and Territories should agree to an enforceable timetable to further abolish inefficient taxes as they would be receiving additional revenue from an expanded source (an expanded GST). This agreement would best be achieved by an extension of the IGA. At the same time, negotiations will need to be undertaken factoring in any income tax rate cuts.

State taxes

The Tax Institute recommends that uniformity in State and Territory legislation should be pursued as well as simplification of the administrative burden from complying with these taxes by introducing a centralised collection agency.

1. Overview

The Tax Institute urges the Australian Government to take a leadership position on State tax reform and bring the States and Territories on board with a unified vision for tax reform in Australia. Certain state taxes are inefficient and irregular, providing an impediment to investment and growth. The Australian Government must work with the States and Territories to ensure their revenues are protected as inefficient State taxes are abolished.

Each State and Territory has significant revenue needs that stem from the multitude of State and Territory government responsibilities and programs that are integral to ensuring an appropriate delivery of services to residents. There needs to be a balance between the autonomy of State/Territory revenue generation and the need for simplicity in Australia's overall tax system.

Each State and Territory government needs to work with the Australian Government within the Council of Australian Governments (**COAG**) framework to build a tax system that creates greater financial autonomy for the States and Territories through increased revenue sharing from Federal taxes. However, it is also imperative that this COAG framework obtains a commitment to adhere to any agreement to abolish taxes.

At the time the State and Territory governments signed up to the *Intergovernmental Agreement on the Reform of Commonwealth - State Financial Relations* in April 1999, there was clear recognition that certain taxes imposed by these governments were much less efficient than a broad-based consumption tax would be. We note some States[59] have continually deferred abolition of certain taxes agreed to be abolished in 1999. The Tax Institute is of the view that, at a minimum, the remaining taxes should be abolished as agreed in 1999 and that a review of other remaining inefficient taxes, such as insurance duties[60] be undertaken to identify further opportunities for reform.

We note the Australian Capital Territory has recently undertaken its own tax review and is in the process of shifting away from relying on transfer duty to more stable tax bases such as land tax. South Australia has recently committed to abolish stamp duty on

[59] For example, NSW still has mortgage duty, duty on non-real property transfers and duty on non-quoted marketable securities; South Australia still has duty on non-real property transfers and non-quoted marketable securities; Queensland still levies transfer duty on non-real property transfers.
[60] Refer to Recommendation 55 of the Henry Review

certain transactions and provide other relief, such as by increasing the land tax thresholds[61].

2. Uniformity in State and Territory laws

Even for relatively straightforward transactions or enterprises, there is great difficulty for taxpayers, in particular businesses, in dealing across State borders with respect to their State/Territory revenue obligations. Implementing transactions, or merely operating or expanding a business, can become burdensome to undertake due to the onerous State/Territory revenue law implications they attract. For example, certain features of the laws such as payroll tax exemption thresholds, and duty on certain asset transfers, can dampen business expansion.

Uniformity among State/Territory legislation governing taxes that are common to all jurisdictions would deliver a more efficient tax system. Consistent rules that apply in respect of taxes such as payroll tax, transfer duty, landholder duty, land tax and royalties as well as in respect of other common imposts (for example, workers compensation, renewable energy certificate schemes) would serve to greatly reduce the current complexities in complying with and administering the applicable laws.

An example of where some level of legislative uniformity has been achieved is in the area of payroll tax where, in 2007, all States and Territories agreed to harmonise their payroll tax legislation by 1 July 2009. Progressing from that, the Commissioners administering the payroll tax legislation in those jurisdictions signed up to a protocol[62] to affirm their commitment to harmonisation. This has involved uniformity in applicable legislation in eight key areas. However, each jurisdiction retains its own rates and tax-free thresholds and only seven jurisdictions have agreed to use the jointly issued rulings.

We recognise that there are certain structural features of certain state taxes that will prevent complete uniformity from being achieved (for example certain features in land titles systems[63] in different jurisdictions directly impact on how land tax can apply).

However, the more commonality that can be achieved where the policy intent appears to be consistent across all jurisdictions, such as in relation to landholder duty regimes and the transfer duty exemption for corporate reconstructions, the better for taxpayers. The Tax Institute sees no reason why disparate legislative provisions should continue to apply in these otherwise universal business contexts.

3. Administration of State and Territory revenue laws

The Discussion Paper refers in passing to the fact that centralising the administration of at least some, if not all, State/Territory taxes through a single Government entry point

[61] Refer to the 2015-16 South Australian State Budget for further detail.

[62]http://www.osr.nsw.gov.au/sites/default/files/file_manager/Protocol_for_payroll_harmonisation_between_Jurisdications.pdf

[63] Eg long-term crown leases are a prominent feature in the Queensland land titles system.

could potentially reduce administration and compliance costs[64]. The Tax Institute strongly supports the Government pursue the development of a centralised collection agency.

If businesses which have, for example, payroll tax obligations across many Australian jurisdictions could lodge returns and remit amounts of tax to a single agency, this would greatly reduce administrative costs for these taxpayers. This reform could include centralisation of the administrative decisions associated with implementing the harmonisation protocol that has already been adopted for payroll tax, discussed above. The States and Territories could each appoint representative delegates to the office that oversees this centralised function.

Presently, there is a possibility that different discretionary outcomes can issue from different State or Territory revenue offices. A central administration would issue rulings and interpretations from one centralised office thereby ensuring consistent outcomes for businesses operating across multiple jurisdictions, with an emphasis on delivering timely responses.

Similarly, if documents evidencing acquisitions of dutiable property in more than one place could be submitted for assessment (and payment of transfer duty) in the one place, this would also greatly alleviate the compliance burden.

4. Transfer duty policy

The policy intent behind the imposition of transfer duty should be revisited. To date, reforms to the application of transfer duty have favoured removal or reduction of the impost of transfer duty on residential property, and maintained higher rates of duty on land and other business assets and interests in landholder entities.

The current climate for reform provides the opportunity for the apparent current policy setting of favouring homebuyers rather than business taxpayers to be reconsidered.

[64] Page 178 of the Discussion Paper

Complexity, administration and tax system governance

- The Tax Institute recommends that complexity in the Australian tax system be reduced by implementation of improved processes around policy development and law design, including the development of an agreed procedure for tax law consultation.
- The Tax Institute encourages the Government to seek opportunities to develop and adopt new technologies for use in improving administration.
- The Tax Institute recommends the re-write of the *Income Tax Assessment Act 1936* (Cth) be completed.

1. Overview

Australia has a very complex tax system. The causes and drivers of complexity in the system are numerous. They include unclear policy intent including uncertainty about interactions between different parts of the law, exceptions (in the form of exemptions and concessions) from the main rules, and the inclusion of integrity rules together with uncertainty around the application of the general anti-avoidance rules to safeguard policy objectives.

Some of these complexity issues arise during late stages in the law design consultation process, such as at the time the exposure draft legislation is prepared, where Treasury is already advanced in its thinking on an issue and is required to revisit work already undertaken to address issues raised in consultation. This leaves Treasury in the position of having to re-write parts of the exposure draft or include additional provisions to address issues raised by stakeholders. Often, there are time pressures so quick fixes are made to the exposure draft (if at all) and may not be properly thought through.

A clear lack of resourcing in Treasury to handle the raft of tax law changes is also a significant factor, causing delays, in some cases up to years, before tax law changes are made following the announcement of new tax policy.

The level of guidance the ATO is required to issue after a law change is a strong indication of the complexity of the law. The ATO's willingness to provide guidance is welcome, but the abundance of guidance, including in both binding and non-binding forms, illustrates the fact that Australian tax law is not easily understood in the absence of guidance. Other measures of complexity include the number of exemptions or exceptions to the core rules and the extent of amendments required post enactment. Also, continuous reviews of parts of the tax law[65] contribute to uncertainty, as well as having announced un-enacted measures remain outstanding for long periods of time.

[65] And an absence of Government action on the recommendations from those reviews

We acknowledge the significant amount of work that the current Government has done to clean up an extensive list of un-enacted measures that was left to get out of hand and strongly encourage the Government to ensure such a position does not arise again.

2. System-wide approaches to reduce complexity

The Tax Institute is of the view that complexity in the Australian tax system can be reduced by implementation of better processes around policy development and law design. We recommend the Government consider implementing the processes (or similar) noted below.

a) Improving policy development and law design

Many of the issues that give rise to complexity in the tax system could be resolved at the early stages of policy development and law design. We recommend the development of a framework such that the relevant parties are involved as part of the policy development stage and that as many issues as possible are considered prior to exposure draft law being prepared.

The ‘relevant parties’ include the policy arm of Treasury, the administrator (ATO), the drafters, and relevant tax practitioner, business and community representatives. Each of these stakeholders has a valuable contribution to make at the embryonic stage of policy development.

While steps have been taken over the last few years to improve consultation in the development of tax policy and the design of the law, the Institute is of the view that more needs to be done to reduce complexity in the tax system. Complexity will be reduced through having better resourced teams with relevant skills and knowledge and sufficient capacity to properly focus on issues during the policy development and law design stage. These issues include interactions between different parts of the law, the need for concessions and exemptions to the main rules and the need for integrity rules.

A change to policy development and law design of this nature would reduce complexity and improve the quality of new law as a lot of the issues that traditionally come up at later stages of consultation would be addressed a lot earlier within the context of the broader scheme of the law change.

b) Improving the consultation process

The Government should develop an agreed procedure around consultation with all relevant stakeholders on matters of significant tax policy change to be followed in all cases as much as possible.

A major contributing factor to complexity in Australia’s tax system is the recent history of developing tax policy ‘on the run’ where a media announcement is made about a new tax policy, with a relatively short timeframe to enact it. Tax law measures are also announced to address specific issues only[66] and are not necessarily thoroughly considered, particularly in terms of the context of the whole system. There is a sense that law change is constant, and it is difficult to keep up with all potential changes.

New Zealand could serve as a good model for Australia. Since the 1990s, New Zealand has operated a tax policy process called the 'generic tax policy process' that applies to tax law changes. This process sets a clear expectation around, and provides a sufficient amount of time for, thorough consultation. It ensures that well-considered tax legislation is introduced into the New Zealand parliament and that New Zealand tax policy is well-developed, and has involved the right stakeholders, prior to reaching the draft law stage.

The result is a positive and increased level of engagement in the policy process, and a greater level of understanding of tax policy intent. Retrospective law changes are also extremely rare, and this reduces uncertainty and complexity.

In its review of the tax consultation process[67] the Board of Taxation made a number of recommendations to improve Australia's tax consultation processes based on the New Zealand experience.

Subsequently, a further review was conducted by the Tax Design Review Panel. In its report[68], the Panel also recommended a number of changes to Australia's tax law design. Those changes were in broad terms consistent with the generic tax policy process advocated by the Board of Taxation, although not completely. This was noted by the Board of Taxation in its subsequent report in 2011.[69]

A number of changes have been implemented following the Tax Design Review Panel report which have improved the system (such as the publication of a forward tax policy programme). However, as the Board of Taxation noted in 2011, there is still an inconsistent process of consultation and a lack of quality in consultation,[70] a degree of lack of engagement from taxpayers, and there are still problems in the system. The Board of Taxation recommended a clear and consistent generic tax policy process be adopted and announced openly.

We recommend that the Government revisit the recommendations made by the Board of Taxation and the Tax Design Review Panel, and in particular draw on the New Zealand experience, to design a similar framework for Australia to apply when tax policy changes are being considered. Such a framework should include an agreed

[66] For example, the recent announcement of the possible development of a 'diverted profits tax' or the 2009 changes to the taxation of employee share schemes.

[67] Board of Taxation *Improving Australia's Tax Consultation System* Report, February 2007

[68] *Better Tax Design and Implementation: A Report To The Assistant Treasurer And Minister For Competition Policy And Consumer Affairs,* 30 April 2008

[69] Board of Taxation *Post-Implementation Review of the Tax Design Review Panel Recommendations* December 2011.

[70] For example recent complex legislative changes to the managed investment trust regime provided only *two weeks* to provide submissions. Sometimes only particular stakeholders are even involved in consultation, rather than the wider taxpayer community,

timeframe for consultation applied in *all* but extremely rare situations and set procedures for thorough development of tax policy. There should be a commitment to avoid retrospective law change. This framework should alleviate some of the issues that add complexity to tax law, such as making multiple amendments to new laws subsequent to their enactment to address unintended consequences that are not considered prior to enactment.

c) Regular technical changes

Introduction of a regular scheduled omnibus bill to address changes, including minor technical changes to tax law that inevitably arise, should also be put in place. This could address matters such as drafting errors, minor technical deficiencies that do not have policy implications and issues that have been identified on the Tax Issues Entries System. This would provide certainty that the minor (yet necessary) legislative fixes will be addressed within a certain timeframe.

In addition, omnibus bills would reduce the sheer number of bills issued, and a standardised schedule and consultation process would encourage greater participation in commenting on tax law changes, and would enhance understanding of the policy intent of law changes. We also recommend that the Treasury Tax Consultation Characterisation Matrix be reconsidered as to its effectiveness in terms of the quality of tax policy consultation in Australia.

3. Increasing use of technology to improve administration

We encourage the continuing development and adoption of new technologies to help simplify administration issues in the tax system. Developments such as the improved use of pre-filled information, initiatives such as 'MyTax', the streamlining of whole-of-government initiatives such as Standard Business Reporting and 'Single Touch Payroll' and other initiatives introduced to improve tax compliance and administration should be applauded.

While these types of changes can significantly reduce the compliance burden for the majority of taxpayers in the long term, they need to be properly executed (including extensive consultation, user-testing and education of the taxpayer community as to the changes) to ensure that the compliance burden is actually reduced rather than resulting in one type of administrative burden being replaced by another. In addition, not all new systems are suitable for all types of taxpayers and as such, solutions will need to be tailored for different market segments.

4. Rewrite of tax law

Significant uncertainty and complexity in the tax law could be resolved with the completion of the rewrite of the *Income Tax Assessment Act 1936* (Cth). Having two co-existing income tax assessment acts creates difficulty for taxpayers to navigate the tax law and an unnecessarily excessive amount of legislation to contend with. There is little value in a partly completed rewrite. We recommend dedicated resources be allocated to complete this project that is currently 18 years in the making. It is very important that the rewrite process also includes, as a principle, plain English drafting and seeks to alleviate some of the complexity of the current drafting.

We also recommend that Schedule 1 of the *Taxation Administration Act 1953* (Cth) be written into the main body of this (or another appropriate) Act. It is difficult to understand why operative provisions are in a Schedule. This adds to confusion. Ordinarily, taxpayers look for the operative provisions in the main body of the legislation and as such, the operative provisions in Schedule 1 should be relocated to the main part of the Act.

5. Integration of administration

Please refer to relevant comments in the 'State Taxes' section.

About The Tax Institute

The Tax Institute is Australia's leading professional association and educator in tax, with more than 15,000 members. We set the benchmark for the most up-to-date tax professional development events and education programs in the country. Meaning our members are best placed to have the highest level of expertise in the field.

Our growing membership base includes tax professionals from commerce and industry, academia, Government and public practice throughout Australia.

In 2012, we introduced the internationally recognised Chartered Tax Adviser (CTA) designation to ensure our members have the credentials to demonstrate their tax expertise to employers and clients.

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Our reach extends to over 40,000 Australian business leaders, tax professionals, Government employees and students through the numerous specialist, practical and accurate tax publications – all of which ensure that the latest information is available at their fingertips.

Established in 1943, the purpose of The Tax Institute was to provide education and information products and services to the tax profession as well as support improvements in the tax law and its administration. That core purpose remains.

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