The Tax Forum
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Submission by:

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As a Chairman of a publicly listed company which is committed to managing its tax obligations globally, I welcome the opportunity to participate in this highly valuable Tax Forum. It is imperative that we regularly explore ways to make our tax system more efficient, effective and fairer for the benefit of all Australians and also to ensure our tax system provides a globally competitive landscape for inbound and outbound investment.

Summarised below are some thoughts on areas where reform is needed to improve the effectiveness of our tax system.

1. Tax administration

The Australian tax system is complex and, as a result, taxpayers incur significant compliance costs in understanding and complying with the tax rules (both enacted and announced but not legislated). Such expenditure is not a productive use of taxpayers' resources and does not add value to the Australian economy.

The tax system should be designed to minimise the administrative burden on taxpayers by ensuring tax laws are clear and unambiguous. Furthermore, legislation with retrospective effect which is adverse to taxpayers is in conflict with the principles of equity and certainty.

Tax legislation – less complexity and increased review of draft legislation

The rewrite of the tax legislation was inappropriately abandoned almost a decade ago. While the Government's goal of achieving long-term tax reform is to be commended, it is critical that the Government also commit to simplifying the existing legislative taxation provisions.

It will be important for the tax legislation drafting process to have increased rigour by including tax specialists from the ATO and the Treasury. Recent experience in relation to the "rights to future income" as part of the tax consolidation rules is an example of legislation being introduced without sufficient work being undertaken by the Treasury or the ATO.

With significant tax reform in recent times, it is also clear that Treasury is under resourced. An example is the delay in the Treasury releasing draft legislation on the interaction between the Tax Consolidation rules and demergers which was announced in November 2010. This is an important area for companies that have undertaken demergers and warrants the focus of Treasury resources.

Australian Taxation Office ("ATO") – increased cooperation

Most Australian companies seek to have a cooperative relationship with the ATO. Tax enquiries, reviews, and audits consume resources that may be applied by taxpayers elsewhere. As such, the ATO should provide an avenue for corporate taxpayers to obtain confidential independent administrative binding advice in relation to ongoing tax matters on a "real-time" basis. To the extent that available resources within the ATO is a limiting factor, a reasonable application fee for the advice is an alternative that may be explored.

This will provide certainty for taxpayers, provide comfort to the ATO in relation to the taxpayer's tax compliance, and potentially reduce costs for both taxpayers and the ATO. This will lead to a more cooperative and less adversarial relationship between the ATO and taxpayers and in turn encourage taxpayers to become more "real time" regarding their taxation affairs and positions with the ATO, and lead to a more consultative approach to tax issues.

2. Transport/fuel taxation

The taxation system needs to recognise the importance of transport to the efficiency and productivity of the broader Australian economy. The large distances between Australian population centres and major industrial sites (such as ports and mining sites) means that substantial transport costs are an embedded cost associated with the production and distribution of goods in Australia.

The Government must appreciate that an efficient cost structure associated with transport is essential to the efficiency and productivity of the Australian economy. Any taxation measures considered by the Forum which could increase the cost of transportation must be carefully evaluated to ensure that it does not negatively impact the competitiveness and/or productivity of the Australian economy.

3. Congestion levies

Toll recommends against road congestion levies. Although road congestion is an increasing problem and imposes substantial costs on the community, it must be recognised that a congestion levy already applies in metropolitan areas such as Sydney and Melbourne, in the form of state government imposed car parking levies in the central business districts.

Debates on the merits of congestion levies for Australian cities also tend to overlook that traffic congestion in Australia's major cities is driven by the lack of viable transport alternatives. Until Australian metropolitan areas enjoy public transport systems that are comparable to those in overseas cities where congestion levies are in place (e.g. London and Singapore), the introduction of congestion levies in Australian cities will only serve to punish motorists and the road transport sector for the chronic under investment in public transport infrastructure perpetuated by state governments over many terms. In the absence of improved alternative transport infrastructure (especially public transport infrastructure) the underlying causes of congestion will not be addressed by a congestion levy.

4. Infrastructure investment incentives

The taxation system needs to provide appropriate incentives for private sector infrastructure investment, especially as Australia's economy faces increasing capacity constraints and declining productivity. Infrastructure investment is often characterised by very high capital investment requirements, high levels of risk and long lead times between the initial capital outlays and the generation of profits. This means that additional encouragement is required to stimulate private sector investment in infrastructure. There a number of possible mechanisms that could encourage infrastructure investment including:

- A tax exemption/rebate for interest received by private sector lenders for infrastructure development (similar to the former Infrastructure Borrowings taxation concession)

- Allowing a flow-through or attribution of tax losses from corporate vehicles involved in infrastructure projects to their private sector shareholders (which would allow private sector investors to access the losses immediately rather than carrying them forward for a number of years in the corporate vehicle)

- Extending the range of infrastructure projects that would be eligible for the concessions proposed in the 2011/12 Federal Budget (under which tax losses from certain infrastructure projects would be exempt from the continuity of ownership test and the same business test and would also be eligible for an 'uplift' in the value of those losses at the government bond rate). The Budget announced that these concessions would be available only to specified projects of 'national significance' however I believe the eligibility should be broadened.

5. Foreign dividends

Australian companies are increasingly investing in offshore operations. Dividends received by Australian companies from foreign subsidiaries are not taxed in Australia; as a result, no franking credits are available to shareholders when these dividends are distributed to shareholders since no Australian tax has been paid in relation to the foreign dividends.

To ensure Australian shareholders do not suffer from the double taxation of profits earned by foreign subsidiaries of Australian companies, the Government should consider providing a tax offset to shareholders of Australian companies that pay unfranked dividends out of tax exempt dividends received from their foreign subsidiaries.

Furthermore, in some instances, the territory from which the dividends were paid may impose withholding tax. The Government should consider whether the withholding tax paid to the foreign territory may also be allocated to shareholders to claim as a tax offset (which would be available if the shareholder had received the dividend directly from that foreign company).

The alternative to this is to remove franking credits and reduce company tax to 20% allowing a higher dividend stream to shareholders from the after tax company profits, This was an original recommendation of the Henry Report.

6. Taxation of foreign source income

The current controlled foreign companies ("CFC") regime imposes a significant compliance burden on companies. In addition, the CFC regime results in attribution of income in relation to genuine business activities being undertaken overseas.

The Government should commit to continuing the consultation in relation to the reform of the CFC rules with the objective of introducing the new rules with effect from 1 July 2012 (with an option for taxpayers to elect into the new regime from 1 July 2011).

7. Tax relief for goodwill and intellectual property

At present, tax relief in relation to intangible assets is limited to items such as copyrights, patents, and registered designs. No tax relief is available in relation to trademarks. However, trading partners such as the United States and the United Kingdom provide tax relief in relation to a wider range of intangible assets including goodwill and trademarks.

The Government should consider whether tax relief should be provided to a wider range of intangible assets.

8. Carry back for corporate tax losses

The Government should consider introducing a one-year loss carry back for corporate taxpayers, as recommended by the Henry Report in 2010. Although the current regime permits a carry forward of tax losses, the ability to use those losses is dependent on the ability of the company to derive assessable income in the future, which may not be viable if the company does not continue as a going concern. Moreover, the real value of a company's tax losses diminishes the longer the losses are carried forward.

9. Personal services income

The classification of individuals as employees or independent contractors is relevant for businesses in determining their federal income tax, state payroll tax, and superannuation obligations. There is significant uncertainty in this regard from the perspective of businesses, individuals and unions and much discussion and debate has arisen in recent times in this important area.

The Government should consider introducing consistent "bright-line tests" to provide businesses with certainty in relation to their income tax, payroll tax and superannuation obligations.

10. Capital structure and thin capitalisation

The thin capitalisation rules are designed to prevent excessive debt deductions being claimed by companies.

The current thin capitalisation rules include an exclusion in relation to an "arm's length debt amount". However, taxpayers are required to undertake an expensive and detailed analysis to support this position, this could be easily streamlined.

The level of external debt of Australian-listed companies is governed by market conditions, i.e. the amount of debt and interest rate will be at arm's length. As such, tax compliance costs may be significantly reduced by excluding Australian-listed companies from the thin capitalisation rules.