

FEDERAL COURT OF AUSTRALIA



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Tax White Paper Task Force
The Treasury
Langton Crescent
PARKES ACT 2600

By email: bettertax@treasury.gov.au

Dear Sirs

Tax Discussion Paper

As someone genuinely interested in structural reform of the Australian tax system, and as a lawyer, first as a solicitor, then as a member of the New South Wales Bar and now as a Federal Court Judge having 50 years cumulative experience in advising and adjudicating on issues arising under that system, I was looking forward to making a substantive and hopefully constructive contribution to the tax discussion paper ("Paper") issued on 30 March last.

On reading the Paper, it became apparent that despite what the paper said on pages 5 and 6 under the heading "Joining the national conversation on tax reform", including statements such as:

*"... the Government will ...
Rule nothing in or out ..."*

and:

"... you should not be limited by the issues or questions contained in this discussion paper",

certain matters that need to be brought to the table for consideration and discussion were "off-limits"; the infection of politics has once again intervened to quarantine them from the reform process.

For example, there will not be any changes to the treatment of the family home:

"Given the central importance of the home for Australian families, there is a strong consensus that it would not be appropriate to tax either the imputed rent on owner/occupied housing or capital gains derived from it".

On negative gearing and superannuation, while the Government says it is open to new ideas, the Paper has all but nailed its policy colours to the mast already:

- **Negative gearing:**

“Negative gearing does not, in itself, cause a tax distortion ...”; “it allows more people to enter the market than those who might have had the equity alone to do so ...”; “negative gearing is not a specific tax concession for taxpayers with investment properties”; “the majority of tax filers with negatively geared properties fall into the middle income bands [which] reflects the distribution of taxpayers across taxable income bands ...”; “allowing investors to claim deductions for interest expenses ensures consistent treatment between debt and equity financing ...”.

- **Superannuation:**

“Superannuation is designed to improve individuals’ incomes. In doing so, it also reduces pressure on Age Pension expenditure”; “the policy merit of ... tax concessionality has to be judged taking into account Australia’s full retirement income support arrangements, including the means-tested Age Pension.”

The message is clear: you will have to persuade us to abandon these positions.

And the bar for changing the GST is set so high it is in effect off the agenda too (*“the Australian Government will not support changes to the GST without a broad political consensus for change including agreements by all state and territory governments.”*)

The political infection so apparent in the terms of the Paper has turned septic following statements by senior members of the Government since the issue of the Paper, making it quite clear that a number of these matters will not be considered at any price save, perhaps, if it is “our” political advantage to do so. The “handcuffs” that are being placed on the process are as bad as the handcuffs placed on the Henry Review.

If that is what is to happen, then I do not wish to participate. My time is too valuable to undertake a reasoned analysis in support of various aspects of reform when I know that no matter how sound and persuasive the arguments are, they have no hope of finding traction.

I therefore do not propose to undertake a substantive response to the Paper. Instead, I attach a paper I presented to the Australasian Tax Teachers’ Association in Adelaide in January of this year dealing with a number of the issues that should be brought to the table. A copy of this paper has been published in (2015) 30 *Australian Tax Forum* 393-409.

Yours faithfully



Richard Edmonds