



10 February 2017

Ms Jodi Keall
Tax and Corporate Whistleblower Protection
Project Senior Adviser
Financial System Division
100 Market Street
Sydney NSW 2000

Email: whistleblowers@treasury.gov.au

Dear Ms Keall

Review of tax and corporate whistleblower protections in Australia

The Corporate Tax Association (CTA) is the key representative body for major companies in Australia on corporate tax issues and welcomes the opportunity to provide comments on the Treasury consultation paper titled "Review of tax and corporate whistleblower protections in Australia" (the paper). The focus of our submission is on the discussion contained in Chapter 9 of the paper dealing with proposed protections for tax whistleblowers.

The CTA and its members are fully supportive of tax rules that support and develop confidence in the tax system. Appropriately targeted rules that encourage, or at a minimum do not discriminate against, those that disclose cases of tax evasion (and possibly tax avoidance or other significant breaches of the tax law) should form a part of that policy mix.

In relation to the paper we make the following specific observations:

Definition of tax whistleblower

Whilst we agree with extending the definition of tax whistleblower as outlined at page 32 to cover former employees, it is not clear to us if the inclusion of "business partner or joint venture" is sufficiently wide enough to provide protections to an employee or former employee of a company that may have dealings with an unrelated company and uncovers an instance of tax evasion, or if the rules are specifically intended to only deal with whistleblowers that are legal partners or joint venturers. For example, the definition would appear to provide protection to a partner in a partnership, but not to a shareholder in a company who becomes aware of tax evasion activities. Similarly, it is not clear if an officer, employee or former employee of another company who may have business dealings with a third company is covered by the proposed definition. To us, the definition should be sufficiently wide enough to ensure protection in such cases. Further clarification on the definition would be welcomed.

Definitions based off information about behaviour of tax avoidance and "other breaches of tax law" seems wide

Whilst we see merit in expanding the potential coverage of types of individuals who can receive whistleblower protections and also coverage of instances where there is information about tax evasion, we have some concern that the protection is afforded to person providing information "about behaviour...they believe, on reasonable grounds, amounts to potential tax avoidance...or other breaches of tax law".

Although these terms are not fully defined in the paper, some further clarity is suggested to ensure that protection is appropriately targeted and not widely drawn particularly if financial incentives are part of any law design. As a general observation, tax evasion is effectively fraudulent activity, whereas tax avoidance focusses on taxpayers applying tax law in a way that the dominant purpose of the arrangement was to secure a tax benefit. We would suggest a dominant purpose test should be the appropriate test and the test adopted is an objective one, as currently exists under Australia's general anti-avoidance rules.

We would also suggest that consideration is given as to whether "behaviour" is an appropriate test. In our view, the test needs to be based more on information about activities the whistleblower believes, on reasonable grounds, amounts to tax evasion as behaviour connotes the subjective assessment of the whistleblower.

Moreover, "other breaches of tax law" appears to apply widely and would on its face cover minor infringements such as a late lodgement of a tax form. We would suggest some consideration is given to clearly delineating what "breaches of tax law" may be excluded from such protections to ensure the law is not abused by a potentially disgruntled party who may be driven by other motives. We note that if financial rewards are not part of the law design, then the likelihood of "bounty hunters" or individuals using the proposed whistleblower protections inappropriately would, we suggest, reduce the need to significantly refine the proposed definition.

Financial incentives

In our view, financial incentives should not be part of any law design. As mentioned in the paper, there does not seem to be clear evidence that rewards increase the quality of disclosures. The sense of civic responsibility seems to be the preferable motivator.

We would however fully agree with the need for appropriate protections and compensation in cases of retaliation against a whistleblower.

Disclosure of taxpayer information to the informant


We see it as an essential part of the tax system that taxpayer information is kept confidential between the taxpayer and the ATO and that any whistleblower rules reinforce that taxpayer information is prevented from disclosure to the informant, including the status of the progress of any investigation.

Anonymous Disclosures

We agree that informants should be able to disclose information on an anonymous basis.

Should you have any questions in relation to the above, please do not hesitate to contact either Michelle de Niese or me.

Yours sincerely

A handwritten signature in blue ink that reads "Paul Suppree". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Paul Suppree
Assistant Director

