NTAA submission on the Review of Aspects of Income Tax Self Assessment

Introduction

The National Tax & Accountants' Association (NTAA), being the main professional accounting association that represents accountants and tax agents for individuals and small businesses, welcomes the opportunity to contribute to the Review of Aspects of Income Tax Self Assessment.

The NTAA understands why self assessment was introduced but is extremely concerned that since its introduction Australia's tax laws have increased significantly in both number and complexity thus making 100% compliance an impossibility. This undermines the whole self assessment system and is the cause for many of the issues raised in the review.

The NTAA's comments on various aspects of the review are set out below. The numbering in the discussion paper is used in this submission for ease of reference.

Further, the NTAA endorses the matters raised by Susan Young in her article "Defects of the self assessment system" published in CCH Tax Week, Issue 14, 8 April 2004, but does not repeat those matters here.

Further information and enquiries regarding this submission should be directed to Robert Warnock, Acting President at the NTAA on 03 9862 7777.

Specific comments

2.A – Australia's tax laws are extremely complex and voluminous and the Tax Office is to be commended for the amount of information it provides regarding its interpretation of those tax laws. However, areas of concern are:

- Finding the relevant advice or information on the Tax Office website is difficult. Unless the appropriate key words are keyed-in important Tax Office information can be missed. A general comprehensive index would go a long way to solving this problem by allowing taxpayers to scroll through the relevant topic headings in the index to locate other key words that could be used in a more advanced search.

- There is no ability to search the sanitised version of private binding rulings which are located on the Tax Office website.

- Although a document may only appear in one area of the ATO website there should be signposts in other relevant areas directing taxpayers to the right area or, better still, an appropriate link.

2.B – Tax Office advice should indicate whether Part IVA applies to a particular arrangement as a matter of course. This does not mean that the Tax Office advice should merely state that Part IVA may apply to the transaction. Tax Office advice should state whether Part IVA will be applied and if so why it will be applied. If a taxpayer seeks advice from the Tax Office, in particular a private binding ruling, it is not appropriate for the Tax Office to only advise on whether certain sections of the Tax Act will apply but ignore other sections that it may also consider applies. In a self assessment environment it is extremely important when obtaining Tax Office advice that the Tax Office advice is complete and that the taxpayer can act with impunity based on the advice received.

2.C – Timeliness of Tax Office advice has been, and continues to be, a concern particularly in relation to private binding rulings. In the "real world" time is an important factor as often a transaction must be completed by a set date. As taxpayers operate

under a self assessment system timeliness of Tax Office advice is extremely important particularly where a transaction must be completed by a deadline. Tax Office advice can often be provided in a more timely manner if the Tax Office advises the taxpayer early on if additional information is required or even if both the Tax Office and the taxpayer consulted early on in the process as to what information the Tax Office required in order to provide its advice or make its ruling.

2.D – The most common complaint the NTAA receives about the accuracy of Tax Office advice is in regard to the advice provided by the Tax Office over the telephone. Tax Agents and accountants often complain that each time they ring the Tax Office and ask the same question they receive a different answer. In order to show they have taken reasonable care a tax agent, accountant or taxpayer will make a detailed note of the telephone advice received from the Tax Office but when the Tax Office officer is asked for their name they often refuse to provide it or if they do provide their name they only provide their christian name and refuse to provide their surname. This makes it extremely difficult for the tax agent, accountant or taxpayer to convince a Tax Office auditor in the future that they actually did contact the Tax Office and receive the advice, particularly where the Tax Office auditor does not agree with the telephone advice originally provided by the Tax Office call centre.

2.I – A private binding ruling is merely the Tax Office's interpretation of Australia's tax laws. As many court cases indicate the Tax Office's interpretation is often not the correct interpretation. Equally, often the taxpayer's interpretation of a tax law is shown by a court not to be the correct interpretation. As a private binding ruling is only a Tax Office interpretation, and as that interpretation could have a pro-revenue bias where the correct view is unclear, taxpayers should not be penalised merely for not following the private binding ruling. The general interest charge is penalty enough.

2.J – Appeals against PBRs would still be required even if no penalty applied as the general interest charge itself is a form of penalty.

2.L – Australia's tax laws are extremely voluminous and complex and taxpayers should not be required to pay a fee to the Government when seeking clarification of the laws that the Government has made. Normally when a taxpayer seeks a private binding ruling the taxpayer is already incurring costs in the form of professional fees and so any additional costs would further discourage taxpayers from seeking clarification of their obligations from the Tax Office. In a self assessment system taxpayers should be encouraged to seek clarification, not discouraged.

3.A – The NTAA believes the time the Tax Office has to amend an assessment for all non-business individuals and for micro businesses with a turnover of less than $2 million should be reduced to two years. Other small businesses should have a three year amendment period. The normal exemption for fraud and evasion should still apply.

3.C – The problem with Part IVA is that it is very easy for the Tax Office, in order to protect its position, to merely say that Part IVA applies to obtain a longer amendment period. Although this may not happen, the mere fact it is possible causes uncertainty. The longer the amendment period the greater the uncertainty, particularly in a self assessment system. The NTAA believes that a four year amendment period should apply.

One of the main problems that has occurred of late is that the Tax Office has not taken action for some years after an event and as a result the penalties, and in particular the general interest charge, often exceeds the amount of primary tax outstanding. Had the Tax Office taken action earlier many taxpayers would not have as large debts and would not have been bankrupted. An example of this is the mass marketed schemes and all the problems associated with them.

3.H – Yes, there should be a remission of the general interest charge.

4.A – Professional opinions such as those by barristers, solicitors and tax experts, should be considered evidence of a taxpayer taking reasonable care or having a reasonably able position.

Penalties and the general interest charge are the two areas that are in greatest need of review and change in the self assessment system. Much greater recognition is needed of the fact that Australia's tax laws are extremely complex and therefore under a self assessment system mistakes by taxpayers are inevitable. Taxpayers should **not** be penalised for making mistakes in a system where the rules are so complex that even tax experts make mistakes. Recognition must be given to the fact that taxpayers and tax agents themselves do not have the time to search every single ATO ID or Fact Sheet on the Tax Office's website or search through every paragraph of every ruling. A taxpayer and a tax agent should be recognised as having taken reasonable care where they have taken reasonable steps to ascertain the correct tax treatment having regard to the amount of tax in issue.

It is difficult to see how this can be rectified by legislation and is probably best dealt with by greater direction given to the Tax Office to be more lenient in this area than it is currently. The volume and complexity of Australia's tax laws has increased remarkably since the self assessment system was first introduced. The penalty system and its application that was introduced with the self assessment system more than 10 years ago should be reviewed in light of Australia's tax laws today.

4.B – Taxpayers generally only request a PBR when they are confident of a favourable ruling or do not mind what ruling they obtain. If there was no penalty for failing to follow a PBR more taxpayers would be encouraged to seek a PBR.

4.D – Refer comments in relation to 4.A.

5.A – As the discussion in Chapter 5, and in particular section 5.1, of the discussion paper notes the GIC can be extremely onerous and in many cases unfair. The GIC should have one purpose – to compensate the Government for the loss of revenue earned as a result of the delayed payment of tax. There should be no uplift factor. Most taxpayers and small businesses are unlikely to be aware of how the GIC and penalty tax regime works. They simply understand that if they do not pay the correct amount of tax then penalties will be applied. Adding an uplift factor to discourage taxpayers from using the Tax Office as the bank is most likely irrelevant except for a very small proportion of taxpayers. As a result other mechanisms should be used to provide a positive incentive to encourage taxpayers to take steps to ensure they assess correctly. This should be dealt with exclusively under the penalty regime and not through the GIC.

If there is to be an uplift factor then the NTAA submits that the uplift factor be reduced to between 2 and 3%.

5.B – Yes

5.C – The approaches identified are appropriate. Of significant concern is the compounding affect of the GIC. A full remission of the GIC beyond a set period would go a long way to ameliorating this problem where for one reason or another an amended assessment has not issued for some years after the original due date for payment of tax. The NTAA also suggests that GIC not be compounded or alternatively, where appropriate, the Tax Office be given the ability to calculate the GST on a non-compounding basis.

5.D – In all aspects of taxation simplicity is to be preferred.

5.E – Given that many individual taxpayers and small businesses are unaware of how the GIC and penalty tax system operates, the Tax Office should initiate the remission of the GIC in more circumstances or at the very least advise taxpayers that they are able to, and should, seek a remission of the GIC.

6.D – These reviews are extremely costly to tax agents. They are generally time consuming and as a result the tax agent is unable to spend that time on providing other services to their clients. Further, the majority of the time spent by the tax agent is unable to be recovered in the form of fees from the client. A further problem is that as these reviews are not audits, any audit insurance cover will not cover the fees charged. These reviews could be improved as follows:

- A reduction in the amount of information requested. Often a lot more information is requested than needed. Further, when a particular area of the Tax Office decides to seek information another area of the Tax Office will also ask for information which has noting to do with the initial review.

- Different areas of the Tax Office should co-ordinate so that the reviews and requests for information are spread among tax agents rather than one particular tax agent receiving many different requests.

- The information requested should be specifically targeted and should not ask for the taxpayer to provide copies of all documents, records and everything else for the last four years.

- There should be a co-ordinated approach to the requesting of information by the Tax Office, for example, from a centralised area in the Tax Office.

6.E – It seems that in many cases the Tax Office is not aware of how onerous it is for a taxpayer to extract and provide information to the Tax Office. It seems that the Tax Office often requests far more information from the taxpayer than it needs and also requests that it be provided within an unrealistic time period. The NTAA receives many complaints from its members that the Tax Office does not really understand how busy small business taxpayers are and how much of a disruption it is for them to extract and provide information to the Tax Office.

6.F – CGT cost base record keeping requirements are extremely onerous. Particularly where on going acquisitions are made for example improvements to a rental property or participating in a dividend reinvestment plan. Although not specifically part of this review the GST record keeping requirements are also particularly onerous.

6.I – Where an election is required to be made by a certain date the Commissioner should always be given a discretion to allow an extension of time for the making or lodgement of that election. The most recent example of where this was a problem relates to family trust elections and interposed entity elections.