



CEO UPDATE – FEBRUARY/ MARCH 2019

Dear Stakeholders,

The Board of Taxation (the Board) held its first Board meeting for 2019 in Melbourne on Wednesday 13th February 2019. Thank you to EY for hosting the Board meeting and our discussions over lunch with stakeholders.

Consultations for a number of the Board's projects have now completed and accordingly the focus of the Board's meeting was to discuss stakeholder feedback and agree the way forward to finalise our reports. The Board also discussed our pipeline of work, priorities and possible new projects for 2019.

The Board held discussions over lunch with stakeholders, members of our Advisory Panel and partners and staff from EY. Thank you to everyone for attending and contributing your ideas and observations on how we can improve the tax system. We value your feedback.

Overview of current agenda

The following is an overview of our current work program, which includes:

- Review into granny flat arrangements;
- Fringe Benefits Tax (FBT) compliance cost and international practice review;
- Review of the Voluntary Tax Transparency Code (the Code);
- Further work on tax residency for individuals;
- Review of small business tax concessions;
- Sounding Board.

Further information on the status of some of these projects is set out below for your information.

Review into granny flat arrangements

The Board has commenced its review into granny flat arrangements as referred by the Assistant Treasurer. The Working Group is currently gathering information on market and industry practices in relation to family arrangements (including the influence of tax considerations) and the operation of the relevant social security laws. We will be conducting targeted consultations throughout March and April 2019. If you would like to be involved in the consultations, please contact the Board via email - taxboard@treasury.gov.au.

FBT compliance cost review

The Board’s review of FBT compliance costs has moved into analysis phase. All data collection is now complete and the Board is reviewing the results of the surveys. The data collection involved a multi-pronged approach including employer focus groups, multiple online surveys, and interviews with employers in Australia and tax authorities and employers in comparable countries.

The response rates for our random employer survey far exceeded our expectations, with over 1,200 responses received, giving us an overall response rate of 15.2%. The survey results are giving the Board some good insight into a wide range of issues, including the reasons employers provide fringe benefits, the direct and indirect costs of complying with FBT obligations, and areas where compliance costs are considered to be unreasonable and might be reduced. The following are some samples of the types of issues raised.

The survey results suggest that one of the primary reasons that fringe benefits are provided to employees is because “the benefits are necessary for employees to carry out their jobs”. This raises interesting questions around the treatment of work-related benefits as part of the FBT system.

The random employer survey and tax agent surveys also throws up some different perspectives on taxpayer capability to meet FBT obligations, as depicted in Charts 1 and 2 below. There is an apparent discrepancy between employers’ self-assessment of their capacity to meet their FBT obligations – a rating of 72% on record keeping abilities as strong and very strong – and tax agent’s perceptions of their client’s business practices – with a majority of tax agents indicating that their client’s business practices increase the costs of meeting their FBT obligations.

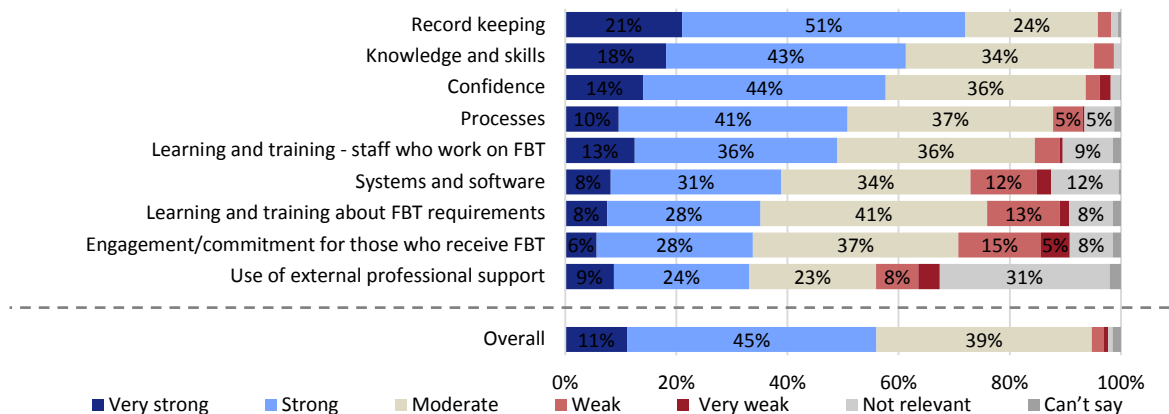


Chart 1: Employer’s perceptions of their ability to meet FBT obligations

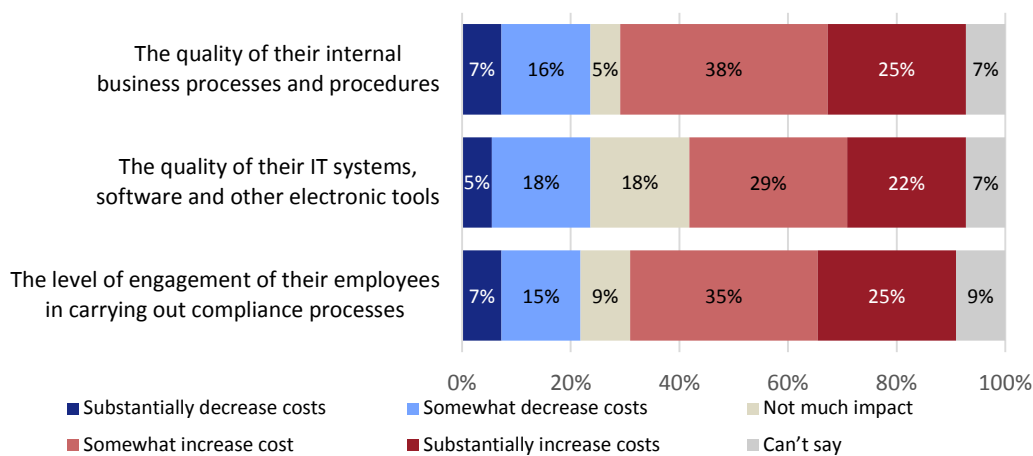


Chart 2: Tax agent’s observations of their clients’ business practices

The Board is currently working through the survey results so that it may formulate appropriate recommendations for Government. The Board is focusing on ideas that can deliver simplification, compliance cost savings and red tape reduction, and is looking at areas such as record keeping, which many employers have called out as being one of the most unreasonable aspects of the FBT regime in terms of compliance costs.

Tax Transparency Code consultation & update

Last year, the Board met with a range of stakeholders to collect feedback on the Code as part of a post-implementation review. On Tuesday 26th February 2019, the Board released a Consultation Paper outlining proposed changes to the Code as developed by the Board, after considering the feedback collected at consultation sessions conducted last year. The Consultation Paper is available on the [Board's website](#).

The Board invites interested parties to make submissions on the proposed changes to the Code, as set out in the Consultation Paper. The consultation period closes on 26th March 2019. Details on how to make a submission are outlined in the Consultation Paper. Whilst the Board is not planning any roundtable consultation sessions at this stage, we are happy to meet with stakeholders to receive feedback and discuss the Consultation Paper further. Written submissions are also encouraged. Please feel free to contact the Board if you would like to arrange a meeting.

The Board is continuing to monitor take-up of the Code and is pleased to report that while the pace of new businesses joining has slowed, there are still new businesses joining every month. As at 26 February 2019, there were 160 signatories of the Code, with 139 of those having published at least one report. The full register of signatories can be found on the Board's [website](#), and links to published reports are available on data.gov.au.

We strongly encourage all our stakeholders to consider adopting the Code, and to work with your clients to adopt the Code. For further information on the Code or to register your intention to adopt it, please contact us at taxboard@treasury.gov.au.

Review of residency for individuals

The Board concluded its consultations on the tax residency of individuals in 2018, and is now in the process of finalising its report to Government. The Board is considering a two-step approach, with a primary "bright-line" days-based test, supplemented by a secondary test based on factors indicating a connection with Australia that can be applied when individuals commence or cease residency in Australia.

The recent Full Federal Court decision in *Harding v Commissioner of Taxation [2019] FCAFC 29* has once again highlighted the uncertainties that can arise applying the current test. The Full Federal Court overturned the decision of the single judge of the Federal Court handed down in 2018 to find in favour of the taxpayer. Importantly, the Board's project is principally concerned with simplification of the residency tests to improve certainty in this area, in the hope that over time, the need for ATO private rulings and/or litigation on matters relating to individual residency can be minimised.

Residency test for companies

In 2018, the Board received a number of submissions from stakeholders outlining concerns around the application of the residency tests for companies. In particular, stakeholders are concerned that the central management and control test of corporate residency which has previously been applied as a two stage test has been collapsed into a single test following the High Court decision in *Bywater Investments Limited and Ors v Commissioner of Taxation [2016] HCA 45* and the withdrawal of Taxation Ruling *TR 2004/15*. This is an area of interest for the Board - once some of our other projects are completed. We are considering opportunities for further work in this area - especially now that the ATO has finalised Taxation Ruling *TR 2018/5* and Practical Compliance Guideline *PCG 2018/9*.

2019 Meeting Dates

The Board will meet in 2019 as follows:

- 14 March – hosted by CAANZ Sydney
- 11 April – hosted by EY Brisbane
- 30 May – hosted by Treasury Canberra
- 4 July – hosted by PwC Melbourne
- 8 August – hosted by Deloitte Adelaide
- 12 September – hosted by Deloitte Sydney
- 17 October – hosted by KPMG Perth
- 21 November – hosted by Baker McKenzie Sydney
- 19 December – hosted by BDO Melbourne

Thank You!

The Board would once again like to thank EY partners and staff for hosting the Board meeting and lunch with stakeholders.

We value your feedback, so please stay in touch. You can contact me directly at any time using the details below. You can also keep up to date with the Board's activities via the [Board's website](#), or follow us on [LinkedIn](#).

Kind regards
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