

4 November 2002

The International Taxation Project
Board of Taxation Secretariat
C/- the Treasury
Langton Cres
Parkes ACT 2600

Email: international@taxboard.gov.au

Dear Mr Warburton

Re: NIA Submission on the Review of International Taxation Arrangements Consultation Paper

The National Institute of Accountants (NIA), a professional accounting body with over 12,000 members working in all areas of the accounting profession, would like to make the attached submission in response to the Review of International Taxation Arrangements Consultation paper.

The NIA would like to take this opportunity to thank the Government and the Board of Taxation for this opportunity to provide comment on an increasingly important area of taxation.

The comments provided in the attached submission are general and are therefore targeted at expressing to the Board the frustrations and concerns many small businesses and their accountants have with Australia's current International Taxation Arrangements.

Should you have any queries, or would like any additional information on the attached submission, please do not hesitate to contact me on (03) 8665 3114 or by fax on (03) 8665 3130 or by e-mail on gavano@nia.org.au.

Yours sincerely

Gavan Ord
Technical Policy Manager

NIA SUBMISSION TO THE REVIEW OF INTERNATIONAL TAXATION ARRANGEMENTS

Introduction

The National Institute of Accountants (NIA) is one of three professional accounting bodies in Australia. With a membership of over 12,000 accountants working in all areas of the profession, we have a significant interest in this Review and therefore we provide the following comments on the Consultation Paper.

The NIA appreciates the opportunity afforded by the Government and Board of Taxation to provide feedback on this Consultation Paper and we hope that our contribution can assist in the development of Australia's international taxation arrangements that increase Australia's attractiveness for foreign investors and increase the competitiveness of Australian firms investing in other countries.

General Comments

The NIA supports any process that the Government undertakes that will increase the attractiveness of Australia to foreign investors, supports the growth of Australian businesses outside of Australia and provides an environment that attracts people with appropriate skills to Australia to work.

In meeting these objectives we have to consider what are the attractions and disincentives in Australia's tax system and the relative importance or otherwise tax plays in decision making. Firstly we must reflect upon why tax is such an important consideration. This should not be so, tax should never create bias in investment decisions and the NIA hopes that an important outcome of the Review is to reduce the relative importance tax plays in decision making. Taxation considerations should just not be as important as they are. A good

taxation system from a taxpayer and economic efficiency point of view is one that has little prominence in decision making for all taxpayers.

Australia should not concentrate on having a tax system that is comparable to other jurisdictions outside our region. Although helpful in guiding on policy formation, policies formed from such comparisons do not greatly assist in attracting investment to Australia. This is supported in the Consultation Paper at page 2 which states:

“Tax often is more significant in determining the location of investment between countries within a region (for example, countries in Europe) than between countries (for example, Europe and Asia).”

Therefore, although understanding the integrity and revenue imperative of many of the proposed changes, unless the proposed changes make Australia’s tax system comparable to other jurisdictions in our region, the benefits of the Review will be muted. In discussing comparability, the NIA is not limiting itself to the rate at which tax is imposed but on tax policy and tax administration as a whole. For example, comparability should include compliance. Compliance with Australian tax law is time and resource consuming, mainly because of the sheer complexity of the law. Therefore, the Review must aim to bring compliance requirements more in line with other taxing jurisdictions in our region.

Complexity is another issue that needs to be considered. While arguments around integrity and revenue protection are correct, often integrity is achieved at the expense of complexity. It would be an interesting exercise to compare the complexity of Australian tax law with other taxing jurisdictions in the region. Another issue that increases compliance costs is the stability, or otherwise, of the law. The tax reform process, although mostly beneficial, has created significant instability in the tax system, which gives taxpayers an increased degree of

uncertainty in the tax system and uncertainty creates a poor investment environment.

Attracting Equity Capital for Off-shore Expansion

The NIA supports changes to the tax system that removes the bias of domestic investment over offshore investment. The tax system should not artificially generate bias in the market unless there is a clear Government policy to do so. We therefore support the option that best removes that bias. If the Government considers that its policy intent is to continue to encourage domestic investment by domestic taxpayers, then the NIA submits that the Government must continually review the effectiveness of the imputation system to determine when, or if at all, the imputation system works against Australia's interests (if not already) and make changes at that time.

Promoting Australia as a Location for Internationally Focused Companies

Option 3.8 asks for consideration of the options to improve the consultation processes on negotiating tax treaties. Although understanding the traditional confidentiality of bilateral negotiations, the NIA asks that the extent of such confidentiality be considered on a negotiation to negotiation basis. For example, during the recent renegotiations on the United States Double Tax Agreement, updates on negotiations were made available on US Government websites while the ATO did not publicly provide such an update. Therefore greater transparency during negotiations (where possible) should be adopted.

The NIA endorses recommendations that will make better use of Tax Treaties Advisory Panel and other expert committees of the ATO and the tax profession, including the Foreign Source Income and Transfer Pricing sub-committees of the National Tax Liaison Group in addition to special interest groups and companies.

Option 3.12 on clarifying the test of company residency is an interesting issue as there is a large body of legal precedent established over many years about where company residency is established for tax purposes, therefore the NIA is yet to be convinced that the issue needs clarification through legislative change.

Given the increasing mobility of capital and goods and the substantial incentives that exist in moving corporate residency to low tax jurisdictions, the issue of residency will always be subject to challenge and amending the legislation which has built up a large body of precedent, may cause more problems for taxpayers and the ATO than what it solves.

Promoting Australia as a Global Financial Services Centre

Option 4.1 asks us to consider long-term models to replace the current foreign investment fund (FIF) rules. The NIA agrees with this option (given the complexity of FIF rules, even by Australian standards) and recommends that the Government review the FIF rules, especially to consider the results of reviews in the US, UK and New Zealand of their FIF type rules.

Option 4.7 puts forward for consideration the possibility of exempting from Capital Gains Tax (CGT) disposals of a non-portfolio interest in a unit trust that relate to unrealised gains on assets that do not have the necessary connection with Australia. While the NIA supports such an exemption as being necessary to increase Australia's attractiveness as a global financial services centre, any change must not add to the complexity of CGT. Given the complexity of the CGT system, the NIA also calls for a review of the effectiveness or otherwise of Australia's CGT system along similar lines to this Review.

Improving Australia's Tax Treatment of Foreign Expatriates

The NIA supports measures that assist in attracting necessary talent to Australia, including expatriates, as this is in Australia's interest. It will be difficult for Australia to remain competitive unless we can fill areas of labour shortages and, in the short term, this can only be done through importing such labour. One of the key factors in attracting expatriate talent is Australia's taxation system, which the Consultation Paper states is relatively high, especially at the top marginal rate.

Option 5.1 considers implementing the Review of Business Taxation recommendation that residents departing Australia provide security for deferred CGT liability. The NIA does not support such a proposal for the same reasons given in the Consultation Paper, being such an approach would involve considerable compliance and administrative costs and would add to, not reduce complexity.

Conclusion

The NIA would again like to thank the Board of Taxation and the Department of Treasury for this opportunity to contribute towards improving Australia's international taxation arrangements. Although the comments in this submission are general in nature, they do accurately reflect the general frustrations and issues NIA members working in this area have with the current taxation arrangements.

Gavan Ord
Technical Policy Manager