



27 May 2014

Review of Tax Impediments to Small Business
Board of Taxation Secretariat
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Submission on Review of Tax System Impediments Facing Small Business

Australian Bookkeepers Network (ABN) welcomes the opportunity to respond to the Board of Taxation's review into the tax impediments facing small business.

About ABN

Australian Bookkeepers Network is a commercial organisation which provides resources and support to thousands of bookkeepers Australia-wide to assist them in operating and growing their businesses. As such, we are uniquely placed to identify tax system impediments faced by small business that are unreasonably or unnecessarily hindering or preventing those businesses from pursuing and achieving their commercial goals and growing into medium and large businesses.

Small Business Concessions – \$2 million Turnover Test

The small business entity (SBE) concessions provide small business with a wide array of CGT, GST, FBT, PAYG and income tax concessions.

The sole access point for the concessions is that your business must have an aggregated turnover of less than \$2 million. The dollar value of this threshold is inadequate and may act as a disincentive for small business to grow. Having been set at this level since 2007, this threshold should be lifted or at least indexed in line with inflation. We note that the small business CGT net asset threshold was in the recent past lifted by 20% from \$5 million to \$6 million. However, there has been no lifting of the \$2 million threshold since the SBE concessions were introduced nearly seven years ago. Lifting or indexing the threshold gives small business the freedom to grow without jeopardising access to the many and lucrative SBE concessions on offer.

Red Tape – Employment

Small business is the lifeblood of the Australian economy, employing a high percentage of the overall workforce. However, the processes involved in putting on extra staff are now more complex, time-consuming and cumbersome than ever and act as a disincentive to hire. Whether it be:

- Grappling with the different definitions of 'employee' for the purposes of PAYG withholding, superannuation guarantee, workers compensation and payroll tax
- Complying with the superannuation choice regime
- Complying with Workers Compensation obligations

...the whole process when added together can be overwhelming for employers and of itself act as a disincentive to putting on additional staff.

In view of this, we propose:

- A uniform definition of 'employee'. Although State laws are not the chief focus of this review, the Federal Tax System should at least play its part in this area by offering a consistent definition of 'employee' for the purposes of PAYG withholding and superannuation guarantee (at present, a worker can be classed as a contractor; with the employer having no PAYG obligation but be nonetheless liable for superannuation).
- That the current Tax Office **Employee/Contractor Decision Tool** be redeveloped in consultations with industry (at present tool can in some cases provide anomalous outcomes and appears to have a slight bias towards classifying workers as employees for superannuation purposes). For example, consider the following Case Study:

Fred is an IT worker who fixes client's computer problems both hardware and software. He rented a small shop and works alone. While he gives his clients an estimate of repair costs for those that ask, he prefers to charge an hourly rate as often there are more problems that become evident in an assignment than present initially. He charges for parts used but these are incidental and the vast majority of his charges are for labour. He has no written agreements with his customers (just his invoice). He stands behind his workmanship and rectifies any faults.

Having entered this example into the Tool, it concludes that Fred is an employee. This does not seem to accord with common law principles in this area, or the tests contained in IT 2005/16.

- That the determinations provided by the **Employee/Contractor Decision Tool** be binding on the Tax Office, provided the employer has fed accurate information into the tool. It should also be made clear on the Tax Office website that the tool is binding on the Tax Office.

On a broader level, such is the importance of small business to the creation of employment; consideration should be given to the development of a new, user-friendly website/portal as a "one-stop shop" for employers who are hiring a worker. This should house all the State and Federal information required to hire new employees including Tax Office information (TFN declarations, superannuation choice, PAYG links, superannuation guarantee etc.) as well as State-based resources for Workers Compensation, payroll tax etc. Fair Work Australia material should also be included. Such a website/portal would make the employment of extra staff a much simpler process for small business. It makes no sense that red tape alone is a disincentive to employing additional staff.

While on the topic of complying with the Fair Work Act, it's our view that the current Fair Work system (consisting of the Fair Work Ombudsman and the Fair Work Commission) does not adequately cater for employers seeking independent advice on their obligations under the Fair Work Act. As it currently stands, the Ombudsman's main brief is to investigate breaches of workplace rights and take matters to court, while the Commission's main role is as an independent tribunal set up to hear disputes and also make adjudications in relation to minimum wages and awards. This leaves a gap in the current system. Employers need better access to free, independent, reliable advice from those administering the Fair Work Act. Either the Ombudsman's office should be better resourced to provide independent advice to employers, or a new department established for this express purpose.

Restructures

In the early stages of business-life the prevailing philosophy often is: keep it simple and low cost. Consequently a number of start-up businesses commence with a sole trader or partnership

structure. However, as a business grows such structures become less appropriate on several levels including asset protection, tax-effectiveness, succession planning etc.

Consequently, business owners may be inclined to change to a more appropriate, mature structure such as a company or discretionary trust. In doing so, CGT may be incurred for the change of ownership of the business's assets including goodwill. While in this situation CGT exemptions may provide some relief when changing to a company structure, equivalent relief is not always available when changing to a discretionary trust structure. Consideration should be therefore be given to greater CGT rollover relief when changing to a trust structure. Put simply, it should be simple and low cost for a business to restructure as it grows. Currently, this is not always the case.

Another large cost in restructuring can be is stamp duty. As we later propose, stamp duty concessions and exemptions should mirror CGT concessions and exemptions.

GST Reform

Despite having been in operation for more than a decade, the GST system is still proving a drain on small business on a number of levels.

Reporting – The GST represents nearly half of the tax compliance cost for business. This forces business owners to work 'in' their business rather on developing and growing their business. A large part of this compliance burden is from GST reporting with most small businesses doing so on a quarterly basis. To alleviate this burden, we propose that businesses be permitted to report and pay GST annually if they are an SBE (i.e. have an annual turnover of less than \$2 million). This would not only reduce the compliance reporting burden, but provide a cash flow benefit for businesses in a net GST payment position at year-end (i.e. they owe the Tax Office more GST than the credits they are entitled to be paid). These businesses would make a year-end annual payment of GST rather than being required to pay the Tax Office quarterly.

Under our proposal, businesses in a GST net refund position would still be able to report quarterly or monthly if eligible under the current rules.

Complexity – dealing with the complexity of various GST-free carve-outs and exemptions especially in the area of food is felt most acutely by small business. With pre and post-Budget calls to consider raising the rate of the GST in order to secure a sustainable revenue base going forward (see for instance the 3 April speech to the Sydney Institute by Treasury Secretary Martin Parkinson), in our view a better approach would be to broaden the base of the GST which would not only achieve the desired goal of a sustainable revenue stream for the States but would simplify the complexity of the GST system for business who would then not be forced to spend so much time distinguishing between taxable and non taxable items, and the flow-on reporting effects.

On this simplification front, we welcome the announcement by the Government in January that it would proceed with the former Labor Government's proposal to simplify the GST going concern exemption with a reverse-charge mechanism. However, whilst this reform may reduce complexity and compliance in the sense that taxpayers will no longer be required to grapple with the complex going concern provisions, it could result in an increase in stamp duty charges on the sale. This is because stamp duty is applied on the GST-inclusive price. Whereas under the going concern exemption GST would not apply at all, with the reverse-charge mechanism, GST will always apply on these transactions...on top of which stamp duty may be charged, thus increasing the real cost for the buyer. For example, on the purchase of business property for \$2 000 000, where the going concern exemption applied, stamp duty was only levied on the amount of \$2 000 000. By contrast, the reverse-charge mechanism will mean the property sells for \$2 200 000. Although the purchaser will be able to claim back the \$200 000 GST component on their BAS, stamp duty will be applied to the extra \$200 000 which, if charged at 5% for example, will see the purchaser's real cost increase by \$10 000. The take-away point is any moves to simplify the system should not add extra transactional costs, especially in the area of business acquisitions.

Stamp Duty – Business Purchases

Stamp duty is a growth-inhibiting tax which deters investment.

Although State taxes are not the chief focus of this review, we would urge the Federal Government to apply pressure to the States and Territories to abolish stamp duty. After all, when the Government introduced the GST in 2000, in exchange for the revenue they were to receive the State Governments pledged to abolish a raft of taxes including Stamp Duty. According to the Inter-Governmental Agreement signed by the States, stamp duty (now known as Transfer Duty in some states) was to be abolished by 30 June 2010. State Governments then signed a subsequent agreement to abolish Stamp Duty on certain transfers (including on the transfer/acquisition of business assets) by 30 June 2013. This has not yet occurred. It is to be hoped that State Governments will follow through on this agreement and we urge the Federal Government to apply pressure for them to do so. The abolition of Stamp Duty would encourage greater business investment.

If stamp duty is not to be abolished then at the very least we propose that stamp duty exemptions on business assets and re-organisations/restructures be consistent with the exemptions that currently exist in the CGT law. This would better enable businesses to invest and also restructure their affairs as they grow.

Payroll Tax

Perhaps the greatest tax barrier at a State level to expanding your business is Payroll Tax. It not only inhibits growth but can be an administrative nightmare if you have employees in different States. Even though payroll tax provisions have been across some jurisdictions, different thresholds continue to apply; making compliance more time consuming and difficult than it should otherwise be. We also note that Payroll Tax thresholds have not kept pace with growth in wages.

The abolition of Payroll Tax (perhaps to be funded by a broadening of the GST base – see earlier) would promote employment growth and business expansion. If abolition is not viable, at the very least, Payroll Tax laws should be harmonised across ALL jurisdictions, including having uniform thresholds.



Peter Thorp
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