

28 March 2011



The Board of Taxation
Post-implementation review of the Tax Design Review Panel
recommendations
c/- The Treasury
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CANBERRA ACT 2600

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Dear Sir/Madam

Submission - Post Implementation Review of the Tax Design Review Panel Recommendations

CPA Australia represents the diverse interests of more than 132,000 finance, accounting and business advisers worldwide. We are committed to working with governments and their agencies to ensure economic and social policies foster an environment that facilitates sustainable economic growth.

Please see our submission attached which details our responses to the questions raised in the Board's Discussion Paper (DP) on the abovementioned topic.

You can contact Garry Addison (ph. 03 9606 9771 or email: garry.addison@cpaaustralia.com.au) in the first instance if you have any queries on the issues canvassed in this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Drum'.

Paul Drum
Head – Business and Investment Policy

Encl



Attachment

Submission re Post Implementation Review of the Tax Design Review Panel Recommendations

Q 2.1 Issues/Questions/Responses

1. We do not have any hard evidence as to whether the increase in the proportion of prospective measures announced during the review period (ie. 22/8/08 – 21/8/10) has enabled taxpayers to more efficiently structure their tax affairs, but we would think that this has in fact been the case. The apparent decline in the concerns regarding the impact of retrospective legislation on taxpayers would seem to be consistent with this outcome.
2. While the introduction of a majority of measures within the recommended time frames (of 6 and 12 months) has presumably lessened concerns about delays in introducing legislation for announced measures, it is important that these time frames be maintained and preferably improved going forward.
3. The Government's publication of the Forward Work Program for Announced Tax and Superannuation Measures is certainly a welcome development and appears to have increased certainty and eased concerns about delays in introducing tax changes.
4. The information collected and presented in this discussion paper in relation to recommendations on the timing of legislation broadly accords with our perception and understanding of the current position in this area, and
5. We are not aware at this stage of any further evidence/information which the Board should consider in its review of the recommendations on the timing of legislation.

Q 2.2 Issues/Questions/Responses

1. The current process whereby most tax measures are open for consultation and external input via Board of Taxation (BoT) reviews and/or via Treasury consultations has resulted in improvements in tax policy and legislation including greater certainty for taxpayers. The proposed resource rent tax (RSPT) was a case where such consultation arguably did not occur and thus gave rise to significant uncertainty for affected taxpayers.

2. The proposed RSPT appears to be the most significant case in recent times where pre-announcement consultation could have been undertaken which may have resulted in more effective policy design than that reached by post-announcement consultation on the design of the announced policy and draft legislation.
3. We are not aware of any instances in recent times where post-announcement consultation was not undertaken but which might have been beneficial in refining the policy design or the draft legislation.
4. The increased use of public consultation relative to confidential consultation appears to have enabled most stakeholders to have sufficient involvement in consultations on tax measures relevant to them over the two year review period.
5. In relation to your query concerning whether the posting of consultation summaries for most measures consulted upon has provided improved feedback to stakeholders involved in the consultation process, our answer at this stage is in the negative as we have not previously been aware of the existence of such summaries. We note also that we are still finding it difficult to access these summaries via the Treasury website.
6. We are not aware whether the release of discussion papers (DPs) for just under half of the measures announced during the two year review period has caused uncertainty for taxpayers in managing their tax affairs but clearly the goal going forward should be to ensure that appropriate DPs are issued in most if not all cases unless there are good reasons why this is not necessary. .
7. We are not aware whether the minimum recommended time period (4 weeks) for post-announcement consultation on policy design during the review period has allowed sufficient time for the public to identify issues and for them to be addressed before the relevant legislation is enacted. However, in relation to matters that impinge on a wider range of taxpayers, including particularly individual taxpayers, it could be desirable in future to either allow a longer period for consultations or allow extensions of time for some taxpayers to lodge submissions.
8. We are also not aware whether the minimum recommended time period (4 weeks) for post-announcement consultation on draft legislation during the review period has allowed sufficient time for the public to identify issues and for them to be addressed before the relevant legislation is introduced into Parliament. However, in relation to matters that impinge on a wider range of taxpayers, including particularly individual taxpayers, it could be desirable in future to either allow a longer period for consultations or allow extensions of time for some taxpayers to lodge submissions.
9. We do not have any concerns, nor are we aware of any concerns, as to whether the prioritisation process undertaken by Treasury and OPC is adequate in ensuring legislation is being drafted by the date by which it needs to be released for consultation.

10. The information collected/presented in this DP in respect to recommendations on the quantity of consultation seems to be consistent with the perception and understanding of industry generally.
11. Consultations during the relevant period generally comprised the issue of a Treasury discussion paper for comment followed subsequently by the issue of draft legislation which was also open for comments. This approach seems appropriate going forward except that there could be more scope for extensions of time to comment in some circumstances.
12. In respect to how the Board could evaluate the quality of the consultation process, one option could be for the Board to invite feedback from stakeholders following the completion of these processes from time to time.
13. We have no further comments to make on the abovementioned matters at present.

Q 2.3: Issues/Questions

1. In respect to stakeholders' experience with the engagement of private sector experts by the Government and the resulting tri-partite design team arrangements, we support this approach, including particularly via the Tax Review Design Panel (TDRP), to ensure that appropriate consultation processes are in place regarding proposed government tax measures and new legislation.
2. As reflected in the abovementioned comments, we believe that the engagement of private sector experts and the involvement of tri-partite design teams in the tax design process has enhanced the quality of the tax measures announced during the review period.
3. However, the Government's more limited use of tri-partite design teams during the review period (as reflected in our understanding that only around 7 out of 90 projects had such pre-public consultation input) and increasing reliance on public consultation, is a matter of concern to us and we believe that this matter should be addressed as soon as possible. In particular, the reasons for this outcome need further clarification since expert input from external experts (ie. private sector tax specialists) at the early design stage is extremely important and is not something that should be supplanted by public consultation as the latter should complement and not be a substitute for earlier external expert input under the formal tripartite arrangements.
4. We are not entirely sure as to how the engagement of private sector experts could be improved but if the level of remuneration necessary to attract the right experts is currently inadequate then this problem should be appropriately addressed by the Government as soon as possible. If there are other problems in this regard then such problems should be clarified and further consultation on ways in which such problems might be fixed should occur.

5. The information collected and presented in relation to recommendations on the involvement of the private sector seems to broadly accord with the perception and understanding of industry generally.
6. In respect to any further evidence/information that the Board should consider in its review of the recommendations on the involvement of the private sector in the policy and legislation area, we would note that more time for consultations should be provided in the early period of the New Year where, as is common, a large number of proposed new tax measures are released for consultation during this period.