

Review of self-assessment system
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Sent: Monday, 23 February 2004 4:13 PM
To: selfassessment@treasury.gov.au
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Subject: Review of self-assessment system

It recently occurred to me that Treasury might be interested to hear of a quirk in the self-assessment system for the purposes of its review of that system. The quirk is that the non-commercial loss rules have become an exception to the way the self-assessment system operates in practice. Given the Inspector General of Taxation's interest in the self-assessment system and the Board of Taxation's current review of the post-implementation phase of the non-commercial loss rules, I have copied them in on this email.

Under the Income Tax Assessment Act ("the ITAA"), many outcomes are subject to the discretion of the Commissioner of Taxation ("the CoT"). On occasions, taxpayers must grapple with the CoT's discretions when preparing their income tax returns. On such occasions, taxpayers can self-determine whether the CoT would exercise his discretions. Where taxpayers want greater certainty than self-determination provides, they can apply to the CoT for private taxation rulings on the exercise of the CoT's discretions.

One of the few exceptions, if not the only exception, to self-determination of discretionary matters is the CoT's discretion under section 35-55 of the ITAA not to apply the rule in section 35-10 of the ITAA regarding non-commercial losses. Where affected taxpayers have business losses for a post-2001 year of income, they must complete item P9 in their income tax returns. The effect of item P9 is that affected taxpayers cannot self-determine whether the CoT would exercise his discretion under section 35-55.

Item P9 discriminates against affected taxpayers with business losses. Typically, such taxpayers are small-business taxpayers. Affected taxpayers without business losses and non-affected taxpayers can self-determine whether the CoT would exercise other discretions. At least one of the other discretions relates to the deductibility of losses.

Finally, I wish to comment on the interaction between item P9 & the settlement of mass-marketed tax schemes, or so-called schemes. The settlement of such schemes was unsatisfactory in some respects, including a lack of clarity as to the deductibility of the ongoing costs of participating in the schemes. Clarification of this point would soften the discriminatory nature of item P9.

Regards,

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