Tax White Paper Task Force

The Treasury

Langton Crescent

PARKES ACT 2600

***Re: think* Tax Discussion Paper**

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**Introduction**

We would firstly like to congratulate The Treasury on the release of the *Re:think* discussion paper and thank you for allowing ADP the opportunity to contribute to the conversation around the reform of Australia’s tax system.

ADP has 41.22% market share of outsourced payroll Australia-wide[[1]](#footnote-1) and is a premiere payroll and human capital management provider globally.

We have addressed the consultation questions from the discussion paper where we feel our experience and expertise contribute valuable insight to the discussion.

Overall, we feel that this submission process and the possibility of tax reform is a step in the right direction toward building a stronger Australia, along with the focus on small business as was demonstrated in the Federal Budget delivered on 12 May 2015.

ADP looks forward to working with the Treasury should further consultation be necessary.

**Responses to discussion questions**

**Challenges for Australia’s tax system**

***Question 1. Can we address the challenges that our tax system faces by refining our current tax system? Alternatively, is more fundamental change required and what might this look like?***

We believe that whilst reform of Australia’s tax system is not the only solution it is definitely a step in the right direction. Our tax system may contribute to a view of Australia’s anti-competitiveness globally and hindrance to the development and growth of businesses locally. As we have seen examples of this with the car industry moving offshore to manufacture vehicles in recent times.

In section 2.2 of the discussion paper, there is discussion around Australia having a relatively low tax burden compared to other developed countries. That comparison may not be fair given that the structures of other countries, especially Europe, are different to our own. Specifically, a difference being that we privately fund retirement income.

Australia is still one of the most burdensome tax jurisdictions in the world and is heavily reliant on individual and corporate income tax revenue.

We are also unique compared to some other larger developed nations such as the United Kingdom and the United States in that our business community consists of approximately 96% small businesses.[[2]](#footnote-2)

Lowering taxes may initially impact Australia’s GDP and debt ratios, however, giving the community the confidence to spend, build businesses and grow may ultimately serve Australia better in the long term.

**Australia’s tax system**

***Question 4. To what extent should reducing complexity be a priority for tax reform?***

The complexity of the current tax system would be the basis for the majority of non-compliance in Australia. Most businesses *want to be compliant,* however many do not have the resource to invest in tax advice or a dedicated in house tax resource*.*

For example, a small to medium business that is fighting larger businesses to appeal to a more skilled segment of the workforce may offer a vehicle or some other incentive to an employee not realising that his is creating an FBT liability.

**Overview of the Fringe Benefits Tax System**

***Question 7. What should our fringe benefits tax system look like and why?***

The Fringe Benefits Tax (FBT) obligation currently rests with the employer and not with the employee. As mentioned in the discussion paper, Australia and New Zealand are the only countries in the world that tax non-cash benefits in the hands of the employer.

Our FBT regime currently consists of 13 different benefits, each having a number of valuation methods, the scope of FBT has reached so far that there is very little incentive left for an employer to reward an employee (with anything).

There is an argument that FBT should be folded into the Income Tax regime as it would make more sense. The logic for the tax in the first instance was to capture the full ‘remuneration cost’ of an employee. Taxing it in the hands of the employee recognises that it is a form of non-cash remuneration given by the employer.

There would need to be extensive simplification of the FBT regime to both narrow the types of benefits caught and to reduce the degree and complexity of valuation methods to be applied.

It would be unfair to impose FBT in its current state on to the employee as it would be a significant tax burden. Further, employers currently can claim a tax deduction for FBT paid in their income tax returns, which offsets (to some degree) the outlay of the liability. The law as it currently stands does not allow an individual to claim a deduction for the payment of tax.

Exempt and rebateable employer statuses were originally introduced because these types of employers (i.e. public hospitals, charities and benevolent institutions) were typically not paying salaries at market value. Benefits up to the relevant cap, were seen as a way to ‘top up’ the salary and wages to these employees.

It is perhaps time to review these caps, in light of the purpose for which they were implemented. One potential area to review being that there is no limit to how many times an employee has access to these caps (i.e. a medical practitioner that works at a number of hospitals may be able to utilise the cap at each place of employment).

**Implications for labour supply**

***Question 9. To what extent does taxation affect people’s workforce participation decisions?***

ADP has considered workforce participation both from the view of the employer and the employee.

*Employer considerations*

It is almost more important to consider the employer view than that of the employee. In that, without the employers being in the position to build their businesses and hire more staff, there are no jobs for employees regardless of their motivations.

As mentioned in the introduction, we commend some of the measures announced as part of the Federal Budget to assist small businesses and we feel it is a positive shift to support those businesses.

Fundamentally though, the tax burden is not only for small businesses and also, in most cases not primarily from direct tax sources.

Businesses in Australia looking to grow and expand have a number of burdensome indirect taxes to consider:

* FBT
* PAYGW (especially on events such as terminations which can be particularly difficult)
* Payroll Tax when their ‘wages ‘exceed the relevant thresholds
* WorkCover
* Superannuation Guarantee
* Land Tax (where they own certain types of land)

These are on top of dealing with any additional items such as Centrelink and other disbursements, National Employment Standards, industry regulations and unions all with varying requirements.

Payroll tax in particular appears to be a tax with no purpose (other than to raise tax revenue). Payroll tax is effectively a ‘penalty’ on employers for employing more people. It is a hindrance to employers growing their business.

Taxes like payroll tax would be a major consideration in whether to hire more people, expand interstate or globally for many businesses.

Apart from the actual cost of these taxes to businesses, they are also unnecessarily complicated. FBT, payroll tax and WorkCover legislation are more complex than income tax.

The payroll tax harmonisation project that was carried out by the States and Territories in 2010 was to result in a uniform payroll tax across the nation. Today, each State and Territory still has its own variation on what constitutes ‘wages’, different tax rates and different exemption thresholds.

For an employer that employs over two or more states, it is very complicated for them to comply when the rules are varied depending on the jurisdiction.

Not to mention that the definition of ‘wages’ for WorkCover purposes is different again to the definition in payroll tax. WorkCover legislation also has inconsistencies over the various jurisdictions.

Another burden are the various contractor provisions in place that, in most cases, deem contractors as employees and then place employer obligations on businesses and extra administrative work. Dealing with contractors becomes unnecessarily arduous for businesses and may discourage them from engaging with contractors as a source to test expansion or implement short term win projects.

The more complicated and burdensome the tax system is on an employer, as demonstrated above, the less likely employers will be to continue employing people and growing their businesses.

*Employee Considerations*

Individual marginal rates in Australia are high, meaning employment income is significantly diluted. Our top marginal tax rate (including the Temporary Budget Repair Levy) is 49%, compared to our Asia Pacific neighbours who levy:

* Singapore– maximum of 20%
* Hong Kong – maximum of 17% progressive rate or 15% standard rate
* Japan – maximum of 40%
* New Zealand – maximum of 33% (PAYE system).

Some considerations for Australians deciding to participate in the workforce include:

* Paid parental leave – can they afford to have children with no or very little pay for an extended period?
* Cost of child care – is the employment income enough to cover the cost of child care?
* Other disbursements (i.e. child support) that would mean the more they earn the more they pay
* Flexibility and work-life balance
* Government funding vs employment income – is it more lucrative to receive Government funding (i.e. the dole) than to work
* Is it worth having a HECS/HELP debt in the hope that a degree will improve my chances of a good career?

**Individuals –Fringe Benefits Tax**

***Question 16. To what extent does our fringe benefits tax system strike the right balance between simplicity and fairness? What could be done to improve this?***

The Fringe Benefits Tax (FBT) system is not simple; in fact, it is quite possibly the most complex of all the taxes in Australia.

Please see response to Question 7 (above).

***Question 17. To what extent are the concessions and exemptions in the fringe benefits tax system appropriate?***

There is still further scope for exemptions and concessions in the FBT regime.

As discussed at Question 7, the intention of FBT when it was introduced and where it stands currently are completely different.

There is little that an employer can give an employee now that isn’t subject to FBT. Even where a concession or exemption is available, the record keeping requirements are quite onerous to the business to ‘prove’ that they meet the criteria for the concession/exemption.

Businesses that cannot afford market salaries have traditionally relied on being able to provide employees with a few non-cash benefits to reward or retain staff. The impost of FBT effectively doubles the value of any non-cash benefits an employer provides.

The current exemptions and concessions are also quite complicated, notably, the criteria around Living Away From Home Allowances (LAFHA) as a key example, exacerbated by the recent change in legislation.

Exemptions for smaller benefits such as gift cards are complicated and time consuming for the employer. For example, when a gift card is provided to award an employee, the employer has to ‘test’ what the card was provided for:

* Recognition/reward for services
* Value and frequency of the employee receiving that or similar benefits
* Was it tied to an official reward/recognition program
* Was it related to years of service?

Depending to the responses above, there is more than one outcome for FBT purposes.

This is a difficult position for businesses, where they have to track and decipher complicated legislation for a seemingly small gesture.

**Savings - Superannuation**

***Question 22. How appropriate are the tax arrangements for superannuation in terms of their fairness and complexity? How can they be improved?***

Superannuation Guarantee is also complicated; however we do feel that the move to SuperStream is a positive change to help employers, employees and the funds in the long run.

Here are some points on Superannuation for consideration:

* Determining what constitutes Ordinary Times Earnings (OTE) for employees can be difficult where the payroll consists of more than just wages
* Superannuation Guarantee Charge (SGC) is unnecessarily harsh, especially where the superannuation contribution was an isolated event, inadvertent mistake or beyond the control of the employer
* As a savings tool it may not be utilised in the most efficient manner possible. Limiting the amount an employee can contribute to their superannuation fund may be necessary to an extent; however the current caps are low, with the concessional contributions cap being $30,000.
* Lowering the tax rate may also incentivise people to save more for their retirement
* Given that Australia has an ageing population (supported by the Intergenerational Report) we need to also consider the timing of the taxation from a revenue stream perspective also. It may mean that the rate may need to be very low, but apply during accumulation and pension phase so that the tax revenue stream is consistent
* Re-introduce Government co-contributions for people on low incomes
* As discussed earlier, we feel that the introduction of SuperStream will in future make Superannuation easier and simpler.

**General Business Tax Issues**

***Question 37. Are there other important issues in the business tax system, not covered in this section, which should be considered as part of the Tax White Paper process?***

Along with the complexity of the Australian taxation system, comes the onerous record keeping and administration required by the tax system.

Different Government and regulatory bodies have different record keeping requirements, in addition to those found in the specific tax Acts.

**Small business – personal-business tax interaction**

***Question 43. Is the interaction of the personal and business tax systems a problem? What can be done to manage the personal-business tax interactions?***

We feel that the Government has some great initiatives in this area, specifically the Single Touch Payroll (STP) program in development.

The positive impacts we can see stemming from such an initiative on the personal-business interactions:

* Employees being in control of their employment profile via MyGov
* Employees being able to view tax, leave and other balances in real time via standardised reporting and/or MyGov
* Businesses being able to access employee information as required
* Employees having less administration at tax time

Areas where the personal-business tax interactions probably require further attention include:

* Businesses need to be transparent with interaction between FBT and Reportable Fringe Benefits Amounts (RFBA’s). Often an employee states that they do not know why they have an RFBA and what it was for.
* Some people get confused between PAYG withholding and PAYG instalments. Often people see PAYG instalments as ‘more tax’ or ‘another tax’ and do not understand its function as a type of pre-payment
* How to report RFBA’s and Reportable Employer Superannuation Contributions (RESC) going forward if no longer issuing PAYG Payment Summaries

**Goods and Services Tax & State Taxes**

***Question 52. What are the relative priorities for state and local tax reform and why? In considering reform opportunities for particular state taxes for particular state taxes, what are the broader considerations that need to be taken into account to balance equity, efficiency and transitional costs?***

As discussed at Question 9, Payroll Tax requires reform. It needs to be reformed so that it is consistent across all States and Territories, but it also seems to be an unnecessary tax and particularly onerous.

Looking at Chart 8.7 on page 142 of the discussion paper, payroll tax is clearly the biggest revenue earner for the states, but serves no business purpose. Payroll tax is a hindrance to growth.

**Complexity and Administration**

***Question 56.What parts of Australia’s tax system, and which groups of taxpayers, are most affected by complexity? What are the main causes of complexity?***

Individuals and small businesses are the groups which are most affected by complexity. Those who cannot afford to invest the required resources in understanding the legislation and maintaining the relevant records.

In addition, global companies looking to start business in Australia, may be discouraged by the complexity and administration imposed by our tax system. Our system, laws and regulations are making it hard for us to compete on a global scale, especially with other restrictions such as Transfer Pricing and the like.

***Question 60. What processes or systems currently being used by businesses and individuals could the ATO better utilise to lower the compliance costs of the tax system?***

Although some of these matters are already under consideration by Government, improvement could be made by:

* Expanding the services on MyGov for individuals
* Recreating or revamping the Business Portal to include Government communication
* More applications that can be used from digital devices such as smart phones and tablets
* Whole-of-government sharing of information.

***Question 61. Could administrative responses – such as embracing technology, harnessing data and taking the whole-of-government approach to administration – help address the issue of tax system complexity?***

As discussed earlier in the submission, we feel initiatives such as Single Touch Payroll, SuperStream and the general whole-of-government digital approach will assist with addressing the issue of tax system complexity and administration.

Perhaps the issue is that Government has not shared this vision with the greater Australian community to rally the support for these changes as currently, the drip-feed of information makes initiatives like Single Touch Payroll and SuperStream seem more like additional compliance when it is meant to be the exact opposite.

To ensure business is able to make the necessary substantial investments in new technology and processes, and to enhance certainty for business and industry participants, it is important that the government agencies involved in administering these new initiatives ensure that they are implemented in full and in a timely manner. Our experience is that the business benefits intended by such initiatives (such as SuperStream) may be delayed or disrupted by late or incomplete implementation by some industry participants who remain unprepared despite the lengthy transition periods allowed.

1. Statistic taken from the Australian Payroll Association 2015 Payroll Benchmarking Report (pg 19) [↑](#footnote-ref-1)
2. The Hon Joe Hockey stated this statistic in his Federal Budget speech on 12 May 2015. Being that 96% of businesses meet the definition of ‘small’ being businesses with an aggregate turnover of less than $2million. [↑](#footnote-ref-2)