

19 May 2004

The Review of Self Assessment
The Treasury
Langton Crescent
ACT 2600

Dear Sir or Madam,

Review of Aspects of Income Tax Self Assessment

Here is my submission to the review of Self Assessment. I have constrained my answers to questions in respect to chapter 2.

Chapter 2: Rulings and other Tax Office advice

2.7 Questions for Consultation

2.A *Is Tax Office Advice sufficiently accessible?*

Email is required for the Tax Office to be more accessible. However, security issues presently prevent any discussion of the use of email to improve Tax Office advice. However, this submission is proposing the use of email that does not use private information of taxpayers in conjunction with the use of email.

This comment focuses on the characteristics of Tax Office rulings. The identity of the taxpayer making a request for a ruling is normally one of these characteristics. Identification of the specific taxpayer will be necessary to facilitate escalation of the issues to third parties such as to a tribunal or court for review. Other characteristics of a ruling issued by the Tax Office include a restatement of all questions and details of all relevant facts as understood by the Tax Office to apply to the taxpayer's arrangement. The usual type of ruling will also have a decision and an explanation.

If the explanation is not available to the taxpayer in a Tax Office email, it is submitted that a new type of ruling could be provided using email. The ruling would have a statement of facts, questions and decisions. However, there would be no taxpayer details and no explanation for the decision provided. Reasons provided for the decision will only be provided upon request and identification of the taxpayer.

Withholding reasons relied on by the Tax Office for a decision will also address concerns that the document may be too detailed for the needs of some taxpayers. It should be noted that the reasons that explain a decision must continue to be prepared by the Tax Office and made available immediately on request.

Numerous factors could also negate the validity of the ruling provided to the taxpayer that originally sought the advice from the Tax Office. For example, there may be uncertainty concerning the reliance by taxpayers on incomplete or out of date facts as disclosed in the request. This uncertainty exists whether or not the Tax Office knows the identity of the taxpayer.

It is therefore submitted that questions concerning the relevance of advice will always exist. Establishing the identity of the taxpayer is part of the procedure for providing a ruling by the Tax Office. Questions of uniqueness of taxpayers individual circumstances should be capable of being incorporated into a process that involves the convenience of using email. This would enable greater access to taxpayers to Tax Office advice that answers taxpayer's questions.

2.B Should Tax Office advice indicate whether Part IVA applies to a particular arrangement as a matter of course, or only on request?

The use of general disclaimers by the Tax Office could provide a cautionary note concerning Part IVA where relevant in the publication of certain rulings.

2.C Do taxpayers and their advisers currently encounter delays in obtaining Tax Office advice? If so, what strategies might allow the Tax Office to provide advice on a more timely basis?

Email is required for the Tax Office advice to be more timely. Please refer further to comment in response to Question 2.A.

2.D Are there significant problems with the accuracy of Tax Office advice? If so, how should they be addressed?

A survey should be conducted of the recipients of rulings issued by the Tax Office. It is submitted that without the conduct of a comprehensive independent post issue survey of recipients of actual rulings issued by the Tax Office, that accurate data on this question will continue to be unavailable.

2.E Is there evidence of a pro-revenue bias in Tax Office advice? What measures would improve confidence in the objectivity of Tax Office advice? Would an independent evaluation assist?

As stated above in response to Question 2.D., it is submitted that the conduct of a comprehensive survey of actual rulings issued by the Tax Office is appropriate in the circumstances. A survey of the recipients of rulings will generate a meaningful and accurate evaluation that should be made available to the public.

2.F *How should the Tax Office advice be framed to assist taxpayers – by explaining contending views of the law, or by setting out how the Tax Office intends to apply it? Does this impact on the way that advice is expressed?*

If the explanation is not available to the taxpayer in a Tax Office email, a new type of ruling could be provided that has a decision only, with the reasons provided upon request. Please refer further to my proposal in response to Question 2.A.

2.G *How might the Tax Office clarify the circumstances in which general advice might be relied upon?*

Perhaps making all of the ruling advice issued by the Tax Office to follow the same rules so those rulings issue in a similar fashion would derive greater clarity. In particular, businesses presently operate under both an income tax ruling regime and an indirect tax ruling regime. Bringing the income tax ruling system into line with different types of tax rulings would provide a single coherent ruling structure that could prove to be more reliable for business taxpayers. This is so whether the legislative framework for the income tax ruling system is brought into line with indirect taxes or vice versa.

It is submitted that this part of my comment is within the parameters set out for the scope of the review as described in the introduction to the discussion paper.

2.H *Is there any value in making more Tax Office advice legally binding? What additional safeguards would be required?*

Please refer to the comments in relation to Question 2.G., above. With respect, more safeguards would only be required where mechanisms for the review of the tax ultimately payable (which flow from ruling decisions) were being removed, which I interpreted to be beyond the scope of this question.

2.I *Should taxpayers be penalised merely for not following PBRs when self-assessing their income tax liabilities?*

No. It is the failure of taxpayers to pay their share of tax that should give rise to penalties. However, whether or not the failure by a taxpayer to pay the correct amount of tax is covered by a PBR could impact on the quantum of penalty applied.

2.J *If no penalty applied, would direct appeals against PBRs still be required?*

No, direct appeals against PBRs are not required. It is the assessment of an amount of tax that should always be at the foundation of any dispute between a taxpayer and the Tax Office.

2.K *If appeals are retained, how could the process be improved?*

Please refer to the comments in relation to Question 2.G., above. It follows then that if appeals are retained, they should be extended to indirect taxes rulings for business income tax payers.

2.L *Should the Tax Office be permitted to charge for certain advice?*

Yes, but email advice should be free of any charges. Please refer further to comment in response to Question 2.A.

2.M *How could the tax Office use more cost-effective channels for the delivery of binding advice to taxpayers or through practitioners?*

Email is required for the Tax Office advice to be more cost-effective. Please refer further to comment in response to Question 2.A.

Yours faithfully,

Peter Schnall