

21 May 2004

The Review of Self Assessment
The Treasury
Langton Crescent ACT 2600

Business and Finance Services
Taxation

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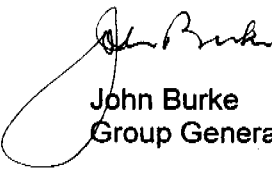
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Dear Sir

Review of Aspects of Income Tax Self Assessment

Please find attached our submission on the review.

Yours faithfully



John Burke
Group General Manager Taxation

encl.

Submission to The Treasury

REVIEW OF ASPECTS OF INCOME TAX SELF ASSESSMENT

Telstra Corporation Limited

21 May 2004

Telstra welcomes the review of income tax self assessment and any initiatives to refine Australia's complex income tax self assessment system where the end results are greater certainty and lower compliance costs.

Where uncertainty exists in relation to the interpretation or administration of the tax law additional compliance costs will result in a variety of forms whether as changes to tax systems and processes (including the need for sufficient / reasonable lead time to make changes), staff training costs, income tax calculations or the amendment of income tax returns. For a large organisation such as Telstra such costs are often substantial.

Whilst Telstra recognises that this review does not focus on the legislative policy process, we would strongly suggest that improvements in that process would also help the operation of the self-assessment system and reduce uncertainty. In this regard it is apparent that since the introduction of self-assessment in 1986-87 and then full self-assessment in 1989-90 the compliance obligations required of taxpayers has steadily increased to the point where the compliance efficiencies originally promoted as one of the major advantages of the system no longer exist. This gradual change in efficiencies highlights why a structured post implementation review process needs to be built into tax design.

We have responded below to the specific questions raised in the discussion papers as we see they impact Telstra.

2.A Is the Tax Office advice sufficiently accessible?

Yes, however uncertainty on particular issues could be reduced where there was greater transparency in relation to the private ruling process. The checks and balances built into the ruling process post the Sherman Report are restrictive. In this regard the preliminary views of the ATO should be made known to a taxpayer, if required, prior to a binding ATO position being taken. This would enable any misunderstanding to be clarified. As a corollary the ATO should be required to consult if requested by a taxpayer.

2.B Application of Part IVA in Guidance?

We consider that the ATO should provide guidance in relation to the potential application of Part IVA to particular transactions when requested by taxpayers. Further, if ATO concerns arise about the possible application of

Part IVA to a transaction those reservations should be expressed in writing to taxpayers.

2.C Delays in receiving Tax Office advice

Based on experiences to date improvements should be introduced to reduce delays in receiving ATO advice. Unfortunately timelines and responsiveness in recognition of commercial pressures and deadlines hold little weight and importance. Delays could be reduced by procedural and process improvements including an increased focus on accountability by the individual ATO staff tasked with preparing the ATO advice and allocating appropriate ATO resources to material issues [whether quantum based (ie. \$1,000,000 plus) or issues based].

2.E Pro-revenue bias in Tax Office actions or omissions?

As noted above, there can often be significant delays in receiving ATO advice. In this regard a pro-revenue bias will exist where there is uncertainty on the tax issue, on which advice is requested, and there can be a lack of ATO transparency on the reasons for the position taken.

2.F. Disclosure of Competing Views

There are obvious advantages for taxpayers when applying the law to fully understand any competing views that are unfavourable to the revenue. To have a balanced opinion the explanation of competing views should be mandated.

2.G Reliance on Tax Office general advice

With respect to material transactions Telstra seeks to reduce uncertainty and minimise tax risk and exposures to interest / penalties. Tax risk is increased where there is a lack of ATO guidance or impenetrable tax law that does not have any binding supporting policy intent. Greater transparency in relation to preliminary (and therefore non-binding) positions taken by the ATO along with a decrease in the GIC rate will in part mitigate these risks and create the necessary "balance" between equity and fairness for taxpayers and the sanctions required in the law to influence compliance.

2.I and 2.J. Not following Tax Office private binding rulings

Taxpayers should not be penalised for not following private binding rulings when assessing their income tax liabilities. Such a position recognises that there will be competing views and it is then a taxpayer's choice of determining how and whether to formally contest the ATO position.

2.L. Should Tax Office charge for certain Advice?

The ATO should not be permitted to charge taxpayers for responding to private binding ruling requests. Providing advice on the law is part of the ATO's duty of administering the law, it should not be a chargeable service

when in most cases certainty for the taxpayer and administrator is the desired outcome. Our experience in other jurisdictions who charge for rulings (eg. New Zealand) is not impressive.

3.D. Advance notice of audit

Telstra supports the 'real time' audit activity undertaken by the ATO. The earlier ATO audit is commenced and concluded corresponds to reduced tax risk, reduced compliance costs and achievement of certainty.

3.H. Delays in issue of amended assessments

Where there are unreasonable ATO delays in issuing an amended assessment and all relevant information has been provided taxpayers should be entitled to interest at the GIC rate. We have also experienced delays due to apparent ATO systems shortcomings (eg. not being able to issue multiple year amendments at the one time) and taxpayers should not be penalised because of ATO systems / process weaknesses.

3.J. Processes for implementing these improvements

To reduce uncertainty Telstra believes that any improvements in administrative procedures to be implemented by the ATO should be confirmed by way of changes to the tax law, rather than being left to the exercise of administrative discretion. There is a tension between defective law and administrative action which can lead to a stalling of activity.

4.B and 4.C. Failing to follow private binding ruling

As noted in response to questions 2I and 2J no penalty should be imposed for failure to follow a private binding ruling.

5.A. Should GIC or penalty regime provide incentives to assess correctly?

Yes, both regimes should provide incentives to assess correctly. The GIC as it currently stands acts as a penalty for Telstra as it far exceeds Telstra's cost of borrowings. The penalty regime alone should provide the incentive for large taxpayers to assess correctly and make voluntary disclosures, however the GIC regime should recognise that inadvertent errors (especially for large complex taxpayers) are likely to arise from time to time and taxpayers should not be discouraged from identifying and disclosing these errors to the ATO. A materiality threshold for penalties in relation to a tax shortfall, when compared to a taxpayer's total tax liability, should also be considered. For corporates proper consideration should be given to the ATO's behavioural models (co-operative compliance, client risk reviews, health cards, etc.) in assessing the application of the GIC and penalty regimes and exercise of discretion not to impose.

5.B. Is the GIC rate excessive against this principle?

Yes, it is Telstra's view that the GIC rate is excessive for large taxpayers because the GIC rate exceeds Telstra's borrowing rate and therefore the outcome is a double penalty.

5.C, 5.D and 5E. Approaches to address GIC - are other approaches appropriate?

Telstra supports a reduction in the GIC rate and we also recommend a review of how the GIC provisions operate in practice. In particular, debits are calculated at a high compounding rate of interest but credits are calculated at a very low simple rate of interest. The methodology of interest calculation should be identical. In addition we support the ATO having increased and transparent powers to remit GIC.