

CEO Update – May 2017

Dear Stakeholders,

On 28 April 2017, the Board of Taxation held its third meeting for 2017 in Melbourne. The meeting was hosted by Herbert Smith Freehills (HSF), and included an information session and discussion over lunch with stakeholders and the Board's Advisory Panel members. The Board received a number of ideas to add to our future pipeline (refer below).

Thank you to everyone for attending and contributing your ideas and observations on how we can improve the tax system.

At the Board's meeting, we discussed the progress and direction of our current projects (a number of which are about to conclude), new instructions and referrals, a stocktake of our reports and recommendations to date and our possible pipeline for future projects – to be confirmed with the Minister. The Board also noted the take-up of the Tax Transparency Code (the Code) among Australian corporate taxpayers (thanks to the support of the CTA, BCA and others) and discussed other ways to improve the uptake of the Code.

Some additional detail on the progress of the Board's work is set out below.

Our Current projects and new referrals

The Board continues to be involved with the Government's Black Economy Taskforce and is progressing several other projects towards completion.

Work continues to progress on the following projects:

- targeted trust simplification – bare trusts;
- high wealth individuals and residency;
- definitions under State and Federal Laws;
- tax and the sharing economy (consultation ongoing); and
- alignment of tax and accounting concepts (consultation ongoing).

The Board discussed its submission to Treasury on Stapled Structures. The Board is also considering whistle-blower protections and the OECD proposal for Mandatory Disclosure Rules for the early disclosure of aggressive tax arrangements. Some of our current projects are expanded upon below.

Black Economy Taskforce

The Board received an update from the Chair on the work to date (including stakeholder consultations) held as part of the Black Economy Taskforce. This included both interim recommendations and longer term issues requiring further consultation. A number of the Board's current projects interact and intersect with the work of the Taskforce. The Board discussed how best to co-ordinate this work.

Targeted Trust Simplification – Bare Trusts

The Board discussed a draft working paper of the working group led by John Emerson in relation to the income tax treatment of bare trusts. The project is considering how to ‘disregard’ custodial style bare trusts and simplify the ‘absolute entitlement’ interaction issues for CGT and income tax purposes. The Board provided observations and comments in relation to several matters still under consideration by the working group.

High Wealth Individuals and Residency

The Board discussed a draft working paper of the working group led by Mark Pizzacalla in relation to residency and high wealth individuals. This included a discussion on the UK experience, the merits of simplification versus codification and areas of interaction with a number of other tax and visa provisions. The Board provided observations and comments in relation to several matters still under consideration by the working group.

Definitions under State and Federal Laws – Employee versus Contractor

The Board tabled a comparison table of the differences in core definitions between State, Territory and Federal tax laws, as verified by various State and Territory Revenue Offices. This report was provided to the Board by Deloitte and reviewed by the Board’s working group. There are a number of notable differences. Stakeholders wishing to receive a copy of this report should contact us.

Mandatory Disclosure Rules

The Board will undertake consultation aimed at further developing and evaluating the Mandatory Disclosure Rules in the coming weeks. The Board encourages you to contact us on the details below if you would like to be consulted.

Stapled Structures

The Board submission to Treasury on Stapled Structures was discussed. There was a general discussion on the economic significance of stapled structures and acceptable and unacceptable use of such structures.

Stocktake of our work to date

The Board discussed a preliminary stocktake of its reports and recommendations. This will be finalised in time for the next Board meeting. The Board noted that reports commissioned by or provided to previous Governments will not necessarily be a priority for a later Government. The Board discussed how Stakeholders that wish to prioritise issues raised in earlier reports can continue to advocate for these reforms – either through the Board or directly with the Government. Please contact the Board if you are interested in receiving the stocktake document once finalised.

Our Pipeline for 2017

The Board also discussed a range of options to add to its pipeline of work. These ideas may be considered in the remainder of 2017 or at a future time. Some ideas contributed by Stakeholders at the lunch discussion, included the following:

- Improved 'co-ordination' of government systems to allow large corporate groups to update information more effectively and to ensure all systems are integrated;
- Review of the operation of the GST system - especially important for the financial services industry;
- Review of the taxation of Infrastructure;
- Non-resident withholding taxes for public company transactions (scrip for scrip);
- What should be done with the funds of deregistered charities (entities that lose their charity status)?
- The treatment of foreign trusts for capital gains tax purposes as set out in ATO draft rulings 2016/D4 and D5.

The Board will discuss and agree its pipeline of work in conjunction with the Minister before we commence work on any ideas – especially because we have 'finite resources' and in light of our other priorities. Some of these ideas will be added to Sounding Board to gauge their priority with the business and tax community.

We welcome your feedback on any of the ideas and other areas that you consider should be considered in our potential pipeline of work.

Tax Transparency Code

The Board noted that 82 organisations (including private and foreign companies) have now indicated their intention to adopt the Code – the set of principles and minimum standards to guide the disclosure of tax information by businesses. As this update is being sent out, 40 companies have already published their first reports. A register of these organisations can be found at: <http://taxboard.gov.au/current-activities/transparency-code-register/>.

More organisations have adopted the Code as 2017 progresses - as the Board expected. We have also been exploring ways in which to increase our promotion of the Code. Initiatives discussed include – shareholders raising the issue on an 'if not why not' basis with individual companies, the ATO promotion of the Code through risk assessment processes and how adoption may influence other procurement processes.

The Board continues to work with the AASB on material to guide organisations seeking to comply with the obligations they have taken on under the Code.

The Board encourages you to adopt the Code and support and assist your clients to adopt it. For further information on the Code or to register your intention to adopt it, please contact the Board at taxboard@treasury.gov.au.

