



AUSTRALIAN CHAMBER OF  
COMMERCE AND INDUSTRY

# ACCI SUBMISSION

Board of Taxation Review of Tax  
Impediments facing Small Business

May 2014

# EXECUTIVE SUMMARY

As Australia's largest and most representative business advocate, the Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to make a submission to the Board of Taxation *Review of Impediments facing Small Business*.

Of critical importance to ACCI is the abolition of state payroll taxes, combined with broader reform of state taxation. Payroll tax is levied by all States and Territories on businesses with remuneration above certain thresholds which vary by jurisdiction. Payroll tax is not only one of the most damaging taxes in terms of its impact on economic activity, but it is also one of the most insidious. Tax reform that takes as its objective reducing and ultimately abolishing payroll tax is necessary if Australian businesses are to remain competitive.

Other grossly inefficient state taxes such as insurance levies which cause individuals and businesses to be under-insured and conveyancing stamp duties which cause businesses to minimise their transactions and investment in property, should also be slated for abolition.

In addition to state tax reform, ACCI's other priorities (in no particular order) are:

- Accelerated Depreciation;
- Capital Gains Tax;
- Fringe Benefits Tax;
- Employee Share Schemes for start-up companies;
- Director Penalty Notices; and
- The Small Business Entity Test.

ACCI believes that reforms in these areas can have significant and lasting benefits for small business cash flow and competitiveness. Specific issues and suggestions for reform are presented in the sections below.

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# 1. PRIORITY AREAS FOR REFORM

## 1.1 Accelerated Depreciation

Current depreciation arrangements in Australia's taxation system are complex and uncertain due to different arrangements for different assets and special or preferential treatment. For example, currently there are 40 different effective lives provided for 3,700 assets; while low value assets (with a value of \$1,000 or less) can be pooled together and depreciated at 37.5 per cent per year.

ACCI supports the Henry Review's recommendation to increase the threshold for assets that small businesses can immediately write-off to \$10,000 in the income year the asset is first used or installed ready for use. This measure will provide cash flow benefits for the small business sector and simplify their capital allowance arrangements.

## 1.2 Payroll Tax

The most important priority of the business community for tax reform is payroll tax. Payroll tax is levied by all States and Territories on businesses with remuneration above certain thresholds, which vary by jurisdiction. In 2011-12, all states and territories collected \$19.8 billion in payroll taxes, representing 33 per cent of their own-source tax revenues.<sup>1</sup>

Complexity and non-neutralities in the payroll tax regimes of Australian jurisdictions can have pervasive effects on competition through their effect on the locational decisions of firms. The payroll tax threshold also negatively affects employer's decisions to expand business operations and increase wages and employment as they approach the threshold for liability. The effect of the threshold operates as an incentive to keep businesses inefficiently small.

The Henry Review found that payroll tax is the third most inefficient Australian tax after royalties and crude oil excise and insurance taxes, which causes in excess of 40 cents of economic damage for each dollar of additional revenue raised.<sup>2</sup> It is incongruous for the Government to have at one point prioritised cutting the company tax rate when the efficiency gains to be realised from a reduction in the rate of payroll tax would lead to an even greater increase in social welfare.

Payroll tax is not only one of the most damaging taxes in terms of its impact on economic activity, but it is also one of the most insidious given its low level of visibility. Few employees are aware that they bear the economic incidence of a

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<sup>1</sup> Australian Bureau of Statistics, *Taxation Revenue 2011-12*, cat. no. 5506.0, data cube table 10.

<sup>2</sup> Commonwealth of Australia 2010, *Australia's Future Tax System – Report to the Treasurer*, Part One Overview, Canberra, p.13.

“hidden income tax” and unlike Australia’s progressive income tax system little is known about the distributional impact of payroll tax. Similarly, consumers are well aware of the 10 per cent GST they pay on most goods and services but for the most part have virtually no knowledge about the extent to which prices are affected by the burden of payroll tax.

According to a 2002 survey conducted by the CPA Australia, it estimated that 40 per cent of small businesses see payroll tax as an impediment to employment<sup>3</sup>:

- 40 per cent of small businesses and 45 per cent of CPAs believe payroll tax is a barrier to employment; and
- of the small businesses that consider payroll tax a barrier, 80 per cent believe the rate is too high, 65 per cent believe the rate should be lower and applied to all businesses and 77 per cent believe the cost is passed on to consumers.

Australian businesses face a number of complexities and high costs in complying with their payroll tax obligations, this is particularly the case for businesses operating across different jurisdictions, dealing with different definitions of wages for payroll tax purposes, direct rates of tax payable on wages and different small business exemptions.

As already noted, the exemption threshold acts as a barrier to business growth as the compliance and payroll tax costs provide an incentive for business to remain inefficiently small. Indeed, some members of our State Chambers have provided comments on their experiences with their respective payroll tax regime.

#### Example 1

*“We have always been under the threshold for many years. Over the last year our business has grown and we have taken on more staff, and we are now well and truly above the threshold.*

*Like any small business in the growth stage, cash flow is always a problem, and banks are not always very amenable and there is a limit to what they will lend. We have even had to borrow from family to fund our increased stock levels and debtors ledger, and make sure our bills are paid on time. But we are now also faced with a substantial Payroll Tax bill of almost \$40,000, which in order to pay we will have to borrow even more.*

*By definition, small business which starts to become liable for Payroll Tax, must be experiencing growth. Growth usually brings cash flow issues. The last thing such a business needs is a new tax burden.”*

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<sup>3</sup> CPA Australia, Media Release 13 March 2002.

## Example 2

*“Payroll tax constricts my growth both as a small business and when employing more people. I have gone offshore to employ someone to be able to give pay increases to my current team and stay under the threshold. We work hard to retain staff but in doing so their salaries go up annually - and we are then getting closer to the payroll tax threshold which is not indexed. It was never meant to tax small businesses yet now it does and stifles business success, growth and employment all at the same time!”*

The need to reform payroll tax was highlighted by the findings of ACCI’s 2013 *Pre-Election Survey*.<sup>4</sup> Businesses were surveyed on their views about which taxation areas needed further reform. The results were disaggregated by business size, based on the number of employees into small (<20 employees), medium (20-99 employees) and large business (100+ employees).

While small business rated *company tax reductions* and *personal income tax reductions* as their highest priorities, medium and large businesses both ranked *payroll tax reductions* as the highest priority. These results indicate that once businesses expand to the extent where they become liable for payroll tax, it becomes a major concern. At the margin, it is likely that some businesses will opt to remain inefficiently ‘small’ so as to remain under the payroll tax threshold.

Businesses were also asked about possible Goods and Services Tax (GST) reform options. If the GST rate were to be increased to fund a decrease in other taxes, the survey respondents were most in favour of reducing payroll tax.

Tax reform that takes as its objective reducing and ultimately abolishing payroll tax is necessary if Australian businesses are to remain competitive. Harmonisation of payroll tax rates and thresholds, annual indexation of payroll tax thresholds and alleviating unnecessary complexity are nevertheless important interim measures that could be adopted on the way toward realising this longer term objective.

Other grossly inefficient state taxes such as insurance levies which cause individuals and businesses to be under-insured – aggravating pre-existing market failures – and conveyancing stamp duties which cause businesses to minimise their transactions and investment in property, should also be slated for abolition.

## 1.3 Capital Gains Tax

Arguably, CGT is the most economically damaging tax for Australia’s small business sector. It is an active disincentive to risk taking and entrepreneurship, deterring investment and job creation. Upon the sale of an asset or business, CGT detracts from the amount of capital which may be used to re-invest in other more productive assets.

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<sup>4</sup> ACCI, *Pre-Election Survey*, May 2013, p.7

As capital becomes increasingly mobile internationally, it is imperative that Australia has a competitive CGT regime. Capital gains are taxed on a realisation basis and thus give owners of taxable assets an incentive to hold on to them to avoid paying the tax rather than selling them to those who value them more highly. This lock-in effect also means that investors do not shift their funds to other investments (such as higher growth investments) that offer the highest rate of return. Thus, CGT decreases the efficiency of capital markets, results in capital asset misallocations and reduces productivity and economic growth.

Reducing the cost of capital by lowering the CGT rate will increase capital investment and capital productivity. Experience from CGT regimes abroad suggests that lowering tax rates on capital gains can encourage realisation of capital gains which not only increases market efficiency but also can have a positive impact on CGT revenues. By contrast, higher capital gains taxes are self-defeating as a revenue raiser.

ACCI supports the following reforms of CGT arrangements:

- The introduction of carry back provisions for capital losses;
- A stepped rate CGT where the proportion of the capital gain that is taxed diminishes over time;
- An extension of CGT rollover provisions; and
- Increasing the net assets value test threshold.

In addition to these reforms specific to the CGT system, ACCI also supports increasing the small business entity test threshold. As this test applies to a wider range of tax concessions, it is discussed in section 1.7 below.

### 1.3.1 Loss carry back provisions

Realised capital losses can presently be offset against any capital gains in the current tax year in order to obtain tax relief. For example, a capital loss triggered in 2014 would be applied against any capital gains made in 2014, but cannot be applied against gains that were made in previous tax years. Carry back would allow capital gains to be offset against tax losses in previous years, for example up to three years, or carried forward indefinitely, if it cannot be used in the year in which it was accrued.

During periods of volatility investors are likely to experience capital losses, which may not be able to be used quickly. Carry back of losses to offset earlier gains allows greater flexibility for investors to manage such volatility and improve cash flow during periods of difficulty.

The most flexible CGT systems would allow for capital losses to be offset against capital gains without the need to match the length of time over which the loss occurred with that period over which the gain occurred. Allowing capital losses to



offset gains would reduce the amount of complexity and allow businesses to use all their capital losses against any gain over the previous It is acknowledged that this would have an impact on Government revenue.

### 1.3.2 A stepped rate schedule to encourage long-term investment

By steadily reducing the amount of capital gains included in assessable income investors are rewarded for investing long-term. The introduction of a stepped CGT schedule would encourage long-term investment in assets. Based on the number of years an asset is held, a certain proportion of capital gains would be exempt from assessable income. The net capital gains would then be taxed at the taxpayer's marginal tax rate.

While the design of a stepped rate schedule could vary substantially, ACCI has previously proposed the following schedule in Table 1 as an example for discussion<sup>5</sup>:

**Table 1: Proposed CGT rate schedule**

Time asset held	Proportion of capital gain subject to taxation
<b>Less than 1 year</b>	100%
<b>1-2 years</b>	50% (25% with small business active asset 50% discount applied)
<b>2-5 years</b>	25%
<b>5-10 years</b>	10%
<b>More than 10 years</b>	0%

ACCI's proposed stepped rate CGT regime would maintain Australia's current arrangement of not distinguishing between assets and would therefore not include a distinction between business and non-business assets.

ACCI acknowledges that more work would be necessary on the final form of a stepped CGT schedule, however, the proposed schedule serves to illustrate the concept.

### 1.3.3 CGT rollover provisions

Rollover provisions allow assets to be transferred between related entities without triggering a CGT event or other tax consequence. They also allow for the deferral of CGT on gains under special provisions of the law such as those applying for small businesses or from involuntary disposal of assets.

Recognising that CGT can act as an impediment to the efficient restructuring of business, the government introduced a number of reforms to the rollover provisions to cope with acquisitions, takeovers and mergers.

<sup>5</sup> ACCI, *Submission to 'Australia's future tax system' review (Henry Review)*, October 2008, p.13

However, the current rollover requirements are restrictive and onerous, making access to the provisions very difficult. Business believes that investors should be able to reinvest sales of assets without attracting CGT. Changes to Australia's rollover provisions will involve broadening their applicability to business.

As indicated above, there should be an examination of whether the existing CGT rollover relief for small business assets could be extended by increasing the net asset threshold above the current \$6 million.

## 1.4 Fringe Benefits Tax

Fringe benefits tax (FBT) has long been a matter of genuine concern to Australian business. The tax has been extended, business believes, well beyond its original purpose of ensuring consistent taxation of all forms of remuneration.

The extension of FBT coverage has added substantially to the costs of doing business, particularly by increasing the compliance burdens. The resulting costs and complexities are borne disproportionately by smaller businesses. FBT can also have the effect of limiting options a small business can utilise to remunerate their staff in a way that is mutually more beneficial than cash-only remuneration. This hampers their ability to compete with larger businesses for staff.

Business is also concerned that application of FBT to allowances paid for employment in remote areas and certain costs relating to relocation are counter-productive to other economic and social objectives for Australia.

Significant compliance cost reductions could be achieved by the ATO requiring less documentation and applying broad and simple formulas, and applying risk management techniques to compliance.

Another complexity associated with FBT is that the legal incidence rests with employers. Employers are required to report the value of fringe benefits on a 'grossed up' basis to reflect the value of income tax (at the top marginal rate) that would be paid if the fringe benefit were purchased out of after-tax income. Most other OECD countries either tax fringe benefits in the hands of employees or align FBT with the employee's personal income tax rate. ACCI believes that fringe benefits should be taxed in the hands of employees, with collection from employers in the same manner as PAYG.

One possible offset to revenue losses associated with any of the proposed reforms canvassed elsewhere in this submission would be ending the deductibility of entertainment and meal expenses for not-for-profit entities. These concessions arose from the original decision to exempt some institutions from FBT when it was introduced and even though caps to tax-free thresholds were introduced, meal and entertainment expenses remain exempt. These arrangements carry high compliance costs and are of negligible benefit and should be abolished.

## 1.5 Employee Share Schemes for start-up companies

The 2009-10 Budget made changes to the taxation of employee share schemes to prevent employees from gaining an advantage by using ESS to defer taxation.<sup>6</sup> This change created difficulties for companies and their employees because of the need to value the equity instrument being provided and pay the tax liability upfront. For larger companies these difficulties are burdensome, but manageable.

For start-ups, with equity that is virtually impossible to accurately value and little cash to pay for valuations or cover tax liabilities on hypothetical values, the changes make equity based remuneration far too complex to implement.

It is hard to see how the benefits of preventing employees of start-ups from deferring taxation outweighs the cost of making it impractical for Australian start-ups to provide a form of remuneration that is an industry standard internationally.

The extent to which the employees of start-ups defer taxation is also debatable. In most cases start-ups have a small number of employees. The value of the equity that employees are granted is very directly determined by their subsequent work. Similarly, valuations are often heavily based on the quality of individual staff. As such, an upfront tax on the value of equity is often a tax on the value of an employee's subsequent labour. Moreover, if an employee does not perform, it is likely that their equity will be worth very little, so in most cases its value can be considered at risk even if there are no formal performance hurdles that determine its vestment.

A failure to address these issues will drive more Australian entrepreneurs overseas and encourage those start-ups that have established themselves in Australia to look offshore for opportunities to grow.

Specific issues that should be addressed to make it simpler to utilise employee share schemes, particularly for start-up ventures are the taxation point and valuation methods.

The current regime establishes a tax liability in the income year that shares or options are granted and limits a \$1,000 tax exemption to employees with an adjusted taxable income of \$60,000. This should be altered so that a tax liability is not established until an employee has the opportunity to vest shares, or sell/exercise options.

The valuation methods are complex and difficult for small businesses and start-up companies to implement and to overcome this some simple, standard methods and reporting tools that these businesses could have access to should be developed.

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<sup>6</sup> Commonwealth of Australia, *Budget paper no. 2: Budget Measures*, 2008-09, p. 18.

ACCI acknowledges that the design features of any such changes would need to be carefully considered by the Government with the regard to the outcomes of the direct consultations recently undertaken on this issue by the Commonwealth Department of the Treasury. To limit foregone revenue, any changes could be limited to 'start-up' companies – companies that have been in existence for less than, for example, 3 years.

Alternatives to limiting the changes to start-up companies include:

- Applying the small business entity test threshold for concessions; or
- Applying any changes to companies with less than say, 20 full-time equivalent employees in the current income year.

## 1.6 Director Penalty Notices

Company directors have a legal responsibility to ensure that their company meets its pay as you go (PAYG) withholding and superannuation guarantee charge (SGC) obligations.

The director of a company that fails to meet a PAYG withholding or SGC liability in full by the due date automatically becomes personally liable for a penalty equal to the unpaid amount. The Australian Taxation Office (ATO) may issue a director penalty notice (DPN) enabling the commencement of legal proceedings to recover the penalty.

Changes were introduced in 2012 to:

- extend the DPN regime to SGC liabilities;
- ensure that a director cannot discharge penalties for liabilities not reported within three months of the due date by placing the company into voluntary administration or liquidation; and
- in some instances, make directors and their associates liable for PAYG withholding non-compliance tax (NCT).

According to the ATO website, the 2012 changes were intended to reduce the scope for company directors to engage in 'phoenix' activity to avoid PAYG and superannuation guarantee liabilities and to "*improve the regulatory environment for businesses that comply with the tax and super laws*".<sup>7</sup> While ACCI is not opposed to the inclusion of SGC liabilities in the DPN regime or the changes to PAYG NCT arrangements, it is difficult to see how the changes to remission options will prevent phoenix activity.

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<sup>7</sup> <https://www.ato.gov.au/General/Gen/Strengthening-director-obligations/>

ACCI is concerned that the compliance regime for PAYG and SGC collection may have unintended consequences for company directors not engaged in fraudulent activity. It may also inhibit small business access to finance by dissuading potential equity investors who would normally seek a company directorship as a means of oversight.

Under the changes, DPNs only need to be issued for the ATO to commence legal action. Company directors become personally liable as soon as a PAYG withholding and/or SGC liability is more than 90 days overdue and there is no requirement for the ATO to issue a DPN or otherwise notify a director that they are personally liable. The options to remit the debt are then limited.

In reality, many, even most, small businesses lack the sort of financial controls that would let them know if another director (or tax agent) fails to lodge their Business Activity Statement (BAS), and financial controls that are in place deteriorate if there is a broader crisis with the business. Most directors do not have problems because their business partners and tax agents are usually reliable. However, there is a significant element of luck involved.

ACCI is concerned that a sizeable personal liability is not an appropriate consequence for the fact a business failed to lodge its BAS within 90 days. Beyond the simple lack of proportionality, it is not clear that it would be efficient for small businesses to adopt significantly stronger financial controls when the reduction in risk is balanced against the increased administrative cost, or the opportunity cost of time away from other parts of the business. In any case, the changes to remission options are unlikely to improve financial controls when most businesses are not aware of them.

The changes to remission options also seem unlikely to limit phoenix activity, since a director that intended to undertake fraudulent activity could simply ensure that their BAS was lodged on day 89 or keep enough money aside to pay their tax liabilities. Indeed the other concerning consequence of the changes to remission options is that it gives directors an incentive to ensure that taxes are paid before putting the company into liquidation, which leaves less available for other creditors. ACCI is also concerned that the impact of phoenix activity in terms of revenue foregone is not as great as has been estimated in the past.

One possible solution is for the ATO to establish an automated process whereby directors are automatically notified once a company PAYG or SGC liability becomes overdue by a certain number of days. This would allow sufficient time for company directors to take remedial action before becoming personally liable. Notification could occur at 60 days without requiring any legislative change. Alternatively, notification could occur at 90 days if the deadline for the removal of remission options was extended to 120 days – this would ensure businesses have similar options to those that were available before the 2012 changes.

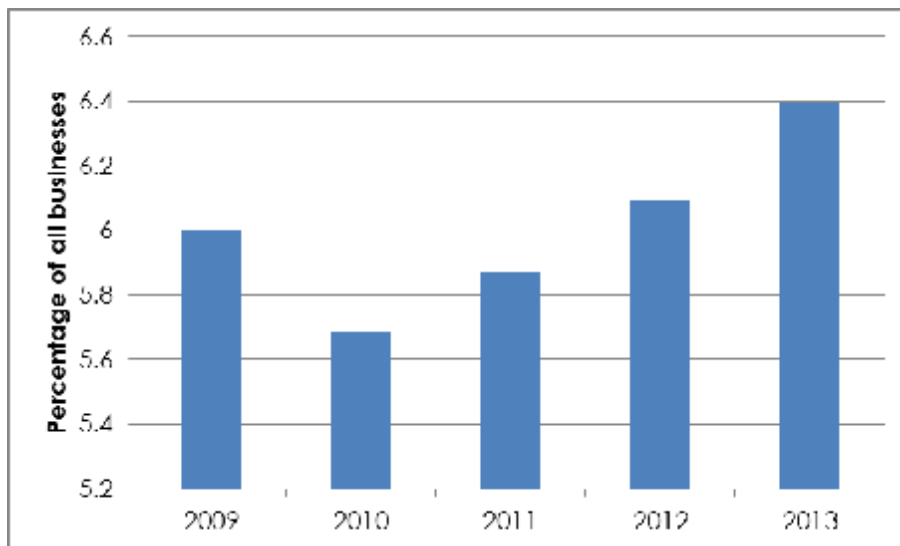
It would also be useful for the ATO to provide guidelines on what it would consider adequate financial controls that can be practically implemented by small business.

## 1.7 Small Business Entity Test

A business is defined as a small business entity and therefore has access to a range of small business concessions if it meets a range of criteria. Most concessions are available to a business that has an aggregated turnover of less than \$2 million, either in the previous income year or is estimated to be less than \$2 million in the current income year (if turnover has been below \$2 million in one of the two previous income years). The turnover test threshold has not been changed since it was introduced at the start of the 2007-08 financial year.

Given that the threshold has not been increased for a number of years, there is a strong case to review it, as ACCI is concerned about a greater proportion of business losing access to small business concessions over time. The percentage of businesses with a turnover of \$2 million or more is shown in Figure 1 below.

**Figure 1: Percentage of businesses with turnover of \$2 million or more, June 2009 to June 2013**



Source: ABS cat. No. 8165.0, Data Cube table 17

ACCI supports the recommendation contained in the Henry Review that the \$2 million threshold be raised to \$5 million and the net assets test threshold should be reviewed. This would provide significant tax relief to small business. In addition, ACCI would be supportive of regular, timely reviews of the thresholds to ensure that concessions remain appropriately targeted and accessible to small businesses.

## 2. ABOUT ACCI

### 2.1 Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All eight state and territory chambers of commerce
- 29 national industry associations
- Bilateral and multilateral business organisations.

In this way, ACCI provides leadership for more than 300,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia.

### 2.2 What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally;
- Business representation on a range of statutory and business boards and committees;
- Representing business in national forums including the Fair Work Commission, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and occupational health and safety;
- Representing business in international and global forums including the International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, Confederation of Asia-Pacific Chambers of Commerce and Industry and Confederation of Asia-Pacific Employers;
- Research and policy development on issues concerning Australian business;
- The publication of leading business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of law and policy.



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