



CIVIL CONTRACTORS FEDERATION
Constructing Australia's Infrastructure™
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The Board of Taxation Review
c/o The Treasury
Langton Crescent
CANBERRA ACT 2600

29 July 2009

Dear Sir/Madam

Thank you for the opportunity to comment on the Taxation Board of Review Post Implementation Review of the Alienation of Personal Services Income ("PSI").

1 Background

The CCF or Civil Contractors Federation is the member based representative body of civil engineering contractors in Australia providing assistance and expertise in contractor development and industry issues.

Through our Federation we represent over 2000 small, medium and large sized contractors who in turn employ more than 40,000 people.

Our members are involved in a variety of projects and activities including the development and maintenance of civil infrastructure such as roads, bridges, dams, wharves, commercial and housing land development.

Civil Construction is for historic reasons considered as part of the building and construction industries but in effect it represents 30% or more of the sector nationally and over 40% in some states such as Queensland.

In general our members are unlikely to come within the PSI regime due to their size and the nature of their work. Issues of whether a person is or is not an independent contractor is more a policy issue for our members in relation to Industrial Relations Legislation.

2 What this review is about and the criteria upon the legislation will be benchmarked.

We note that this Review is directed to:

- examining the operation of the rules to determine whether the rules are achieving their desired policy outcome;
- identifying any problems with the operation of the rules; and
- if appropriate, considering options for improving the rules.

It is not directed to broader issues of whether the policy is appropriate in terms of taxation outcomes.

3 Fundamental principles in relation to Taxation and its administration

As a matter of general policy CCF considers that the taxation regime must:

- be equitable in its treatment of taxpayers – not leading to distortion of business and individual decision making;
- be efficient in its operation – be clear about what is being taxed, why it is being taxed and how the tax is calculated; and
- Compliance costs must be kept to a minimum with the laws and their application being clear, transparent, easily accessible and easily understood.

It is against these benchmarks that we assess taxation matters.

4 The PSI legislation

Alienation of personal services income refers to situations where a person interposes an entity such as company or partnership between themselves and the income they receive from personal exertion. Without this entity the person would be taxed at personal income rates and would be subject to the rules that apply to that categorisation.

The Ralph Review of Taxation¹ found that such an arrangement lead to distortions in the taxation system such as income splitting and larger deductions, than are available to an employee taxed under the normal employee PAYG arrangements. This in turn was seen as posing implications for the integrity of the taxation system overall.

We note that the PSI legislation is designed to overcome what are seen as inappropriate taxation arrangements given the way in which income is derived.

Whilst we understand that it is not the Board's remit or intention to re-open the policy debate which occurred at the time the legislation was passed in our view there may be a number of reasons other than taxation benefits as to why a person may choose to interpose an entity.

¹ Review of Business Taxation, A Tax System Redesigned, July 1999,

For example it may allow a person greater freedom in negotiating projects, less restriction on how work is to be performed and also enable them to seek different and varied work.²

However we note that this review is limited to the operation of the current law.

5 Interaction with the issue of Independent Contractors generally

CCF's primary concern in relation to this issue relates to its interaction with industrial relations matters. We see the taxation issues as quite separate and apart from debates about whether those providing their services in a project are independent contractors or employees.

Indeed we strongly believe that taxation law should not be used to achieve industrial goals – the objectives of the Taxation laws are both different and separate.

Overall the laws appear to be working appropriately evidenced we believe by the lack of concerns reported to us by members. Generally speaking when taxation laws are operating in a distorting or unfair manner members raise such issues with us directly. We also participate in a number of forums with the ATO where we have an opportunity to raise tax administration issues as they arise – to date these arrangements have not been an issue for us.

In our view it would be undesirable to revisit this area of law when it appears to have only just been settled.

We would however urge the ATO to continue its education program as this continues to be a key part of a compliance strategy.

We would be happy to provide further comment if required.

Yours sincerely



Mr Chris White
National Chief Executive Officer

² There may be other reasons see for example the evidence given by the Master Builders Association (MBA) to the Senate Economics Committee PSI Inquiry 23 May 2005 E 6.