

TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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33 | The Great Debate

If you could change one thing about the Australian tax system, what would it be? And how would you change it? This is the question Robert Deutsch, Senior Tax Counsel of The Tax Institute, asked himself. He selected eight key issues in our tax system and gathered tax professionals who are experts in their field to debate for or against change. The result was The Great Debate on 16 August 2017. A joint initiative of The Tax Institute and the Australian Tax Research Foundation, over 100 tax professionals attended the event.

The Great Debate

The Great Debate on 16 August 2017 allowed arguments for and against various propositions in a purer context than is usually available when stakeholders are responding to tax policy propositions.

During The Great Debate delegates were able to question the debaters and proffer their own views on, and possible solutions to, the issues.

It is a rare circumstance where the merits of a policy proposition can be argued without an overarching aim of trying to achieve a particular outcome, usually to persuade the government towards one's own views.

Here are the eight issues discussed.

To listen while you drive, walk or work, just access the episode through a podcast app on your mobile phone.

1 Number of CGT events

Should Australia remove the current list of 54 CGT events and replace it with a more coherent conceptually based system?

For

Andrew Mills, CTA (Life) – Second Commissioner of the [Australian Taxation Office](#)

The 54 events and their consequences make up almost 200 pages of legislation with complex details. The volume of legislation alone provides a reason to reconsider the current approach.

But even with all this detail, the CGT events only address half of the balance sheet. As a result, a whole host of other provisions had to step in to deal with the other half. Examples are the gains and losses on the discharge of liabilities, commercial debt forgiveness rules, defeasance arrangements, limited recourse debt rules (Div 243), consolidation rules and gains on financial arrangements liabilities (Div 230).

The income provisions might show us a better model. A single statement to the following effect could do the work of the existing 200 plus pages:

“Include in your assessable income any net capital that you make. A net capital gain is capital gains less capital losses.”

This would allow flexibility in dealing with the ever changing world, It would cover not only assets but also liabilities. And it would reduce the size of the tax law and maybe even save compliance costs.

Without ever questioning it we have always determined ordinary income by the application of the common law principles. It is well worth asking why it is that we cannot determine ordinary capital gains in much the same way.

As if to support Andrew’s argument the event brochure referred to 36 CGT events, while there are in fact 54 such events.

Against

Mark Molesworth, CTA – Partner [BDO](#)

The current framework provides certainty and a degree of clarity to taxpayers in a self-assessment environment where such certainty and clarity is essential.

We shouldn’t return to the old days of deeming matters as disposals which are not disposals and deeming items as assets which clearly are not assets. In other words, artificial deeming are confusing and unhelpful.

The elaboration of 54 events is a price we need to pay, having regard to the need for certainty in a self assessment environment.

2 Work-related deductions

Should Australia abolish all work-related deductions and maybe instead allow a one-off \$1000 annual deduction?

For

Joanne Dunne – Director at [PwC](#)

We should change the current rules since,

1. Non-business WRE’s amounted to \$18.8b in 2015. So adopting the proposition could raise additional tax of an estimated \$3b;
2. WREs contribute substantially to the tax gap because some taxpayers decide to give a tax deduction a go because it is only a small amount;
3. The legislation and administrative guidance surrounding WREs is needlessly complex leading to increase costs and compliance for individual taxpayers;
4. WRE reform could lead to taxpayers no longer needing to file tax returns;
5. Australia could use the saved revenue to fund personal tax cuts;
6. International comparisons suggests we should restrict deductions. New Zealand broadly disallows all such deductions. Canada, Japan, Switzerland, the UK and the US all allow only limited categories of deductions. Spain allows a standard one-off deductions.

Against

Ram Pandey – Principal Lawyer at [ATO Review and Dispute Resolution](#)

We should maintain the current framework for WRE deductions with some modifications for the following reasons:

1. We shouldn't deny legitimate claims for such deductions simply because there are some inappropriate/improper claims;
2. The AAT and Courts appropriately deal with the worst cases, eg Ogden and Kaley;
3. We can't just simply brush aside issues of equity that would result if we adopt this proposition. Why can all other forms of enterprise claim deductions so as to pay income tax on net income only? How can we deny that opportunity to employees WREs;
4. The current system has worked fine for a long time and the community understands it. There are difficult cases but there always will be;
5. There is no guarantee that if we deny WREs that employers will pick up these expenses;
6. Isn't it a taxpayer's right to pay income tax on net income only?

One compromise suggested by Joaane (and supported by Professor Michael Walpole) is to only allow a WRE deduction if the taxpayer incurs the expense wholly exclusively and necessarily in the performance of the duties of the employment. That would eliminate all apportionable expenses. Section 336 of the Income Tax (Earnings and Pensions) Act 2003 in the UK has essentially done precisely that.

3 Residency rules for individuals and companies

What could a simplified set of residency rules for individuals and companies look like if we removed the current rules?

For: Clint Harding – CTA at [Arnold Bloch Leibler](#)

Clint discussed this very topic in an interview with Tax Talks in [episode 6](#).

Against: Dr Michael Dirkis – CTA at [University of Sydney](#)

4 CGT discount and negative gearing

What new rules could replace the CGT discount and negative gearing?

For: Jonathan Ortner – FTI at [Arnold Bloch Leibler](#)

Against: Dr Brett Freudenberg – CTA at [Griffith University](#)

5 Imputation

Should and could we change the imputation system for a different model and if so how?

For: Jonathan Ortner – FTI at [Arnold Bloch Leibler](#)

Against: Dr Brett Freudenberg – CTA at [Griffith University](#)

6 GST base

Should and could we widen the GST tax base by including currently GST-free goods and services and if so how?

For: Bruce Quigley – CTA at [The Tax Institute](#)

Against: Prof. Michael Walpole – at CTA [University of NSW](#)

7 Superannuation

Should and could we simplify the taxation of superannuation and if so how?

For: Suzanne Mackenzie – CTA at [DMAW Lawyers](#)

Against: Phil Broderick – CTA at [Sladen Legal](#)

8 Stapled Securities

Should and could we end the tax advantages for stapled securities and if so how?

For: Prof. Kevin Davis – [University of Melbourne](#)

Against: Steven Economides – CTA at [KPMG](#)

9 The Corporate Tax Rate

For: Prof. Richard Vann – CTA at [University of Sydney](#)

Against: Grant Wardell-Johnson – CTA at [KPMG](#) and Prof Graeme Cooper – CTA at [University of Sydney](#)

Although this was not an official point on the agenda for The Great Debate, this topic came up nevertheless and led to a heated discussion.

Conclusion

The Great Debate in August 2017 was a starting point. But there are many more aspects of the tax system for which the merits of maintaining should be the subject of a debate in a public forum. It is only then that we can test whether we have all the right elements in making the tax system as simple, efficient and transparent as it could be. But we all know that we are far from that status. There is therefore much left to debate and discuss, all in the aim of improving Australia's tax system.

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