

# **AUSTRALIAN TAXATION OFFICE/TREASURY PROTOCOL — TAX POLICY AND LEGISLATION**

This protocol provides an agreed framework for working arrangements between the Treasury and the Australian Taxation Office for delivering advice to government on tax policy and on the design and development of legislation and related administrative guidance material and products to implement the government's policy. This protocol covers all laws administered by the Commissioner of Taxation and is also relevant to the Commissioner's role as Registrar of the Australian Business Register.

## **OBJECTIVES OF THE TAX DESIGN PROCESS**

The objectives of the tax design process are to provide the government with the best possible advice for making tax policy decisions, as well as producing law and administrative products that give effect to the policy intent set by the government in a way that meets the needs of users of the tax system.

Tax policy, legislation and administration are integrally related and interdependent. Recognising this, the tax design process aims to ensure that the administrative, compliance and interpretive experience of the Tax Office fully contributes to those policy and legislation processes and that there is a high level of integration across the policy, legislative and administrative aspects of tax changes.

## **ROLES OF BOTH AGENCIES IN THE TAX DESIGN PROCESS**

Treasury, through its Revenue Group, has primary responsibility for advising on tax policy and the design of tax laws.

The Commissioner of Taxation, as statutory head of the Tax Office, is responsible for the interpretation and administration of tax laws.

Treasury and the Tax Office will work cooperatively to provide high quality advice to the government on tax system issues, consistent with the integrated design approach outlined above. Subject to government and legal requirements, both agencies will share information at all stages of the process.

## **TAX OFFICE AND TREASURY RESPONSIBILITIES**

### **In designing new tax policies and laws**

In meeting its accountability for advising on tax policy, Treasury formulates and provides advice to government on options, prepares official costings, and produces regulation impact statements where required.

In designing tax laws, Treasury is responsible for:

- instructing legislative drafters;
- producing explanatory materials;

- conducting community consultation on tax policy and draft legislation, in accordance with government requirements;
- managing the legislation program; and
- assisting the government to secure passage of Bills through the Parliament.

The Tax Office contributes its views and experience to all stages of the tax policy and legislation design process. To meet this accountability and role in the law design function, the Tax Office will provide advice to Treasury on:

- the administrative and interpretive aspects of tax design;
- material that may form the basis of official costing of tax proposals, including administrative costs and the compliance implications of policy advice; and
- issues that emerge through its experience in administration, including compliance costs and other issues that may arise for taxpayers in complying with proposed tax laws.

To the extent that interpretation of proposed legislation is required prior to enactment, Treasury will provide the Tax Office with the policy intent and outcome intended in relation to a particular matter, and the Tax Office will provide its views as to whether the provisions achieve that end, recognising that, formally, it is the Office of Parliamentary Counsel which is to be satisfied that legislation is legally effective to implement government policy.

#### Advice to the Minister

Treasury and the Tax Office will seek to reach agreement on tax policy and legislation matters wherever possible. Where agreement cannot be reached, Treasury will ensure that the Tax Office view is provided to the Minister in a form agreed by the Tax Office, or the Tax Office may advise the Minister separately in consultation with Treasury.

#### **For enacted law**

The Tax Office has the role of interpreting enacted tax law (subject to the courts) in order to administer them.

In forming its view on the interpretation of enacted law, the Tax Office routinely consults Treasury, the professions, affected taxpayers and the public.

#### Circumstances in which the Tax Office may consult Treasury during the course of its interpretation of enacted law include:

- (i) *Where more than one possible interpretation is open.* In these circumstances the Tax Office may invite Treasury's comments on the purpose or object of the legislative provisions in question.
- (ii) *Where, having settled on its interpretation, the Tax Office is concerned that the law may give rise to unintended consequences, for example, unnecessary compliance costs or inappropriate outcomes.* In these circumstances the Tax Office may notify Treasury and Treasury may advise the Minister accordingly, or the Tax Office may advise the Minister directly in consultation with Treasury where appropriate.

What weight can be given to Treasury's views on purpose or object?

Any comments Treasury provides to the Tax Office are not determinative. The Tax Office can, nevertheless, consider Treasury's view along with the views of other stakeholders in arriving at an interpretation which, as far as possible, is consistent with the purpose or object of the law, given the words of the law and its statutory context.

Communications between the Tax Office and Treasury on tax and superannuation matters are confidential as they are, effectively, in the nature of communications between an agency and the government.

To facilitate the purposive approach to interpretation, when developing legislation and treaties, Treasury will seek to ensure the purpose or object of provisions is explicitly outlined on the face of the law or tax treaty and reinforced in publicly available extrinsic material, such as explanatory memoranda and second reading speeches.

Advice to the Minister

The Tax Office will advise the Minister on administration matters in consultation with Treasury.

**MONITORING AND REVIEW OF PROTOCOL**

The Taxation Policy Coordination Committee (TPCC), comprising senior leadership of each agency, will oversee the operation of this protocol. The TPCC will review the protocol from time to time, and may agree to amend it at any time for the benefit of effective working relationships.

A Tax Office and Treasury Liaison Committee will monitor work flows between the agencies. Both agencies will further develop and enhance the design of tax laws and provide the underlying working mechanisms to support this protocol.

**RELATED MATERIAL:**

Tax Office [Practice Statement Law Administration PS LA 2004/6](#)

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