Tax reform: with 2020 vision

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It is universally agreed that tax reform in Australia is necessary but obtaining agreement from all stakeholders on the design of an improved system, and implementing those improvements, seems an impossible task. Previous tax reform made some inroads, but our tax system has been creaking under its own weight for far too long. The COVID-19 pandemic may provide the impetus for reform. The Henry review remains a blueprint for the reform of Australia's tax system and many of the recommendations contained in the report are worthy of consideration, even 10 years on. Against this backdrop, this article considers issues with the taxation of fringe benefits, the corporate tax rate, the top marginal tax rate and the CGT discount, the taxation of trusts, small business tax concessions, Div 7A, individual tax residency, the personal services income rules, the superannuation guarantee regime, and the state of consultation on legislative amendments.

While it is universally agreed that tax reform in Australia is necessary, our political leaders have lacked the courage, foresight and will to make genuine and substantive reforms. Some business and community leaders lack the vision to suggest changes beyond their own sectoral interests. The majority of the legislative amendments made to the tax law just tinker around the edges and adjusting the personal income tax thresholds and rates does not constitute "reform".

1 July 2020 marked the 20th anniversary of the introduction of the GST in Australia. Its introduction was the centrepiece of the Howard Government's tax reform package. You may recall the slogan, "Tax reform: not a new tax, a new tax system". This was abridged to "A new tax system" or "ANTS", which became the prefix for the titles of all tax-related Bills at the time.

The Howard Government described its policy framework for securing Australia's economic future in 1998 in the following terms:[1]

> "It is a framework designed to achieve stronger sustainable growth, higher productivity, more jobs and rising living standards.
>
> Tax reform is not an end in itself. It is an indispensable part of a broader co-ordinated policy approach that has as its goals greater incentive, security, consistency and simplicity. It also provides for fairer outcomes, greater choice and greater opportunity.
>
> As part of that broader co-ordinated policy approach, tax reform is essential if Australia is to be able to achieve its full potential as a nation in the twenty-first century.
>
> The tax reform which is necessary for Australia — and to which the Coalition Government is committed — is not reform narrowly focussed on establishing a new tax, but reform which delivers a new tax system: a system which is built on a lower tax burden and which is fairer, more internationally competitive, more effective, and less complex.
>
> It is a new tax system that has as its central priorities not only the efficiency and effectiveness of our national economic policy framework but also the sense of equity and fairness that has always been part of the Australian way."

Reading back those words, it is striking that these aspirations are as relevant today as they were 22 years ago. However, the sad truth is that little has been done by those on either side of the political divide to achieve them.

In the last two decades, the chorus of voices championing improvements to our tax system has only amplified. Our tax system has been creaking under its own weight for far too long.

Continual legislative amendments by successive governments over more than four decades have resulted in a set of rules, regulations and necessary binding and non-binding ATO guidance that all agree is unwieldy, inefficient and in desperate need of reform. Our tax system must be robust so that it can adapt to changing conditions and challenges, including:

- digital and technological changes;
- the globalisation of business, investment and labour — this has increased the mobility of capital which was historically fixed in physical, geographical locations but is now borderless;
- an ageing demographic; and
- an increased consumption of services across our economy that falls outside the GST.

The COVID-19 pandemic may turn out to be both the straw that breaks the camel's back and the impetus for change. The crisis has inevitably caused a rethink of virtually everything we do and how we do it.

Significant parts of the economy are hurting badly, and we are seeing many business closures. However, there are also some sectors that are still managing okay or have even not been significantly impacted. Regardless, our economic future is uncertain. Unprecedented levels of debt to fund the stimulus packages have presented the government with an enormous challenge in balancing financial recovery of the economy with the fiscal impost. Getting its policies right over the next few months will be crucial to the recovery of the economy but, longer term, getting its policies right will be crucial to the future of our nation.

Our current taxation system is simply not robust enough to sustain us well into the 21st century. If there was ever a time for necessary and genuine reform, it is now.

Lessons from the Henry review

The Henry review[2] remains a blueprint for the reform of Australia's tax system. The December 2009 report (the report) famously stated that:

> "Around 90 per cent of Australian tax revenue is raised through only 10 out of some 125 different taxes that are currently levied on businesses and individuals."

According to the report, the 10 taxes (ranked in order from highest to lowest) that generate around 90% of the Australian tax revenue are:

1. personal tax;
2. company tax;
3. GST;
4. payroll tax;
5. fuel excise;
6. local government rates;
7. conveyance stamp duty;
8. superannuation;
9. tobacco excise; and
10. land taxes.

The 115 other taxes include FBT, gambling taxes, insurance taxes, beer and spirits excise, customs duties, motor vehicle taxes, crude oil excise and agricultural levies.

Many of the 138 recommendations contained in the report are worthy of consideration, even 10 years on. Some of the notable recommendations include:

- recommendation 2: a high tax-free threshold with a constant marginal rate for most people should be introduced to provide greater transparency and simplicity;
- recommendation 5: the Medicare levy and structural tax offsets — the low income, senior Australians, pensioner and beneficiary tax offsets — should be removed as separate components of the system and incorporated into the personal income tax rates scale;
- recommendation 6: to remove complexity and ensure that government assistance is properly targeted, concessional tax offsets should be removed, rationalised or replaced by outlays;
- recommendation 9: fringe benefits that are readily valued and attributable to individual employees should be taxed in the hands of employees through the PAYG system. Other fringe benefits, including those incidental to an individual's employment, should remain taxed to employers at the top marginal rate (and non-reportable for employees);
- recommendation 11: a standard deduction should be introduced to cover work-related expenses and the cost of managing tax affairs to simplify personal tax for most taxpayers. Taxpayers should be able to choose either to take a standard deduction or to claim actual expenses where they are above the claims threshold, with full substantiation;
- recommendation 17: the CGT regime should be simplified (see the report for further details);
- recommendation 18: the tax on superannuation contributions in the fund should be abolished. Employer superannuation contributions should be treated as income in the hands of the individual, taxed at marginal personal income tax rates, and receive a flat-rate refundable tax offset;
- recommendation 20: the restriction on people aged 75 and over from making contributions should be removed. However, a work test should still apply for people aged 65 and over;
- recommendation 23: superannuation guarantee contributions should be paid at the same time as wages;
- recommendation 27: the company income tax rate should be reduced to 25% over the short to medium term, with the timing subject to economic and fiscal circumstances;
- recommendation 36: the current trust rules should be updated and rewritten to reduce complexity and uncertainty around their application; and
- recommendation 51: ideally, there would be no role for any stamp duties, including conveyancing stamp duties, in a modern Australian tax system. Recognising the revenue needs of the states, the removal of stamp duty should be achieved through a switch to more efficient taxes, such as those levied on broad consumption or land bases.

What can we take from these and the other 126 recommendations? Reflecting on the Henry review recommendations, a number of issues with our tax system become apparent. These are discussed below.

Taxation of fringe benefits

In 2018-19, the FBT revenue contributed $3.794b[3] out of total revenue of $425.980b, just 0.89% of all revenue. The system is complex and burdensome for employers and it generates comparatively minimal revenue for the government.

There are recurring compliance concerns relating to:

- valuing benefits;
- record-keeping and employee declarations;
- misalignment of the FBT year (ending 31 March) with the income tax year (ending generally 30 June);
- allocation of shared benefits to employees;
- misunderstanding by employers of the various exemptions;
- interpretation of terms such as "minor, infrequent and irregular";
- complexity with the provision of benefits relating to meal entertainment and Christmas parties; and
- recent judicial and resulting ATO guidance on "car parking" benefits.

The antiquated provisions of the *Fringe Benefits Tax Assessment Act 1986* (Cth) is further impetus for an overhaul of the regime. Occasional amendments[4] are made to the Act to reflect changes in our society, but expressions such as "briefcase" and "panel van" are hopelessly showing their age.

The notion of taxing benefits to employees has been a perennial recommendation in tax reviews.[5] Taxing fringe benefits to employees would depart from collecting tax from a relatively small number of employers versus a significantly

larger number of employees. But this could be overcome by applying a reporting and withholding tax regime, effectively extending PAYG withholding that currently applies to most other types of payments made by employers.

Corporate tax rate

Between 1940 and 1973, the tax rate for public companies was higher than that for private companies. The two-rate system was removed in 1973 when the rates for both types of companies were aligned. In 1986, the rate was increased to align with the top marginal tax rate (49% at the time). The rate was then reduced to 30% between 1988 and 2000, where it remained for 14 years, before a two-rate system was once again introduced from 2015-16.

The government's vain attempt to reduce the corporate tax rate for all companies to 25% has resulted in non-resident shareholders faring better than Australian resident shareholders. The lower corporate tax rate is advantageous for non-resident shareholders who benefit from larger dividends, but is disadvantageous for resident shareholders who may face additional top-up tax due to trapped franking credits.

The legislative amendments made in 2018 have resulted in an unnecessarily complex and nuanced regime for companies which must navigate their way through the complicated aggregated turnover test and the base rate entity passive income test to determine their tax rate and franking rate.

Unnecessary complexity exists due to the potential misalignment of a company's tax rate and its maximum franking rate, resulting in top-up tax or trapped franking credits where dividends flow between companies that are base rate entities and those that are not. The misalignment is compounded by companies being required to use current year data to determine their tax rate but prior year data to determine their franking rate. Further complexities arise where distributions flow through trusts, as illustrated below.

Numerous anomalies arise such as where, assuming the aggregated turnover is less than $50m and there is no significant passive income:

– business income derived by a company that is distributed to another company via a trust is taxed at the higher rate, but income distributed directly to another company is taxed at the lower rate;
– a company carrying on a business of equipment hire is taxed at the higher rate, yet a dormant company must frank its distributions at the lower rate; and
– a company that derives both business income and rent suffers a massive decline in its turnover due to the COVID-19 pandemic — it may extraordinarily find itself being taxed at the higher rate as a result.

Top marginal tax rate and CGT discount

It would be a bold move, but reducing the highest marginal tax rate to align it with the corporate tax rate would eliminate:

– the personal services income (PSI) rules;
– Div 7A of Pt III of the *Income Tax Assessment Act 1936* (Cth) (ITAA36); and
– the need for proposed amendments to include all remuneration (including payments and non-cash benefits) provided for the commercial exploitation of a person's fame or image in their assessable income from 1 July 2019.

Such an alignment would remove the incentive for individual taxpayers to divert their taxable income to companies and trusts to minimise their tax. This would have the consequential effect of reducing the benefit of the CGT discount, but perhaps there is merit in a redesigned CGT discount which becomes more generous the longer the asset is held.

It is notable that a discount capital gain made by an individual on the highest marginal tax rate is now taxed at a rate that is very similar to that which applies to a non-discount gain made by a company that is a base rate entity, although the gain must still be extracted from the company by the shareholder.

> *"The exclusion in s 100A(13) for 'an … ordinary family or commercial dealing' is screaming out for judicial clarification."*

Taxation of trusts

Copious articles have been written over the decades by the best minds in the judiciary and legal and accounting practitioners who have identified, dissected and debated the problems inherent in Div 6 of Pt III ITAA36 (Div 6). Vain attempts to reform Div 6 have been largely unsuccessful, notably in 2010 following the High Court's decision in *FCT v Bamford*[6] which finally provided some certainty in relation to some long-debated issues regarding the taxation of trusts.

There was a flurry of activity following the *Bamford* decision, including a consultation paper[7] in 2011 and a policy options paper[8] in 2012 which set out proposed reforms to the taxation of trust income. However, only some limited trust streaming provisions relating to capital gains and franked distributions emerged from the extensive and earnest efforts to reform Div 6.

"Be careful what you ask for"

The adage, "be careful what you ask for", rings true here. The profession asked for the ability for trusts to continue to stream capital gains and franked distributions in the wake of concerns arising from the *Bamford* decision. Had the profession maintained its insistence on the ability to stream foreign income, interest income or rental income, maybe the provisions would have included those classes of income.

It is a similar situation with s 100A which deals with reimbursement agreements. This obscure provision in Div 6 has been in the law since 1981 and treats a beneficiary as not being presently entitled where the present entitlement arose out of a reimbursement agreement. The exclusion in s 100A(13) for "an agreement, arrangement or understanding entered into in the course of ordinary family or commercial dealing" is screaming out for judicial clarification.

In the meantime, the profession sought interpretive guidance from the ATO, which was first provided in the form of a non-binding document[9] on 2 July 2014. Since then, the profession has continued to seek binding guidance from the ATO. The ATO's advice under development program[10] advises that a draft ruling will set out the Commissioner's preliminary views on the exclusions from a "reimbursement agreement" for:

- agreements not entered into with a purpose of eliminating or reducing someone's income tax; and
- agreements entered into in the course of ordinary family or commercial dealings.

The expected completion is yet to be advised but targeted consultation on this issue has commenced.

The provisions affecting trusts

More than 30 separate set of rules affect trusts (many of which contain dozens more rules):

- Div 6 of Pt III ITAA36: incorporating the key provisions of ss 97, 98, 99, 99A, 99B and 101;
- s 100A ITAA36: reimbursement agreements;
- Div 6C of Pt III ITAA36: public trading trusts;
- Div 6D of Pt III ITAA36: closely held trust rules;
- Div 7A of Pt III ITAA36: loans by private companies to trusts;
- Subdivs EA and EB of Div 7A of Pt III ITAA36: private companies with trust entitlements;
- Pt IVA ITAA36: the general anti-avoidance rules;
- Sch 2F ITAA36: trust loss provisions;
- Sch 2F ITAA36: family trust elections;
- s 106-50 of the *Income Tax Assessment Act 1997* (Cth) (ITAA97): absolute entitlement;
- Div 115 ITAA97: discount capital gains;
- Subdiv 115-C ITAA97: streaming capital gains;
- s 118-180 ITAA97: CGT main residence exemption rule on marriage or relationship breakdown;
- Divs 122 and 124 ITAA97: CGT roll-overs;
- s 126-15 ITAA97: CGT roll-over involving trustee on marriage or relationship breakdown;
- Subdiv 130-D ITAA97: employee share trusts;
- s 152-70 ITAA97: "significant individual" modifications (small business CGT concessions);
- Subdiv 165-F ITAA97: company losses — non-fixed trust ownership;
- Subdiv 207-B ITAA97: streaming franked distributions;
- Subdiv 235-I ITAA97: instalment trusts;
- Div 275 ITAA9: managed investment trusts;
- Div 276 ITAA97: attributed managed investment trusts;
- s 328-125 ITAA97: "connected with" modifications for trusts;
- ss 12-175 and 12-180 of Sch 1 to the *Taxation Administration Act 1953* (Cth): TFN reporting for closely held trusts;
- CGT events E1 to E8;
- deceased estates;
- holding period rule (when distributing franking credits attached to dividends);
- special disability trusts;
- superannuation funds;
- testamentary trusts; and
- transferor trust provisions.

A cursory glance of the above list shows that the interplay and application of the legislative provisions affecting trusts is unworkable, and almost impossible to fully comply with.

An obvious area of reform is the sets of provisions applying to closely held trusts. There is both an overlap of and mutual exclusivity between:

- the trustee beneficiary reporting rules in Div 6D of Pt III ITAA36;
- the TFN reporting rules for closely held trusts in ss 12-175 and 12-180 of Sch 1 of the *Taxation Administration Act 1953*; and
- the trust loss provisions in Sch 2F ITAA36, which includes the rules governing family trust elections, interposed entity elections and family trust distributions tax.

Surely it is time for the trustee beneficiary statement, which can result in the imposition of trustee beneficiary non-disclosure tax, to be repealed. The rules are poorly understood, complied with, and enforced. The family trust election rules and TFN reporting rules (which emerged subsequent to the trustee beneficiary reporting rules), together with the information reported in the distribution statement in the trust's tax return, should be sufficient to warrant the repeal of the rules in Div 6D.

Reform s 99A tax rate

While reasons of asset protection, family succession and control of assets are frequently offered as the basis of distributing from a trust to a corporate beneficiary, arguably, one of the main drivers is ensuring that the trust income that is not being used for personal or non-income producing purposes is taxed at the corporate rate rather than at the penal rate which applies under s 99A ITAA36.

If the rate imposed under s 99A were reduced to be aligned with the corporate tax rate, whether the headline rate of 30% or the lower rate that applies to base rate entities, this would simplify structures by removing some of the motivation to distribute to corporate beneficiaries.

In most cases, the funds are retained for working capital and are not used for a personal or non-income producing purpose. The tax law should acknowledge the widespread use of companies and trusts for business and asset-holding purposes and recognise that, where the funds are used for a taxable or working capital purpose, penal rates of tax should not be imposed and Div 7A implications should not arise.

Small business tax concessions

The raft of tax concessions available to small business entities were recently reviewed by the Board of Taxation.[11] In response, the government announced on 12 December 2019 that it will continue to consider the implications of

the Board's findings as this report constitutes a valuable contribution to public debate on important tax issues.[12]

There is scope for concessions applying to small business entities, including the small business CGT concessions in Div 152 ITAA97, to be simplified, streamlined and better targeted. The February 2018 amendments affecting CGT events that happen to shares in companies and interests in trusts were designed to close a loophole. However, they were dreadfully overengineered and greatly increased the complexity of the eligibility rules, making this a specialist area for advisers. The fact that the commencement of the amendments was delayed by nearly eight months reflected the chasm that existed between what was foreshadowed in the Budget announcement and the eventual form of the rules when the exposure draft legislation was released. They were poles apart, and the Senate's insistence on a delay to the start date was appropriate.

Division 7A

The recent announcement on 30 June 2020 to further defer the commencement of the proposed reforms to Div 7A extended the uncertainty which has existed since 2012 when the review by the Board of Taxation was commissioned, but sensibly links the start of the new rules to the timing of enacted legislation.[13]

A detailed analysis of the proposed reforms is beyond the scope of this article, but the following key areas remain of utmost concern to SME practitioners:

- equitable transitional rules for existing loans and unpaid present entitlements, including those that are quarantined;
- minimum yearly repayments under the proposed 10-year loan model;
- the proposed removal of the distributable surplus;
- the treatment of unpaid present entitlements and sub-trusts under the new rules;
- the operation of a much-needed self-correction mechanism, which could be accompanied by a limited-period amnesty to address existing loans that do not comply with Div 7A; and
- the proposed excessive 14-year amendment period.

It will be essential for the profession to constructively engage with the various stakeholders to ensure that the policy objective is reasonable and the enacted provisions are workable, sensible and equitable.

Individual tax residency

There have been 29 cases on individual tax residency before the courts and tribunal since 2011. Unsurprisingly, the overwhelming majority were initiated by Australian taxpayers working overseas who sought to have their foreign earnings treated as exempt income following the 2009 changes which greatly restricted the availability of the exemption for foreign employment earnings in s 23AG ITAA36. The removal of s 23AG in fact was the catalyst for the change in behaviour that led to a number of taxpayers attempting to argue that they were non-residents for tax purposes. Separately, some foreign backpackers unsuccessfully attempted to argue that they were residents in order to claim the tax-free threshold.

The individual tax residency rules were recently reviewed by the Board of Taxation.[14] In response, the government announced on 12 December 2019 that it will continue to consider the implications of the Board's findings as this report constitutes a valuable contribution to public debate on important tax issues.[12]

The residency rules are a fundamental part of the income tax system, yet individual taxpayers have to navigate at least 18 different sets of tax rules, including the differing marginal tax rates, the temporary resident and working holiday-maker rules, non-resident withholding taxes, implications for CGT assets when becoming or ceasing to be a resident, double tax agreements, the CGT discount and the main residence exemption changes. The complexity associated with the interplay of the relevant provisions, coupled with the fundamental threshold question of whether an individual is a resident or a non-resident for tax purposes, makes it increasingly difficult to comply with the law and costly to litigate in the event of a dispute with the Commissioner (as was illustrated by the taxpayer in *Harding v FCT*[15]).

Improved certainty, reduced compliance costs and making Australia more attractive as a destination for inbound taxpayers should be a priority in reforming the residency rules. We should be encouraging Australians to gain valuable experience overseas with the aim of benefitting from these skills on their return, so the tax system should also provide a smooth transition for Australian expatriates returning home.

Superannuation guarantee regime

Introduced on 1 July 1992, the superannuation guarantee (SG) law has not been substantially reviewed or overhauled in its 28-year history.

The following considerations support long-overdue reform of the SG regime:

- the ATO estimates that the SG gap for 2016-17 is $2.3 billion;[16]
- an Industry Super report from May 2017 suggests that 2.85 million Australians did not receive their full SG entitlements in 2016-17, missing out on $5.94 billion.[17] The number of workers who were short-changed increased by 90,000 in three years (up from 2.76 million) and now affects 31.3% of workers;
- the design of the superannuation guarantee charge (SGC) dissuades employers who want to avoid penalties or losing deductions for late or unpaid superannuation;
- the notional interest component ends on lodgment of the SG statement with the ATO, not the payment of the late contribution;
- company directors can be personally liable for unpaid SGC liabilities;
- single touch payroll reporting provides greater transparency over non-compliant employers;
- some employers wrongly treat late contributions as being non-deductible (without also paying the SGC and lodging an SG statement);
- the rate of the SG is legislated to increase to 12% by 2025;
- employers are often confused as to the meaning of "ordinary times earnings";

- there are perennial issues with correctly classifying workers as contractors versus employees;
- due to annual indexation, the maximum contributions base is within uncomfortable reach of the $25,000 concessional contributions cap;
- due to the COVID-19 pandemic, many employers in lockdown or with greatly diminished cash flow will not be in a position to avail themselves of the SG amnesty which ends on 7 September 2020; and
- redesigned rules could:
  - makes it easier for employers to comply;
  - be less draconian if an employer pays the contribution one day late — they are currently treated the same as an employer who never makes the contribution; and
  - more adequately support a modern and sustainable retirement system.

PSI

Introduced in 2000 to ensure that individuals could not alienate their personal services income (PSI), the PSI rules are a frequent source of confusion for taxpayers and practitioners.

The Board of Taxation reviewed the PSI regime in 2009.[18] In releasing the Board of Taxation's review into whether the tax rules on the alienation of PSI are proving effective, the then Assistant Treasurer, Nick Sherry, announced on 16 December 2009 that:[19]

> "The Board has concluded that while the current rules have gone some way in achieving their intention of improving integrity and equity in the tax system, the extent of this improvement is inadequate.
>
> The Board has found evidence of a low level of compliance and a degree of uncertainty or 'greyness' around the rules, such that it has found the alienation of [PSI] rules in their current form do not provide acceptable levels of integrity and equity."

In its review, the Board suggested a range of possible reform options:

- introduce a reporting obligation;
- extend the attribution rules to personal services businesses;
- clarify and simplify the deduction provisions;
- implement a test of "employee-like" manner to clarify who is affected by the rules; and/or
- introduce a deemed labour income approach.

The Assistant Treasurer also stated:

> "... these findings are of concern so we have passed the Board's report to the Australia's Future Tax System review. The Government will wait for the final report of the Henry Review before determining the appropriate action in this area."

Recommendation 10 of the Henry review stated:

> "Consideration should be given to a revised regime to prevent the alienation of [PSI] that would extend to all entities earning a significant proportion of their business income from the personal services of their owner-managers, whether in employee-like or non-employee-like cases. This regime may also apply an arm's length rule to deductions arising from payments to associates to ensure deductions reflect the value of services provided."

No reforms to the PSI rules arose from the Henry review, and the concerns raised by the Board of Taxation in 2009 are still valid today. Evidence remains of a low level of compliance and uncertainty around the rules, for example:

- whether income is correctly characterised as PSI;
- incorrect claims that the results test is satisfied, or that the entity conducts a personal services business;
- failure to remit PAYG withholding on attributed income (some mistakenly apply the PAYG instalment rules in the belief that the ATO is still collecting the right amount of tax);
- a lack of understanding of the interaction of the PSI rules with the SG regime; and
- failure to understand that alienating personal exertion income, even where the entity conducts a personal services business, remains subject to Pt IVA ITAA36.

State of consultation on legislative amendments

A robust, consultation process exists as part of tax law design. This allows the professional bodies and the profession opportunities to provide feedback to Treasury through private focus groups and submissions on draft legislative measures. Senate committees also play a vital role in scrutinising bills.

These processes are designed to iron out any technical problems with newly drafted provisions. However, notwithstanding the efforts of the professional bodies and the profession in regularly raising technical issues with Treasury throughout the consultation process, there are numerous instances of technical deficiencies, illustrated by the recently enacted vacant land measures and the changes to the main residence exemption, both of which have interpretation issues and unintended outcomes.

The Tax Institute's submission to Treasury in November 2019 observed a decrease in the quality of explanatory memoranda (EMs) being produced by Treasury.

The following concerns were raised in the submission:

- misalignments between statements of parliament's intent captured in EMs and the actual drafting of the legislation. A misalignment between the legislation and the EM causes uncertainty for taxpayers;
- a trend towards leaving pertinent examples, explanations and interpretative guidance out of EMs which should not merely repeat or paraphrase the legislation. They should provide practical and interpretive guidance that illustrates how the legislation is intended to apply, and clearly articulate and explain the underlying tax policy of the legislation; and
- a trend towards putting interpretive material into ATO guidance including law companion rulings that should be in EMs.

Conclusion

The issues covered in this article are far from an exhaustive list of the areas in need of reform. The preceding discussion does, however, highlight the importance of approaching tax reform in a holistic manner. Amending elements of the

law to simplify and improve it is commendable, but only with courage, collaboration and a willingness to change our collective mindset can we truly reform our tax law.

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4 For example, the recent amendments contained in Pt 2 of Sch 3 to the *Treasury Laws Amendment (2019 Measures No. 3) Act 2020*, enacted on 22 June 2020 as Act No. 64 of 2020, which amended the definition of "taxi" with effect from the 2019-20 FBT year to reflect the deregulation of the taxi industry and the introduction of ride-sharing providers entering the market.

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