



31 May 2010

Mr Keith James
Chairman of the Working Group
Review of the Tax Issues Entry System (TIES)
Board of Taxation
Treasury Building
Langton Crescent
PARKES ACT 2600

Via email: taxboard@treasury.gov.au

Dear Mr James

BOARD OF TAXATION – REVIEW OF TAX ISSUES ENTRY SYSTEM

Thank you for your letter of 14 April 2010 inviting the Law Council of Australia to make a submission to the Board of Taxation in relation to its review of the Tax Issues Entry System (TIES)

This submission has been prepared by the Taxation Committee of the Business Law Section of the Law Council of Australia ('the Committee'). The submission has been endorsed by the Business Law Section. The submission has not been reviewed by the Directors of the Law Council of Australia Limited.

The Committee supports the government's initiative in establishing TIES as a way of "making the tax system work better for everyone" (as stated on the TIES website) and supports the continued operation of TIES. The Committee welcomes this review after 12 months of operation and considers that this provides an opportunity for the government to make improvements to TIES that will increase transparency and accountability in respect of tax law reform.

Tax law profession experience of TIES

The Committee understands that Treasury has done an initial statistical analysis of who has used TIES (to lodge an issue for consideration) and that this indicates that out of 64 issues submitted, 45 were submitted by tax professionals.

The Issues Template on the TIES website enables the person submitting the issue to identify if the submission is being made on behalf of a professional body, but does not provide for the person submitting to identify their professional background. This could be information that would be worth collecting in future.

The Committee would be interested to learn from the Board's inquiry about who has utilised TIES in this first 12 month period of operation including their professional background and whether they submitted in their individual capacity or on behalf of a client. It would also be interesting to know whether submissions are coming from large/medium/small/individual practitioners or taxpayers.

The Committee has not itself made any submissions to TIES and it would be interested to know if any other professional bodies have used this avenue. The Committee's suspicion is that the professional bodies are preoccupied with making detailed submissions through the many other avenues for detailed consultation on interpretive and legislative matters. Further, anecdotal evidence collected by the Committee indicates that no, or very few, TIES submissions have been made by legal professional tax advisers in its first 12 months of operation.

The main reason for lack of use of TIES to date from legal professionals is likely to be, simply, a lack of knowledge about TIES and its potential benefits. In this regard, the Committee submits that a publicity and education program would be useful to inform tax lawyers of TIES and to encourage the registration of issues. The Committee will also seek to publicise TIES among its members and would be happy to support such an education process if carried out by government.

Another reason for lack of use of TIES to date, and one that needs to be addressed in conjunction with a review of the purpose and scope of TIES (discussed below) is the perception that TIES is not available for submissions on issues that may be more than "technical" or mere "care and maintenance" corrections to the law. There may be a perception that submissions to TIES are of limited value to the tax professional, his or her clients or the tax system generally.

The Committee submits the Board should do a detailed analysis of the users of TIES to date and should consider how the use of TIES can be enhanced among the various tax professionals, taxpayers and professional bodies.

The Committee submits the Treasury and Board should identify and take the steps needed to publicise and educate the tax profession about TIES.

Purpose and scope of TIES

TIES is currently intended to assist in improving the tax system by allowing anyone to register an issue relating to "care and maintenance" described as:

Care and maintenance issues are about making sure the existing law operates in the way it was intended, by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes. Care and maintenance issues could involve minor policy changes, though they typically would not have a significant revenue impact.

TIES was established as part of the government's response to recommendations of the Tax Design Review Panel (announced on 22 August 2008). More generally, the recommendations of that Panel that are relevant to TIES were:

Recommendation 16: Greater priority to care and maintenance

The Government should ensure greater priority is given to the ongoing care and maintenance of the tax system.

Recommendation 17: Adopt the Board of Taxation's 2007 TIES recommendation

The Government should pilot the Tax Issues Entry System (TIES) to identify legislative and administrative issues relating to the care and maintenance of the tax system. The Board of Taxation should review the operation of the system after 12 months.

Recommendation 18: Board of Taxation to advise on TIES priorities

The Government should ask the Board of Taxation to consult with the community and provide advice to the Government on how issues identified through TIES should be prioritised. The Board's advice to the Minister should be made public.

Those recommendations of the Tax Design Review Panel originated out of the work of that Panel and out of prior work done by the Board of Taxation on tax law consultation, in its Report in 2007. The Panel also noted at para 3.61:

That issues, other than those relating to care and maintenance, should continue to be referred to the Government through existing processes rather than through TIES. However, in the same way that TIES will be a register of community ideas relating to the care and maintenance of the tax system, the Panel considers that further thought should be given to a system which would allow the community to log other policy ideas on a transparent and accessible register.

Recommendations of the Board of Taxation in its 2007 report that are relevant to TIES include:

Recommendation 5

Government, officials and external stakeholders should seek improved engagement with sectors currently under-represented in consultations, including considering mechanisms for assistance with resourcing issues wherever possible.

Recommendation 6

Treasury should as far as possible use technology-based tools to improve the provision of information and facilitate dialogue, thereby assisting transparency and efficiency.

Recommendation 12

Treasury and the Tax Office should proceed with the proposed pilot of the Tax Issues Entry System for identifying/analysing/prioritising/providing feedback on minor tax system issues requiring administrative change or legislative amendment, recognising that the resources to address these issues have to be considered in conjunction with other legislative and administrative priorities. The Board should review the operation of the system after 12 months.

The discussion in the Board's 2007 report relevant to Recommendation 12 is attached to this submission. In particular, the Board states that TIES would replace the previous Technical Issues Committee process to deal with minor policy issues "including those that may require consideration by government". It also stated that TIES is expected to assist the tax policy and legislative process by "consolidating analysis of the key issues of concern and facilitating dialogue on the prioritisation of them", providing "improved channels" for feedback "on the progress of issues" and resulting in "less controversy regarding minor amendments to existing legislation".

Against this background, the Committee considers that TIES has an important role among a range of tax consultation processes that are managed by Treasury and the Tax Office. In particular, TIES could be enhanced to become a central, public register of technical and minor tax policy reforms. The potential for TIES to assist in tracking of issues and reform proposals and for prioritising those matters could be enhanced. This, of course, will require some education for the community about how TIES can be used to log such issues.

The Committee notes the proposal of the Tax Design Review Panel for further consideration of a transparent and accessible register of broader tax policy ideas. The Committee acknowledges that “big P” policy issues – for example, changing the company tax rate, the introduction of a resources super profits tax, or a major reform of the tax rules applicable to managed investment trusts - are clearly matters for the government. TIES is not a suitable forum for resolution of such issues; if they are raised on TIES, possibly mistakenly, the Committee considers they should remain on TIES and such issues should be responded to as “out of scope” but should be referred to Treasury. This has advantages. Treasury would be made aware of community based issues and users of TIES would see whether an issue they wished to raise had been raised before and whether such issues are within scope.

However, a spectrum of tax legislative, interpretive or administrative issues exists between the so-called “big P” Policy issues and, at the other end of the spectrum, mere technical corrections. The Committee commends the current statement on the TIES website that encourages a person to submit their issue even if unsure whether it falls within the “care and maintenance” scope of TIES. However, in the Committee’s view, the use of the language “care and maintenance” and the overall presentation and tenor of the TIES website discourages submissions that may require a minor tax policy change. An unduly narrow view of the kinds of issues that are eligible for consideration on TIES limits the value of TIES and may make it less attractive to members of the profession and professional bodies to make a submission. The Committee considers that the language used about the scope of TIES could be broadened without causing detriment to the tax policy process or the government’s control of tax reform and this would be consistent with the original proposal of the Board of Taxation in its 2007 report.

The Committee submits that the Treasury should not take an unduly narrow approach to the kinds of issues eligible for consideration through TIES. The scope of TIES should be broadened to encompass a wider range of minor or “small p” tax policy issues which may extend beyond mere technical corrections or “care and maintenance”. This should be clearly indicated on the TIES website and in educational and publicity material.

TIES as a central register for identifying and tracking minor tax policy issues

More generally, the Committee submits that TIES could be better utilised as a central record of all minor or technical tax reform issues, whether these issues are raised for consideration by the public or members of the tax profession through TIES, or through other forums, or whether they are identified and placed on the work agenda by the ATO or Treasury itself.

There are currently several pathways through which taxpayers and advisers may make submissions about technical or minor tax policy matters, or find out about steps being taken by government in respect of such matters. One pathway is the ATO NTLG and its Minutes provide a source of information on minor tax policy changes. Another source of information is the Forward Work Program on Tax and Superannuation Measures issued periodically by the Treasury (last issued in February 2010).

At present, it appears that TIES does not list issues raised by the ATO that are discovered in its administration of the tax law, or that are raised by the profession or taxpayers in other forums such as the ATO National Tax Liaison Group. This is the case even if those issues would fit into the “small p”/technical issues scope of TIES.

It would aid transparency and assist tax consultation if **all** issues that relate to “small p” policy or technical legislative corrections, no matter the source, are logged on TIES. The government response to all of these issues would be briefly identified and would be updated as events occur, for example, when a minor legislative reform is inserted into an amending Bill under the Treasury’s work program.

In this regard, TIES could become the main location, under supervision of the Treasury in close consultation with the ATO, at which summary information about such reforms is made public. The Committee submits that establishing TIES as a central register of “small p” policy issues would be of assistance, not only to taxpayers and the tax profession, but also to officers of the ATO and the Treasury itself.

A further issue arises as to the extent to which TIES is intended to address administrative issues. A number of TIES issues on the “Finalised” list relate to ATO computer systems or process reform. The stated response to these issues is that they are “out of scope”. It is not clear, but it appears that these issues may have been referred on to the appropriate branch of the ATO for consideration. TIES was intended to address “care and maintenance” administrative as well as legislative issues and it is submitted that it not clear when a tax system issue (such as the process for logging client names in different ATO systems) is out of scope. Tax advisors may become frustrated when an issue that they identify as systemic and related to “care and maintenance” is described as out of scope on TIES, simply because it relates to an ATO computer system, form or process. It is a matter of debate whether these kinds of issues should be raised on TIES, or whether it would be better for tax system process issues to be logged with the ATO.

The Committee submits that the Board consider whether and how TIES could be enhanced by making it a central, publicly available, register or log of “small p” tax policy issues and not merely a place for submission of such issues from the public or professionals.

The Committee submits that the Board consider the extent to which TIES is intended to enable submission on systemic ATO administrative process issues (eg relating to different computer systems, client data processing or forms). If these issues are to be included in TIES, this should be made clear and the response (eg referral to the relevant ATO branch and subsequent follow up) should be identified. If these issues are not in scope of TIES, a clear pathway for submission of these systemic issues to the ATO should be identified and publicised.

Enhancing the TIES submission process

The TIES website is simple to use and the Committee commends this. However, there are a few ways in which TIES could, in the Committee’s view, be enhanced. Some possibilities are set out below.

The Committee submits that the Board consider how the framework for submissions on TIES could be further enhanced, including for example:

- In addition to the web based issues template, provide a Word/rtf template for submission that can be downloaded for submission by email or other means.

- Establish a process so that technical or “small p” policy issues that are raised in other forums, such as the NTLG or in other consultation processes with Treasury or the ATO, are registered and tracked on TIES.
- Data published on TIES about submissions could be enhanced, while still maintaining the concise format, eg:
 - The source of the submission (in general terms not identifying individuals), eg “tax profession”, “individual taxpayer”, “ATO”, other could be identified;
 - The issue itself could be identified in a little more detail.
 - Where an issue, such as an administrative issue, is referred elsewhere eg because it is out of scope, details about where it has been referred are provided. This would enhance the educative function of TIES.
- Hyperlinks be provided to, eg, Bills or ATO documents that respond to a TIES issue.

TIES Review Panel and management of TIES

Currently, a Review Panel comprised of a subcommittee of the Board of Taxation considers TIES submissions. A main purpose of TIES is to increase public trust, accountability and transparency in the tax system and to aid consultation. The Committee submits that in this context, it is appropriate that the Board continue with its oversight role, involving some representatives from the tax profession with expert tax knowledge.

However, as the Committee's other submissions are aimed at increasing the awareness, use and scope of TIES, it would be hoped that the number of issues raised will increase in future and this will increase workload. In this regard, the main responsibility for managing TIES, analysing issues, responding to submissions and updating public statements of progress, must lie with the Treasury in close liaison with the ATO. The Board's subcommittee should only provide oversight rather than detailed analysis, unless specifically required by the Treasury.

The Committee submits that the Board consider should continue oversight of TIES but, assuming it is to be enhanced and further publicised in future, the Treasury should ensure that there are sufficient resources and a clear line of authority in Treasury for management of TIES, including contact details on the TIES website.

The Committee submits that the Board's Annual Report should include a section that summarises the operation of TIES in the previous year including such data as number of issues; source of issues; number that were considered to be in scope or out of scope; progress with legislative reform and so on.

The Committee would be happy to provide further assistance, or discuss any of the above proposals, if that would assist the Board. If you have any questions regarding this submission, in the first instance please contact the Committee Chairman, Dr Gerry Bean, on 03-9274 5661.

Yours sincerely



Bill Grant
Secretary-General