

13 February 2019

Australian Taxation Office
GPO Box 9990
Sydney

By email: PublicGuidance@ato.gov.au

Attn: Pei-Sheng Hsu

Dear Sir/Madam

Replacement of Annual Taxation Determinations – Consultation Paper

The Taxation Committee of Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity of commenting on the Consultation Paper of January 2018 prepared by the Australian Taxation Office (**ATO**) concerning the proposal to replace annual tax determinations (**TDs**) with content published on the ATO website.

Whilst you have posed several questions to which you are seeking a response, this submission addresses the question of what the impact of the proposed conversion of published tax determinations to website content would be.

The status of tax determinations

Feedback from members of the Law Council suggests that currently members access the rates and thresholds published by the Commissioner through the TDs published on the ATO legal database. The primary reason for doing so is because, as they have the status of a public ruling, they are a primary source that may be cited, verified and relied upon.

The status of a public ruling is very important for reliance purposes. Section 357-60(1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth) provides that a ruling binds the Commissioner (whether or not the taxpayer is aware of the ruling). Mere guidance, especially moving from a position where taxpayers have been able to rely on a formal public ruling, should not be seen as a preferable or default position.

It is not clear from the Consultation Paper if the rates and thresholds published on the ATO website is a publication and can or will be given the status of a ruling. In this regard *Taxation Ruling TR 2006/10* notes:

25. To the extent that these publications express the ATO's view about how a relevant provision applies to entities generally or a group or class of entities, they can be given the status of a public ruling.

26. However, to be a public ruling, the relevant publication must state that it is a public ruling for the purposes of the public rulings provisions (see paragraph 17 of this Ruling for more information). Therefore, an ATO publication will not be a public ruling unless it is stated to be one.

If it was possible to designate the website content as a public ruling, then the issues identified are addressed.

Access and archiving

It is difficult to see why taxpayers and their advisers would prefer a system where guidance is only provided on a website that, to be verifiable, requires maintained links and then may have unaddressed issues of reliability. The current system is not reliant on links being maintained as TDs are citeable and verifiable even once they have been withdrawn.

On this point, regarding the maintenance of links, one issue that has been raised is how the website pages with the relevant information will be archived or made accessible when they become redundant. Will the website material be updated or simply removed once it reaches a certain age? If so, it may be difficult to advise on matters affected by the relevant information where the applicable events took place in those years for which the historical information is no longer available. Assurances that the website materials will be accessible in perpetuity go some way to addressing this concern, but any such statement is subject to further changes in administrative approach in the future.

The reasons cited for the change include improvements in timeliness of publishing this information and simpler and quicker access to the information. It is difficult without knowledge of the internal sign-off procedures to comment on how timeliness is a factor and we are not aware of any members who have had issues in accessing the TDs or with the timing of their release. The general view of members is that the current system remains preferable for the reasons given above.

Thank you again for the opportunity, and the additional time afforded to us, to prepare this submission. Should you wish to discuss further any aspects of the submission please do not hesitate to contact Clint Harding, Chair of the Committee (charding@abl.com.au or 02 9226 7236).

Yours Sincerely,



Rebecca Maslen-Stannage
Chair, Business Law Section