AUSTRALIAN TAX REVIEW

Volume 53, Number 3

2024

EDITORIAL – *General Editors: Kerrie Sadiq and Dale Pinto*
Guest Editor: Bronwyn McCredie

Tax on the Homefront: Australia's Evolving Tax Regime 159

ARTICLES

Variation in the Cost of Managing Tax Affairs for Taxpayers Lodging via E-filing and Tax Agents – *Jawad Harb, Elizabeth Morton and David Bond*

With the introduction of pre-filled income-related data and e-filing to the Australian taxation system, the Australian Taxation Office (ATO) had expected that the compliance cost burden would be eased, and that taxpayers' compliance behaviour would improve. We investigate whether such technological advancement coincides with a reduction in taxpayers' costs of managing their tax affairs pursuant to s 25-5 of the *Income Tax Assessment Act 1997* (Cth) (or item "D10"). Using ATO published data, this study investigates the variation in D10 between taxpayers lodging their tax returns via (1) e-filing and (2) using the services of tax agents. The study reveals several novel findings: (1) we find that in contrast to tax agent-lodged returns, the percentage of taxpayers claiming D10 over e-filing has decreased, which coincides with the implementation of pre-filled data; (2) the average amount claimed at D10 by e-fillers is increasing at a faster rate relative to taxpayers lodging via tax agents, (3) low-income earners lodging via e-filing have claimed a higher average D10 amount relative to high-income earners; (4) there is an increasing number of e-fillers claiming more than $3,000 at D10 and paying zero taxes; and, (5) If the government impose a cap of $3,000 in D10 deduction, we estimate it could generate a yearly increase of $188 million in government revenues. We, therefore, reflect on the issues of complexity and compliance inherent and exemplified by the costs of managing tax affairs. 161

Slipping through the Cracks: Deficiencies in the Australian Taxation Office's Application of Its Compliance Model – *Connie Vitale, Donovan Castelyn, Belinda Harrison and Robert Whait*

Since the late 1990s, the Australian Taxation Office (ATO) has been regulating the Australian tax system using the compliance model that advocates for regulation in response to a taxpayer's compliance behaviour, stance or attitude and escalates the severity of its response as the taxpayer becomes more disengaged. This model assumes that taxpayers have the capacity to comply, but many may slip through the cracks in the tax system and have difficulty complying for reasons beyond their control. As a result, the ATO's application of the compliance model may lead to these taxpayers being unjustly regarded as seriously noncompliant resulting in them being unjustly met with the full force of the law. This article illustrates situations where taxpayers have slipped through the cracks using autoethnographic methods to compare the ATO's treatment of them against the principles of the compliance model to recommend changes in ATO practice. 184

Legislating the Meaning of Digital Currency in the Australian Income Tax Law – *Christina Allen*

Since Bitcoin was created in 2009, the Australian tax law has slowly responded to the increasing trading in, and widespread use of, crypto-assets. In 2017, the goods and services tax (GST) legislation was amended to introduce a new concept of "digital currency", effectively exempting crypto-assets used as a means of exchange or for the provision of financial services from taxable supplies. However, the international landscape continued to evolve: El Salvador declared Bitcoin a legal tender in 2021, and the Chinese central bank issued a new digital currency in 2020. Responding to these global shifts, the Australian federal government, in 2022, proposed refining the GST definition of "digital currency" to exclude "government-issued digital currencies". Moreover, it mooted the idea of extending this amended definition to the income tax law. This article examines the proposal to insert a new definition of "digital currency" within Australian income tax law for the first time. It begins with an exploration of the foundational principles underpinning GST and income tax. Then, navigating legal and policy implications, it casts a spotlight on digital currency within the income tax paradigm. A pertinent case in point is *Seribu Pty Ltd v Federal Commissioner of Taxation*, in which the Administrative Appeals Tribunal held that Bitcoin was not a foreign currency subject to the taxation of foreign currency gains and losses under Div 775 (the forex regime). This article then examines the GST characterisation of digital currency, juxtaposing it against the meaning of money and characteristics of central bank-issued currencies. It concludes that the adoption of the GST definition of digital currency for the income tax law is logical and that the implementation of the proposal will strengthen the legal frameworks for taxing digital currencies in Australia. 202