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Privacy and FOI Policy Branch
Department of the Prime Minister and Cabinet
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CANBERRA ACT 2600

Email: foiconsultation@pmc.gov.au

Dear Sir

Freedom of Information Reform

The Taxation Institute of Australia ('Taxation Institute') is pleased to provide its comments on the exposure drafts of the *Information Commissioner Bill 2009* and the *Freedom of Information Amendment (Reform) Bill 2009*.

By way of background, the Taxation Institute was established in 1943 and today has more than 15,000 members including a comprehensive cross-section of leading tax accountants, lawyers, tax agents, managers and academics. The Taxation Institute regularly generates submissions on new and proposed tax legislation, Australian Tax Office and State Revenue Draft Rulings and Guidelines, and major tax policy initiatives from all levels of government.

The Taxation Institute supports the policy objectives of the proposed freedom of information reforms outlined in the exposure drafts ('FOI Reforms'). However, the Taxation Institute is concerned about the following two issues:

- the operation of the proposed FOI Reforms in the context of the taxation system; and
- the privacy and security of taxpayers' information which is provided to the Government.

For the reasons set out below, the Taxation Institute submits that the proposed FOI Reforms and privacy reforms should be amended so that the relevant legislation:

- specifically requires the ATO to publish any information that is relevant to a taxpayer satisfying its taxation obligations;
- mandates that all such information will be publicly accessible promptly and free of charge; and
- protects the security of taxpayers' own information which is in the Government's possession.

FOI and taxation

It is submitted that the nature of taxation law needs to be specifically taken into account when determining whether the Government should be required to provide information pertinent to tax matters.

Taxation law is complex, dynamic and voluminous. Taxpayers and their advisers are frequently confronted by complex issues that require consideration of not only the taxation legislation but also other legal materials including case law and rulings issued by the Australian Taxation Office ('ATO'). Further, administrative discretion and interpretation play a central role in the administration of the taxation system by the ATO.

It is submitted that given the unique nature of taxation law and its administration, it is imperative that all ATO materials that pertain to the administration of the taxation system, and the interpretation and application of taxation laws, should be available at no cost to the public. The provision of such information is important to ensure that taxpayers and tax advisers are able to satisfy their obligations under the taxation law.

Privacy and taxation

The Companion Guide to the exposure drafts refers to the Government's proposal to amend the *Privacy Act 1988* to enact an enforceable right of access to, and correction of, an individuals' own personal information.

The ATO and authorised agencies such as the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission and the Australian Federal Police, have broad powers to obtain sensitive commercial and personal information pertaining to taxpayers. In most circumstances, this information is assembled because taxpayers are required to provide such information as part of their obligations under the taxation laws. It is imperative that such information is secure and not accessible by third parties except where expressly provided for by law. In this regard, we note the existence of the Exposure Draft of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009. We expect that the protection provided under that legislation will not be eroded by the changes made by the FOI Reforms.

Accordingly, it is submitted that there must be legislation that protects the personal information of taxpayers from becoming accessible without specific statutory authority. The FOI Reforms and privacy reforms should specifically exempt taxpayers' personal information from a right of access on the part of others rather than relying on the general exemptions. Such an exemption should also provide for the taxpayer to be able to provide a written release to permit third parties access to the information and documents to which the taxpayer would be entitled.

Conclusion

In conclusion, the FOI Reforms need to reflect the special considerations that arise in relation to Australia's taxation system. For the reasons set out above, special considerations apply in the context of taxation law which require pertinent tax information to be available to taxpayers and their advisers. In addition, the Government must protect the security and privacy of taxpayers' own information which is in the Government's possession.

If you require any further information or assistance in respect of our submission, please contact the Taxation Institute's Senior Tax Counsel, Dr Michael Dirkis, on 02 8223 0011.

Yours faithfully



David Williams
Vice President