

NSW TREASURY REVIEW OF PAYROLL TAX ADMINISTRATION

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Introduction and overview

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide a submission to the NSW Treasury review of payroll tax administration (the Review).

The Chamber is one of Australia's largest business support groups, with a direct membership of 20,000 businesses and providing services to over 30,000 businesses each year. The Chamber works with businesses spanning all industry sectors including small, medium and large enterprises. Operating throughout a network in metropolitan and regional NSW, the Chamber represents the needs of business at a local, State and Federal level.

In a survey of members before the 2018-19 NSW Budget 95 per cent of payroll tax liable members indicated reductions in payroll tax was a priority for their business. The Chamber is pleased the Government responded to the concerns of the Small and Medium Enterprise (SME) sector by increasing the payroll tax threshold to \$1 million over the next four years.

One of the reasons the Chamber advocated for an increase in the payroll tax threshold was to reduce payroll tax administration costs incurred by employers. Based on survey feedback from our members, we estimate these costs to be around \$10,000 for a business as they cross the payroll tax threshold. With NSW previously having one of the lowest thresholds in the country, overall tax administration costs were higher in NSW than in other jurisdictions (in absolute and relative terms). A \$1 million threshold will go some way to reducing the number of businesses caught up in the administratively onerous tasks associated with complying with payroll tax.

The Review is an important step toward further reducing tax administration costs for employers. Apart from reducing red tape, it may also facilitate broader reforms to improve the efficiency of payroll tax if it can overcome the impracticalities of requiring small employers to calculate and report their payrolls.

This submission outlines a number of short to medium-term proposals which could reduce tax administration costs for employers. Appreciating that more substantive reform may be outside the scope of what can be recommended by the Review, the Chamber encourages the Review to at least identify potential areas of focus for future reform endeavours. To this end, the Chamber's submission also proposes a number of principles for longer-term reform.

For more information contact:

Mark Frost
Chief Economist
NSW Business Chamber
Tel: 02 9458 7259
Email: mark.frost@nswbc.com.au

What is the tax administration challenge?

Activities which give rise to costs for payroll tax liable employers are summarised in Table 1 below. They include tasks before (or at the same time) employers cross the payroll tax threshold such as understanding their obligations and adjusting business systems.

Activities associated with complying with payroll tax are also significant, though they vary depending on the nature of the employer. For example, employers making significant use of contractors will face different challenges to other businesses.

Table 1 – Overview of processes for payroll tax paying employers

<i>Finding information about and understanding obligations</i>	<i>Registering and getting ready for payroll tax</i>	<i>Discharging payroll tax obligations</i>	<i>Dealing with unusual situations</i>	<i>Ex-post compliance activities</i>
Activities <ul style="list-style-type: none"> • Visiting website • Attending webinars • Obtaining advice from professionals • Understanding requirements • Analysing business context • Obtaining information from business and industry associations 	Activities <ul style="list-style-type: none"> • Prepare information for registration • Online registration • Alter business processes if needed • Train staff • Upgrade systems • Meeting record keeping requirements 	Activities <ul style="list-style-type: none"> • Assessing wages with regards to: <ul style="list-style-type: none"> – Contractors or subcontracting – Payroll fluctuations – Different forms of payments – Business structure – Subsidiaries • Payroll tax lodgements • Annual reconciliation processes 	Activities <ul style="list-style-type: none"> • Monitor policy development and public rulings • Obtain private ruling in unusual circumstances • Obtain external advice from professional on specific areas of clarification 	Activities <ul style="list-style-type: none"> • Deal with any information requirements of Revenue NSW • Provide information as needed as part of audit processes

Based on advice from our members we estimate annual tax administration costs to be around \$10,000 for the typical NSW business.¹ A number of our members report payroll tax compliance consumes almost a third of the time of a full time staff member (the need for this would vary depending on the size and complexity of a business' payroll). Using this benchmark, payroll tax administration costs could be as much or more than \$25,000 a year for some businesses.

¹ NSW Business Chamber Submission to the 2017-18 NSW Budget, Attachment A <https://www.nswbusinesschamber.com.au/NSWBC/media/ABI/NSWBC-Budget-Submission.pdf>

Area of focus: Administration is not just about lodging a return

As illustrated by Table 1, the payroll tax administration challenge is not characterised narrowly as the need to lodge a monthly return or annual reconciliation. It involves all of the preparatory steps required to be able to get to that point.

While electronic lodgement via account software platforms can make things easier, it does not remove requirements to:

- Setup business systems, train staff, and prepare for payroll tax.
- Identify amounts which are non-standard and cannot be identified from an accounting or payroll system.
- Conduct due diligence to validate data and ensure compliance with requirements.
- Keep robust records not only on business financials but also the basis for which decisions were made about how to classify payments (e.g. if excluding a contractor payment).
- Ensure payment of payroll tax.
- Obtain external advice to clarify how payroll tax applies to the unique circumstances of a business.

The Chamber encourages the Review to examine the broader set of activities beyond the transactional aspects of lodging a payroll tax return to Revenue NSW.

Area of focus: Business size

In this submission the Chamber is principally focused on the administration impact of payroll tax on SMEs. This focus has been prioritised given SME tax administration costs are high relative to their tax liabilities.

For smaller employers, the mere requirement to register, understand and practice their payroll tax obligations can have a significant cost. For an employer just over the previous payroll tax threshold (\$750,000), these costs can seem disproportionate relative to their payroll tax liabilities.

The Chamber encourages focussed attention on how to lower tax administration costs for employers with payroll tax liabilities under \$50,000 (the equivalent of around \$1 million over the payroll tax threshold). Employers within this range represent approximately half of employers registered for payroll tax yet account for only a fraction of revenue compared to the cohort of employers with a liability above \$50,000.

Area of focus: Additionality to Australian Tax Office (ATO) reporting

The Chamber encourages the Review to consider the extent to which payroll tax increases costs for employers above that incurred to satisfy the requirements of the ATO (which should be treated as sunk costs for the purposes of this review).

The Chamber maintains that more seamless reporting represents the best opportunity to reduce costs for employers as it would make it easier for employers to lodge their payroll tax returns while reducing the learning curve for employers as they become liable for payroll tax.

Payroll tax harmonisation

The Chamber maintains this review should consider the impact of potential changes within the context of the agenda to harmonise payroll tax across states and territories. However, the Review should first identify changes that could potentially reduce administration costs and then consider how to best integrate them within the context of national consistency and business improvement.

Interaction with workers compensation

While this submission primarily considers the interaction between ATO and payroll tax reporting, the Chamber notes that the definition of wages (for workers compensation record-keeping and reporting purposes) is different. The definition of wages for payroll tax and workers compensation purposes are not aligned mainly due to the fact that they are designed to achieve different public policy outcomes. Considering payroll tax in isolation may limit the potential red tape savings for business and the Chamber encourages a broad approach.

Recommendation

Key areas of focus for the Review should include:

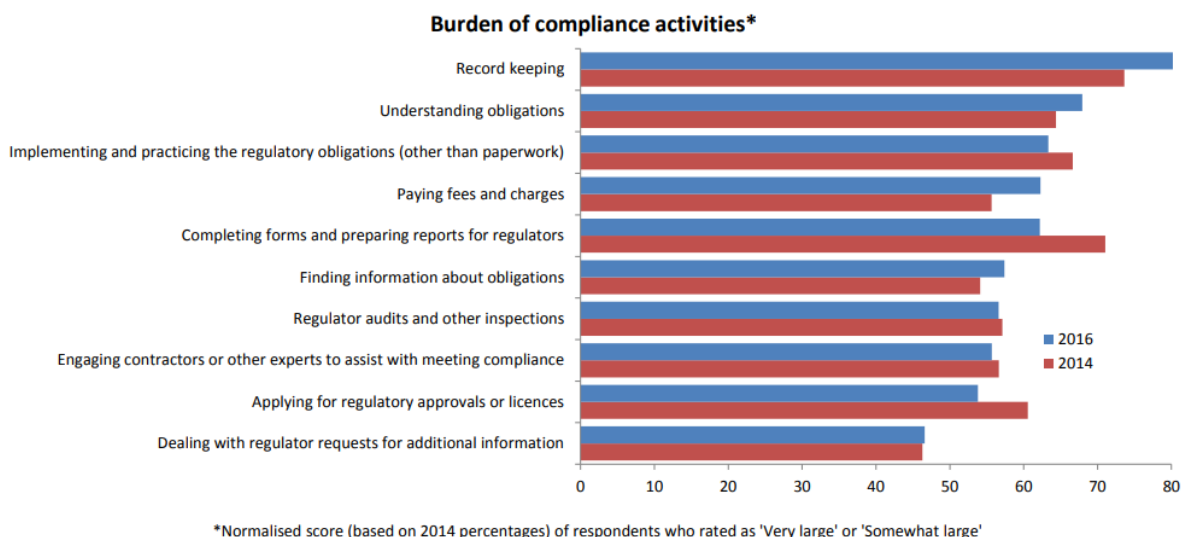
- Administration costs beyond the transactional aspects associated with lodging a payroll tax return.
- How administration costs can be reduced for employers in circumstances where they are high relative to their payroll tax liabilities (with a focus on employers with a liability of less than \$50,000).
- How reporting arrangements for other tax or policy purposes can be leveraged to reduce payroll tax reporting costs for employers.
- Other changes that could reduce costs should be considered irrespective of their potential to generate inconsistency.
- A broad approach should be taken, including by examining potential changes within the context of the workers compensation system.

Short to medium-term actions

The spectrum of potential reforms to reduce tax administration costs include options which can be characterised as forming part of a longer term reform agenda (such as changes to federal financial relations and broader tax reform). The Chamber accepts there is limited capacity for the Review to consider these options. For this reason, the Chamber proposes a number of priority areas for immediate consideration in the short to medium-term. The Chamber has identified these areas based on the feedback provided from members.

Better guidance for employers

Becoming liable for payroll tax can be a daunting prospect. The need to understand and comply with a new set of requirements and obligations is itself a significant challenge. Respondents to the NSW Business Chamber's 2016 Red Tape Survey highlighted that understanding obligations is a more burdensome activity than implementing and practicing regulatory obligations.



*Source: NSW Business Chamber Red Tape Survey,
<https://www.nswbusinesschamber.com.au/Issues/Business-Surveys/Annual-Red-Tape-Survey>*

While there are some very high-quality products and services to support the transition of employers to payroll tax (including webinars, seminar notes, tutorials, and direct support from Revenue NSW), there are areas that should be improved. Employers will seek information about payroll tax in a variety of ways and there is a need to accommodate different preferences around how information is consumed.

A particular concern is the absence of a comprehensive guide explaining what is required once an employer becomes liable for payroll tax.² Information on the Revenue NSW website is a collection of pages spanning different topics, to varying degrees of detail, without a clear

² Seminar notes provide the most comprehensive overview for employers, though they are hard to find on Revenue NSW's website.

structure for the reader to follow. Information is provided in a manner that does not differentiate the needs of new users, employers already registered, and tax practitioners.

The Chamber observes that some lessons can be learned from the approach taken in other jurisdictions. For example, the West Australian Office of State Revenue prepares a Payroll Tax Employer Guide spanning topics such as registration, grouping, calculation of payroll tax, wages, returns and administration.³ Similarly, Revenue South Australia prepares a guide to legislation to help employers understand how to meet their obligations.⁴

The provision of quality guidance is important role across a range of policy areas. For example, guidance for the Australian Consumer Law differentiates between the needs of different users. High-level and basic information is provided to consumers on regulator websites⁵ while a detailed series of guides is provided for businesses and legal practitioners.⁶

Improved guidance is not a 'silver bullet' to addressing the tax administration challenge. It does not, for example, address the significant costs incurred by employers as they change business systems and adopt new procedures to meet payroll tax requirements. Nonetheless, it is a relatively costless initiative that would make it easier for employers as they become liable for payroll tax.

Recommendation

The Review should consider how guidance could be improved to make it easier to access and appropriate to the needs of differentiated users.

Three separate guides should be prepared to accommodate the needs of:

- new users
- employers already registered, and
- tax practitioners.

This information should be available online, in PDF format and should be complementary to existing video tutorials and webinars. Guidance should be modelled on approaches adopted across different policy areas and in other jurisdictions.

³ http://www.finance.wa.gov.au/cms/uploadedFiles/State_Revenue/Payroll_Tax/Forms_and_Publications/Payroll-Tax-Employer-Guide.pdf

⁴ https://www.revenuesa.sa.gov.au/taxes-and-duties/payroll-tax/guides-to-legislation/G2L_PRT_2018-19.pdf

⁵ For example see: <https://www.accc.gov.au/consumers/consumer-rights-guarantees/consumer-guarantees>

⁶ For example see: https://cdn.tspace.gov.au/uploads/sites/60/2016/05/0553FT_ACL-guides_Guarantees_web.pdf

Contractor provisions

Employers must include the labour component of payments made to contractors in calculating their payroll tax liability.⁷ This represents a challenge for employers as they do not ordinarily collect and retain this information for reporting purposes (at least in the form required). The nature of contractor payments can give rise to considerable difficulties in certain industries where widespread use of contractors is commonplace.

For employers in these industries, considerable effort is needed to develop systems to identify the labour component of a contract or whether a contractor payment is eligible for one of the seven contract exemptions (which itself requires maintenance of records to substantiate the basis for treating it as an exempt payment). In some cases, significant effort may be required to substantiate that an employer does not have a payroll tax liability.

Further, for some business models, it can be incredibly difficult to judge whether a contractor payment is liable for payroll tax. For example, the direct selling business model gives autonomy to individual sellers to decide how often they want to work with their remuneration contingent on factors such as sales volumes. This can create challenges for employers seeking to determine whether a contractor payment is eligible for an exemption (such as where services are provided for 90 days or less in a financial year). While an exemption for direct selling previously existed, this has since been repealed.

Resolving the significant challenges associated with contractor payments would require a fundamental rethink about the manner in which payroll tax is applied.

Recommendation

The Review should provide due consideration to how the contractor provisions can be either simplified or abolished so as to make reporting, record keeping, and understanding and practicing obligations easier for employers. Industry specific approaches, such as to address complications in applying the contractor provisions to the direct selling model, should be adopted where they represent a pragmatic solution.

Reporting deadlines

The Chamber notes differences in payroll tax and key ATO reporting deadlines. Payroll tax is due seven days after the end of each month while Business Activity Statements (BAS) are usually due on the 21st day of the month following the end of the taxable period. Some of the Chamber's members have expressed frustration at the inconsistency of reporting dates as they impose additional business compliance cost for their business. Appreciating there are a range of considerations relating to national consistency and how current reporting cycles are managed, the Review should explore whether existing reporting deadlines can be aligned to achieve consistency with BAS reporting.

⁷ For the purposes of this submission, the term 'contractors' is used to refer to those not otherwise deemed to be an employee (e.g. for superannuation purposes).

Recommendation

Reporting deadlines for payroll tax and key reporting dates of the ATO (such as monthly BAS statements usually due on the 21st) should be aligned, so far as possible.

Flexible reporting for SMEs

The Chamber understands that Revenue NSW applies discretion such that employers with an annual payroll tax liability of \$12,000 or less may have the option to pay payroll tax annually rather than monthly. This reduces administrative costs associated with monthly lodgement and assists small business in managing cash flow.

The Chamber encourages the Review to consider three adjustments to further reduce costs and assist SMEs in managing cash flow:

1. Codify annual arrangements (via legislative amendment or a clear policy position from Revenue NSW) so there is greater transparency and certainty around business eligibility
2. Extend annual payment for employers with an anticipated payroll tax liability (based on the previous year's return or other criteria for newly registered employers) of up to \$25,000, and
3. Extend conditional annual payment for employers with an anticipated payroll tax liability of between \$25,000 and \$50,000 subject to a \$2,000 monthly remittance toward their end of year liabilities (to minimise the risk of payment difficulties).

The Chamber observes a general trend toward more flexible reporting arrangements such as those adopted by the ATO. These arrangements (such as a flexible approach to PAYG withholding remittances) afford flexibility to employers based on their size and magnitude of amounts that must be remitted.

Notwithstanding the Chamber's views on extending annual reporting, consideration should also be given to allowing employers to report according to ATO reporting cycles. Specifically, if the ATO requires an employer to report only quarterly for a particular remuneration category, then reporting to Revenue NSW should be no more frequent than what is required by the ATO (even if the employer were still required to report monthly for other remuneration categories with monthly reporting to the ATO).

Recommendation

Eligibility criteria for employers to access, on an opt-in basis, annual lodgement of payroll tax returns should be extended to employers with a liability of up to \$25,000. Employers with a liability of up to \$50,000 should also have access to such arrangements subject to a monthly remittance to minimise the risk of payment difficulties.

Reporting for specific components of remuneration should be aligned to ATO reporting cycles for the individual employer (where there is information overlap).

Revenue NSW Audits

Feedback from the Chamber's members indicates a number of concerns relating to payroll tax audits. These include:

- The comprehensiveness of information required to be provided to audit officers such that it appears to be a fishing exercise.
- A lack of proportionality between the extent of an audit and the payroll tax liability of a business (for example where a business incurs significant costs associated with an audit yet their actual payroll tax liability is low).
- A lack of transparency and clarity around the purpose of an audit and what triggers (if any) have given rise to the audit.
- A strong perception that businesses applying for the Jobs Action Plan rebate have been audited based on information provided when applying for the rebate.
- An adversarial approach to audits compared to a more cooperative and outcomes-based approach utilised by the ATO.

The Chamber suggests the Review examine the ATO's approach to conducting audits as member feedback, in general, suggests ATO audits are more streamlined.

There may also be value in exploring the applicability of principles underpinning the NSW Government's Quality Regulatory Services initiative. This includes taking a risk-based approach when determining how to prioritise regulator engagement with payroll tax liable employers (through a combination of both education and compliance activities).

It is arguable that payroll tax audits currently have a disproportionate impact on employers relative to revenue integrity gains (compared to an alternative approach to conducting audits or other tools). To this end, the Review may wish to consider opportunities to make greater uses of behavioural insights, including 'nudges' to encourage employer compliance with their payroll tax obligations.

Recommendation

Employers should be provided greater clarity and transparency when subject to a payroll tax audit, including by providing employers the opportunity to address any specific concerns that have given rise to the audit.

The Review should identify a more strategic and/or consistent approach to ensure audits are less cumbersome and proportionate to an employer's payroll tax liability.

Jobs Action Plan rebate applications

While the Jobs Action Plan rebate offers welcome relief for many employers looking to take on a new worker, in practice our members have found it to be administratively complex. Feedback from the Chamber's members has included:

"The administrative cost of applying is significant as the calculation is done monthly and the year-end reconciliations are quite time-consuming. The grant application for us as an entity is so cumbersome due to the lack of consistency in employee numbers from one year to the next that it becomes a non-event for us to apply."

and

"The rebate is so onerous in administration we decided not to access it and are not employing additional staff."

The complexity associated with applying for the rebate makes it relatively prohibitive for smaller employers to access. Larger employers can leverage economies of scale unavailable to SMEs. While the Government has amended eligibility to limit access for larger employers, this has not improved access for smaller employers.

The Chamber has previously proposed redesigning the Jobs Action Plan rebate to be determined based on the difference in payroll from one year to the next as a proxy for employee headcount (and labour demand more generally). This would completely remove the need to apply for the rebate.

Recommendation

The Jobs Action Plan rebate should be redesigned so rebates are automatic based on an increase in payroll from one year to the next. At minimum the Review should examine opportunities to streamline the application process for SMEs.

Flexibility in the event of natural disaster

Employers need flexibility when affected by natural disasters such as floods or bushfires. The Chamber understands that Revenue NSW has previously extended flexibility on a case-by-case basis. In practice, this approach requires an employer to apply for relief to become aware of the options available to them.

The Chamber recommends the adoption of clearer and automatic arrangements to provide flexibility for employers located in a disaster affected area (as defined by triggers such as the Commonwealth-State Natural Disaster Relief and Recovery Arrangements), irrespective of whether relief is specifically applied for. For example, employers within an affected geographic boundary could be provided an automatic three-month extension on reporting and remitting any payroll tax owed. This would significantly reduce the stress and anxiety faced by employers uncertain about whether they can meet their immediate obligations.

Recommendation

Relief for employers affected by natural disaster should be clear and automatic. Automatic flexibility to lodge payroll tax returns (such as an automatic reporting extension) should be given to employers located within geographic regions affected by natural disasters such as bushfires or floods.

Employer requests for relief or flexibility above what is automatically provided should continue to be considered on a case-by-case basis.

Annual review of rates, threshold and payroll tax administration

The Chamber has previously recommended a formal annual mechanism to facilitate adjustments to rates and thresholds with a view to ensuring the competitiveness of NSW's payroll tax system over time. While rates and thresholds are outside the purview of the Review, the Chamber maintains that such an annual mechanism is essential to ensuring NSW is as competitive as it can possibly be.

Payroll tax administration costs are an essential part of the calculus when determining the optimality of rates and thresholds within the context of ensuring our national (and indeed international) competitiveness. For this reason, the Chamber reaffirms its earlier recommendation supplemented by the need to explicitly consider potential adjustments to reduce tax administration costs.

Recommendation

A formal annual mechanism should be implemented to facilitate adjustments to rates and thresholds to ensure the competitiveness of NSW's payroll tax system over time. The cost of tax administration, and ways to reduce it, should be considered as part of such a mechanism.

Investment in technology

The future prospects of an efficient tax system hinge on the ability of policymakers and revenue collection agencies to embrace technology to reduce the administrative burden on business. Policymakers need to design taxes in a manner that can facilitate technological solutions while revenue collection agencies must be innovative and proactive in embracing and implementing the opportunities.

Developments in the field of Regulatory Technology (or RegTech) offer a potential source of inspiration. While these efforts primarily relate to business-to-business compliance in the field of financial services, it is clear that their broad philosophy and approach could yield significant gains across a range of compliance areas including taxation.

Accounting and payroll software platforms offer a solid foundation to convert paying payroll tax into a seamless process. As are other initiatives such as Standard Business Reporting

(through which employers can already lodge their payroll tax returns), Single Touch Payroll and SuperStream.

The Chamber encourages the Review to consider what, if any, barriers exist to the full automation of payroll tax lodgement (including determining wages for the purposes of payroll tax). The identification of those barriers and ways to address them should be used as a focal point for the Review.

Recommendation

The Review should identify the barriers that restrict the ability of payroll and accounting systems to identify wages for the purposes of payroll tax (thereby making it difficult for employers to lodge automatically without significant additional manual tasks). Potential technological solutions and the need for any legislative amendments should be considered.

Principles for long-term reform

As noted, the Chamber accepts a more holistic reform agenda may be outside the scope of what can be resolved as part of the Review. That said, the Chamber encourages the Review to identify potential pathways to a more substantial reform agenda to ameliorate the tax administration challenge (as well as other Government priorities associated with tax reform and federal financial relations).

What does long-term success look like?

Any alterations to the collection of payroll tax would have to pass a number of hurdles for its costs to be significantly reduced for an SME. For example, it would have to:

- Require no or very few changes to business systems or processes once an employer becomes liable for payroll tax.
- Require no or very little additional information from what is required for other tax reporting purposes such as the ATO's requirements for PAYG Withholding, superannuation or fringe benefits tax.
- Be possible to fully report with information directly obtained from commonly used business information systems (without the need for additional manual processes).

Redesigning payroll tax and taking a national approach to tax reform could unlock the potential of existing systems used by employers. These options are briefly discussed in further detail below.

Redesigning payroll tax

By leveraging technology, it ought to be possible — under a well-designed tax — to meet tax obligations without manual effort. A so-called "single touch" approach to payroll administration is not just a pipedream, but is now a reality (as seen with the roll-out of *Single Touch Payroll*). Despite this, the benefits of technology can only be realised if taxes are designed to work with (rather than against) existing business systems and practices.

This submission has already considered some of the reasons payroll tax does not integrate well. Opportunities to leverage technology to reduce costs appear to have reached a plateau, particularly for SMEs without the capability or scale to implement customised solutions.

Unlocking the potential of business systems would require a more fundamental rethink of the design of payroll tax. The Chamber observes that the bulk of the payroll tax base is already reported regularly to the ATO in some form. For example, employers must report fringe benefits, PAYG withholding, superannuation payments and payments made under an employee share scheme. Contractor payments represent the most significant challenge for employers as reporting for payroll tax purposes differs from what is required by the ATO.

If definitions and the payroll tax base were aligned to ATO reporting, employers would be able to utilise systems already in place. While additional metadata may be required to determine the jurisdiction of a payment (as ATO reporting is national), it is plausible that payroll or other business systems would be capable of collecting the required metadata to facilitate seamless reporting.

The principle of “ask once, use many times” has produced successful results across a range of policy areas including the NSW Government’s “Easy to do business” initiative. These programs are successful because they are able to bring together multiple layers of government on a single user interface, dramatically reducing costs and improving the user experience. The Chamber envisages significant scope to achieve similar gains when applying the same principle to tax administration.

Recommendation

The Review should investigate whether a redesigned payroll tax could reduce tax administration costs.

A national approach to tax reform

Despite several major reviews over the past decade there remains urgent need for tax reform in Australia. While there are far broader objectives justifying tax reform, future efforts should have regard to the potential to reduce tax administration costs.

Critical to any reform efforts will be to take a national approach. The Commonwealth, States and Territories should work together (rather than individually) to identify reform opportunities that are the most fruitful.

While the Chamber does not propose any specific reforms to specifically deal with the payroll tax administration challenge, it is conceivable that a reform program similar to the implementation of the GST could facilitate the removal of state-based taxes such as payroll tax subject to their replacement with a suitable alternative.

The Henry Review considered the potential to consolidate payroll taxes into a tax on employee remuneration administered through the PAYG withholding system. It also recommended replacing payroll taxes with revenue from more efficient broad-based taxes that capture the value-add of labour. Each of these options would require careful consideration of implications associated with altering the current payroll tax base, as well as how to distribute revenue between States and Territories, but are worth examining for their potential to significantly improve the efficiency of our tax system (including by reducing tax administration).

As a concrete step, the NSW Government could initiate a national tax reform dialogue through the Board of Treasurers or through COAG at the leader’s level.

Recommendation

The NSW Government should re-commence a national dialogue on tax reform including opportunities to improve payroll tax.