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Guest Editorial

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Abstract
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GUEST EDITORIAL

The times are indeed difficult for taxpayers and their tax advisers. The Income Tax Assessment Act 1936, already one of the world's longest pieces of tax legislation, is continually being amended. Australian tax legislation in general is becoming more complex and more confusing every day. But there may be light at the end of the tunnel. The activities in late 1992 of two Commonwealth Parliamentary Committees indicate that the Government is at last moving to simplify the drafting of taxation legislation.

The first of those committees was the House of Representatives Standing Committee on Legal and Constitutional Affairs. It was given the task of reviewing legislative and legal drafting at the Commonwealth level. Under the Chairmanship of Michael Lavarch MP, the Committee indicated, at its Hearings, its clear belief that the traditional style of legislative drafting is no longer adequate. After the 13 March 1993 Federal Election, Mr Lavarch, now Attorney-General, spoke forcefully of the need to simplify both the Corporations Law and the Income Tax Assessment Act 1936. That is a most welcome development. All practitioners and corporate taxpayers should encourage the Government to implement major rewriting projects on each of those pieces of legislation.

The second Committee is the Joint Committee of Public Accounts. Its task was to inquire into the efficiency of the Australian Taxation Office. This provided an opportunity to reconsider the legislation administered by the Tax Office. Possibly the most significant submission to the Inquiry was made by Mr Brian Nolan, Second Commissioner of Taxation. With the then Commissioner, Mr Trevor Boucher, sitting alongside him (and with Mr Boucher's most earnest critic, Senator Bishop, on the Committee), Mr Nolan spoke colourfully of the need for an overhaul of the existing 5000 pages of tax legislation. He referred to the tax law of this country as a vast cauldron of boiling spaghetti:

> We keep on pouring more cans in the top and it's hardly surprising then that we end up with indigestion.

Mr Nolan admitted that the process of simplifying tax laws has so far been piecemeal.

> It doesn't get to the core of the problem that we've been adding layer on layer over many decades now ... the snowball that has been rolling down the hill for a long time now threatens to bury us.

As readers of this journal know, the Victorian Law Reform Commission, at the request of the Law Council of Australia, completed a pilot project aimed at demonstrating just how much simpler our tax legislation could be if it were rewritten in plain English.

It managed to reduce Div 16E of Pt III of the Income Tax Assessment Act to about a third of its length. The draft was intelligible to people with 12 years of formal education, not the 20+ of the original!

The Australian Taxation Office and the Office of Parliamentary Counsel provided valuable and helpful comments on our first draft. The second draft incorporates a number of changes to meet those comments. It is important to note that those changes involved no change whatever in our plain English drafting style. And we only had to add about 300 words to the 3000 in the first draft of the rewrite.

Perhaps not surprisingly, the head of the Office of Parliamentary Counsel (Ian Turnbull QC) leaped to the conclusion (*on the basis of a first draft for discussion purposes only*) that the exercise was not worthwhile. Readers can form their own judgment after reading his criticisms in *Taxation in Australia* Vol 27 No 2 August 1992, p 79 – and my rebuttal – in *Taxation in Australia* Vol 27 No 5, November 1992, p 270.

The most interesting fact to emerge from the responses of the Tax Office and the Office of Parliamentary Counsel is that only the latter *really* understands what Div 16E means. It identified approximately half as many "problems" with our first draft as the Tax Office had. "Interesting", but certainly not surprising. Even Australia's leading lawyers no longer profess to understand the Tax Act. It is a maze which has neither entrance nor exit.

Further changes may yet be necessary. But we have demonstrated beyond doubt the error of those who attempt to justify laughable obscurity by saying that complex laws have to be written in complex language.

In 1992, the Commission put a detailed proposal for a rewrite of the whole of the Income Tax Act to Senator McMullan (now the Minister of Administrative Services), the Parliamentary Secretary to the Treasurer. We estimated that as much as $30 million a year could be saved in the administrative costs of the Australian Taxation Office; and as much as $150 million a year in compliance costs. The likely cost of the rewrite? In the vicinity of $10 million, over three years. Not a bad investment!

Of course, there is more to tax legislation than its drafting. Policy issues also need to be addressed. Complex drafting is often the result of needlessly complex policy, as well as of inconsistencies in the policies behind different parts of the law. As Mr Boucher himself has said, simplification is not just a matter of plain English. Policy must be simplified as well, and it must be made more coherent.

In this respect, it is noteworthy that the former head of ACOSS, Julian Disney, has recently been appointed Professor of Public Law at the

Australian National University. Professor Disney is a member of the Australian Literacy Council and a keen supporter of plain English drafting in legislation. He also has a deep interest in removing the distortions created by inconsistencies in our tax legislation.

Speaking to the Australian Society of Labour Lawyers in Melbourne in May 1992, Professor Disney emphasised the need for not only the simplification of tax laws, but also the development of a code of ethics for professional tax advisers.

It is to be hoped that the legal and accountancy professions heed that advice. As the Victorian Law Reform Commission's recent report, *Restrictions on Legal Practice*, pointed out in some detail, what some lawyers call their "ethical rules" often have very little to do with ethics. The term is sometimes nothing but a mask for anti-competitive practices. You can imagine how the Bar, in particular, welcomed the Commission's report. But that's for another time.

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