



Curtin Tax Clinic

PO Box 7030
KARAWARA WA 6152

Telephone +61 8 9266 2575
Email curtintaxclinic@curtin.edu.au
Web curtin.edu.au/tax-clinic

18 August 2020

By email: taxrev.reps@aph.gov.au

Attention: Committee Chair

Standing Committee on Tax and Revenue
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear House of Representatives Standing Committee on Tax and Revenue

Inquiry into the Commissioner of Taxation Annual Report 2018-19

The Curtin Tax Clinic welcomes the opportunity to make this submission concerning the Standing Committee's (**the Committee**) Inquiry into the Commissioner of Taxation Annual Report 2018-19 (**Inquiry**). For the reasons explained below, we both broadly support the Standing Committee's List of Recommendations in relation to the 2016-2017 Annual Report of the Australian Taxation Office, in particular, Recommendation 34.

A summary of our position is as follows:

- We support the introduction of a fully independent, low-cost external support mechanism which provides taxpayers (who meet transparent criteria) the ability to provide funded, or part funded legal *or taxation* representation. We note that a similar initiative, in the form of the National Tax Clinic Program is currently operational, following the successful pilot of same in 2019.
- We endorse the use of the design and operation of the US Low Income Taxpayer Clinics (**US LITC**) as a model for Australian tax clinics. We do, however, recommend against adopting the US LITC approach verbatim. In this respect, we advocate for the establishment of a National Tax Clinic Board or Steering Committee to guide and inform on the operation of these mechanisms.
- We encourage the Committee to consider expanding eligibility for this program to taxpayers who may not traditionally meet the vulnerability criteria but would nonetheless benefit from the support or assistance of this program. In this respect, we recommend the criteria not only consider the financial position of the taxpayer but also afford the program a level of professionally informed discretion to assist *currently unrepresented* taxpayers and/or taxpayers who may otherwise be rendered ineligible.

A comprehensive submission in support of our position appears below.

Should you wish to discuss anything in relation to this submission please feel free to contact the authors below.

Yours sincerely

Annette Morgan
Clinic Director
Curtin Tax Clinic
Lecturer
Curtin Law School
Faculty of Business and Law

Donovan Castelyn
Clinic Supervisor
Curtin Tax Clinic
Associate Lecturer
Curtin Law School
Faculty of Business and Law

Stephanie Bruce
Research Assistant
Curtin Tax Clinic
Sessional Academic
Curtin Law School
Faculty of Business and Law

Endorsement of low-cost external support mechanism

We support the introduction of a fully independent, low-cost external support mechanism which provides taxpayers (who meet transparent criteria) the ability to provide funded, or part funded legal *or taxation* representation. We note that a similar initiative, in the form of the National Tax Clinic Program is currently operational, following the successful pilot of same in 2019.

Background

The National Tax Clinic Program (**NTCP**) shares, in part, its origins with the Clinical Tax Education Program (**CTEP**) and its practical manifestation, the Curtin Tax Clinic, Australia's first pro-bono tax clinic.

The CTEP, parallel with the NTCP, was established with the dual purpose of: 1) responding to the evolving demands placed on Australian tax and legal education in response to the emerging needs of industry; and 2) facilitating access to free and reliable tax advice for unrepresented taxpayers seeking to meet or comply with their tax-related affairs.

Following the success of the CTEP pilot in 2018, the Curtin Tax Clinic worked closely with the Australian Government and Australian Taxation Office to create the National Tax Clinic Program which sought to expand this initiative to 9 other Australian universities over the course of 2019.

Recommendation

We encourage the Government to continue its funding of this initiative, and to expand the initiative's reach by enabling suitably staffed and qualified universities, not-for-profits and legal community centres, for example, to bid for funding through an open, competitive and transparent grant system.

Taxpayer eligibility

We acknowledge that in order for tax clinics to continue to offer complimentary, non-competitive services to taxpayers, eligibility should, to some extent, be based on the vulnerability of the taxpayer.

We encourage the Committee however, to consider expanding eligibility for this program to taxpayers who may not traditionally meet the vulnerability criteria but would nonetheless benefit from the support or assistance of this program.

In this respect, we recommend the criteria not only consider the financial position of the taxpayer but also afford the mechanism a level of professionally informed discretion to assist *currently unrepresented* taxpayers.

In considering the transparent criteria by which taxpayer eligibility is assessed, we caution the Committee against the use of terms such as “vulnerable” and/or “low-income” as these terms wield the propensity to potentially mischaracterise taxpayer eligibility and/or unintentionally exclude taxpayers who require tax-related assistance, and who may (or should) otherwise be eligible for tax clinic assistance.

While we acknowledge that this position might seem pedantic or semantical, we note that recognition that the breadth of taxpayers requiring assistance extends beyond pure financial vulnerability, and can include a wide variety of issues, is an important consideration.

In support of this position, we note that the Curtin Tax Clinic client base is composed of taxpayers who have required tax-related assistance across a variety of both general and complex issues.

The overall ambit of services provided by the Curtin Tax Clinic includes both general and complex tax assistance. General tax assistance can include the preparation of income tax returns and business activity statements (**BAS**), and is often linked to more complex matters such as those noted below. For example, assisting a taxpayer who is subject to prosecution by the ATO for failing to lodge income tax returns and BAS's may involve the Curtin Tax Clinic preparing over 20 years of outstanding income tax returns and BAS's for that one taxpayer. The services provided by the Curtin Tax Clinic that are representative of more broad and complex tax agent services, include:

- ATO prosecutions assistance, and where necessary, the referral of Curtin Tax Clinic matters to our pro-bono legal advisory or accountancy firms.
- Objections to the Commissioner of Taxation.
- Assistance with Director Penalty Notices, including defending such notices.
- Debt-related matters including applying for hardship relief for taxpayers, negotiating payment plans, requesting remissions of interest and penalties imposed, as well as applying for Department of Finance debt waiver applications.
- Preparation of partnership, trusts, company and superannuation fund tax returns.

In this respect, while most of our clients tend to fit within the vulnerability spectrum, the Curtin Tax Clinic and its clients also tend to benefit from a level of professionally informed discretion to assist currently unrepresented taxpayers and/or taxpayers who may otherwise be rendered ineligible.

We recommend therefore, that when establishing the eligibility criteria for taxpayers in an Australian context, the Committee considers not only the financial position of the taxpayer but also affords the program a level of professionally informed discretion to assist currently unrepresented taxpayers and/or taxpayers who may otherwise be rendered ineligible.

Endorsement of US LITC as model from Australian Tax Clinics

We endorse the use of the design and operation of the US LITC as a model for Australian tax clinics. We do, however, recommend against adopting the US LITC approach verbatim. In this respect, we advocate for the establishment of a National Tax Clinic Board or Steering Committee to guide and inform on the operation of these mechanisms.

On this point, it is important to note that the US has also established the Taxpayer Advocate Service (**TAS**) which houses the administration and oversight of LITC in the US. If a similar approach were to be taken in Australia to establish a TAS, we would recommend, however, that Australia follow the US model in this respect and house the administration and oversight of Australian tax clinics within the TAS office.

National Tax Clinic Board or Steering Committee

We acknowledge that logistical, funding and other challenges surrounding oversight and expertise will impact on the recommendations made in this submission.

Accordingly, if meritorious, to advance these recommendations as well as complementary objectives, we encourage the Committee to consider endorsing the establishment of a National Tax Clinic Board or Steering Committee.

Members of the NTCP with input from industry, professional associations, other academic organisations and relevant government agencies could comprise the Board or Steering Committee. Critically, this group would seek to make informed recommendations concerning:

1. The appropriateness and sustainability of clinical and funding models.
2. Identifiable areas of need across Australia.
3. Best practice approaches to operating tax clinics and reporting requirements.
4. Taxpayer eligibility.

Conclusion

The comments and recommendations made in this submission contemplate the future of tax clinics within Australia and advocates for their longevity.

We would be pleased to discuss any aspect of this submission in more detail and look forward to the outcomes of this important Inquiry.

We also kindly extend an invitation to members of the Committee to attend the Curtin Tax Clinic at their convenience so that they can experience, first hand, the operation and scope of the initiative, and would encourage the Committee to contact us for further details concerning the breadth of cases and projects the Curtin Tax Clinic is involved with to provide additional context and assistance to the Inquiry.

-----oOo-----