

TAX: A LOOK AT SOME OF LABOR'S CHANGES

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1 INTRODUCTION

The period of the Hawke Labor Governments has been one of considerable economic change. That change reflects two basic and interrelated factors.¹ First, capital accumulation itself is a continually revolutionising process. Competition forces capitalists to search for new and cheaper ways of producing their products in order to gain an advantage over their rivals. Secondly, the international economic system has been in crisis since the mid-1970s. That crisis can be seen in Australia in the tendency of the rate of profit to decline over the last twenty years or so. The strategy underpinning the Hawke Government's actions, and this is as true of the taxation field as any other area, has been to adopt measures that will facilitate capital accumulation and improve profit rates for Australian based capitalists. This article will examine how some of the tax law changes that have been made have been affected by this strategy, in particular the internationalisation of the Australian economy. In the first place however, these changes have to be seen as part of the more general process of change itself.

2 THE PROCESS OF CHANGE IN GENERAL

Change continues to sweep the world. The most obvious and inspiring example is Eastern Europe where many of the state capitalist regimes have been overthrown in the last eighteen months or so. In those countries the clash of the forces of production² with the relations of production³ (in its essentials capitalist⁴) has produced a move towards the market as a solution to economic problems. But this fundamental contradiction will not be solved by replacing one form of capitalist relations (state capitalism) with another form of capitalist relations ('market' capitalism).

The whole process of change needs to be seen in historical perspective. First, the move towards greater state intervention was an international phenomenon during the period from the 1920s to the 1970s. As Harman says :

... the tendency towards state control of the whole economy was not something unique to stalinism. It was something which happened to varying degrees throughout the capitalist world, particularly in its weaker national elements, in the period which stretched from the First World War and the crisis of 1929-36 through to the 1970s.⁵

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1 Rick Kuhn, "The Accord and Business: The Distinctiveness of the Hawke Government's Approach to Capital Accumulation" in Brian Galligan and Gwynneth Singleton (eds), *Business and Government under Labor* (Forthcoming 1991) 77 ff.

2 The forces of production are the instruments used to produce goods and the people with the skills necessary to use those instruments. In crude terms the forces of production denote the level of productivity of society.

3 The relations of production are the actual relationships people enter into with other people and machines in the production process.

4 Tony Cliff, *State Capitalism in Russia* (1974).

5 Chris Harman, "The Storm Breaks" (1990) 46 *International Socialism Journal* 4, 37.

Secondly, the very success of state capitalism in Russia and Eastern Europe in producing more or less continual growth of the forces of production saw a clash between those forces and the state capitalist system of production. In the West in the 1970s the most successful companies became those which organised production on an *international* basis.⁶ This meant that economies which were organised on a national scale, such as the state capitalist economies, found they were less efficient and hence less competitive when compared to this new internationalised capitalism. This produced a clash between the forces of production on a global scale and the relations of production in the state capitalist countries, a conflict which has seen the overthrow of stalinist state capitalism itself. This does not mean that it would be accurate to say that this new phase of capitalist development can be called market capitalism. The state has not disappeared. Rather, Harman describes this new phase as "a combination of state capitalism and multinational capitalism".⁷

3 LABOR'S ECONOMIC RESPONSE

It is not only in Eastern Europe where the clash between the forces of production and relations of production is being fought out. Economic restructuring is an integral part of the strategy of most of the governments of the West, including the Hawke Labor Government. The same pressure of international competition that sent Eastern Europe 'to the wall' has been felt in Australia. So in Australia the Government has undertaken all sorts of measures aimed at restructuring the economy. The reality of these changes is to help the accumulation process. The change in production brought about by the drive to accumulate capital puts pressure on both the relations of production and the political-administrative superstructure.⁸ But the relationship is not one way. The superstructure reacts back on the relations of production. It can either reinforce those relations in their old form, thus becoming a fetter on the forces of production, or it can facilitate changes in those relations and hopefully (from a capitalist point of view) enable continued development of the productive forces. In the words of Kuhn, "states facilitate or impede such changes [in social arrangements] to the extent that they provide material and legal frameworks to underpin economic innovation".⁹ So, for example, the 150 per cent deduction for research and development expenditure was designed to encourage the development of innovative Australian capitalist reproduction techniques. Similarly the foreign tax credit system can be seen as an attempt by the state to both respond to and develop (or regulate) international transactions and transfers.

As profit rates in the major economies decline,¹⁰ Governments and bosses search for ways of restoring profitability. One way is to raise what Marx called the rate of surplus value and as a consequence, the rate of profit. There are two major ways of doing this: "reducing [real] wages while maintaining the level of

6 *Ibid* 45.

7 *Ibid* 46.

8 For an explanation of this process see for example Karl Marx, *Preface to A Contribution to the Critique of Political Economy* (1904) 11-13. See also Chris Harman, "Base and Superstructure" (1986) 32 *International Socialism Journal* 3.

9 R Kuhn, *supra* n 1, 81.

10 Rick Kuhn and Tom O'Lincoln, "Profitability and Economic Crisis" (1989) 25 *Journal of Australian Political Economy* 44.

output, or forcing workers to work faster without raising their wages".¹¹ Another strategy involves "modernising productive capacity and eliminating inefficient sectors".¹² The call for a "level playing field" in the tax arena precisely concerns this.

These strategies underpin the Australian Labor Government's Accord and operate in all areas of economic life in Australia, including the tax system. It is impossible to divorce a tax system from the class system which created it. Thus, for example, the Draft White Paper on The Reform of the Australian Tax System says that "any reform must provide the best possible climate for investment, growth and employment in Australia".¹³ *Incentive* in this context is merely ideological propaganda for tax exploitation.

...the incentive rationale asserts that if profits are taxed too heavily, the accumulation of capital and thus the growth of production and employment will diminish, and that if the incentives of wealthy families and investors and their financial institutions ... are impaired, the supply of investible funds will dry up. In other words, the official ideology of taxation asserts that taxes must not reduce incentives both to supply and to invest money capital.¹⁴

The Government's strategy is to increase the exploitation of workers through a variety of means to improve Australia's economic competitiveness internationally. Tax policy is one such means. For example, as the "Australian" profit rate fell one Government response was to open the essentially closed Australian manufacturing and financial sectors to the chill winds of international competition. The Liberals under Fraser made the first tentative moves towards doing this, but the major impetus has come from the Labor Government of Bob Hawke.

The internationalisation of the Australian economy means two things - a further opening of the doors for foreign capital to come into Australia and an expansion of Australian based capital overseas. In the former case this is an absolute necessity because overseas capital is a major contributor to the process of capital accumulation in Australia¹⁵. In the latter case large Australian companies have started to search for "better" profit rates overseas. For instance BHP has become a significant player in the world resources market; Bond and Elders-IXL expanded (seemingly to their detriment) into markets such as the United Kingdom, the United States and Canada; and Rupert Murdoch has outgrown his Australian base to become a truly international capitalist.

There is a new world economic order. It is marked by "the globalisation of manufacturing and service industry production".¹⁶ There has been a trend for Australian production to become integrated with that in other countries.¹⁷ This has meant in the tax field that the government has introduced measures which are designed to sweep away impediments to the efficient accumulation of capital, efficiency being judged by international comparisons.

11 *Ibid* 50.

12 *Ibid* 53.

13 Draft White Paper, *Reform of the Australian Tax System*, (1985) 2.

14 James O'Connor, *The Fiscal Crisis of the State* (1973) 204-205.

15 R Kuhn, *supra* n 1, 97.

16 *Ibid* 83.

17 *Id.*

4 CHANGE IN THE TAX SYSTEM

This internationalisation of the economy has had an effect on the tax system. McKinsey and Co in their report to the Australian Tax Office say that "rapid change and [the] increasing complexity of tax law" is a "response to increasing internationalization, financial deregulation [and] business sophistication".¹⁸ So it is not surprising that the drive for tax reform, exemplified in Australia by the Tax Summit and the Draft White Paper on the reform of the Australian tax system, is not a peculiarly Australian phenomenon. Many of the major OECD countries have gone through a similar experience, whether it be the United States, Canada, the United Kingdom or New Zealand. It is the similarity of the processes that is most striking, rather than the differences between the particular local variants. All these governments are dealing with the same basic problems, namely the constant changes in the forces of production and the crisis of profitability. Their solutions will be within the limits established by capitalism and will be ruled both by the need to give their locally based companies a framework in which they can gain a competitive advantage over their international rivals and also the need to increase profit rates.

The free interflow of goods, services and finance into and out of Australia requires a tax system that does not "burden" productive investment.¹⁹ For many years the Australian tax system had major structural imbalances. For example it failed to tax capital gains. These structural imbalances led to a misallocation of investment resources, in general away from productive investment and into speculative or non-productive investment. In other words these imbalances detracted from the accumulation process. There was, to use the jargon of the Treasury "conrats", no level playing field. Now in times of boom this may not be so important - every productive capitalist can still make an adequate profit. But when the economic system goes into decline uneven playing fields become a seemingly real deterrent to productive investment and the pressure increases for their levelling.

It is in this light that the Labor Government's push for tax reform, their capital gains tax, the fringe benefits tax, the foreign tax credits system, dividend imputation, the removal of various tax concessions, the statement on tax simplification and so on should be seen. The Government is no longer (generally) actively intervening in the investment process itself; rather it is trying to create a climate that encourages private investment, whether that investment be Australian or foreign and whether it be in Australia or overseas. An integral part of that process is tax change and tax reform.

5 SOME CHANGES IN THE TAX SYSTEM

In light of the above I want to examine the more obvious examples of change in the tax system introduced by the Labor Government in the last few years. I make no comment on the appropriateness or otherwise of these types of

¹⁸ McKinsey and Co, *Report to the Australian Taxation Office 5* (Canberra, 1990).

¹⁹ By "productive investment" I mean investment in real wealth producing sectors of the economy such as manufacturing, rather than in speculative endeavours such as real estate.

measures. My point here is to highlight the fact that they reflect the increasing internationalisation of the economy *and* contribute to that internationalisation.

A *The Foreign Tax Credit System*

Before 1 July 1987, the foreign income of an Australian resident was not subject to Australian tax if it had been taxed overseas. In effect this was an incentive for Australian residents, especially companies, to invest in countries with a lower rate of taxation than Australia. So part of the rationale of the foreign tax credit system²⁰ was to remove this tax-driven bias against investment in Australia. Equally it was designed to overcome a tax-driven bias against investment in foreign countries with tax regimes broadly similar to Australia's. In that sense it was not so much a direct concession to encourage investment in Australia. Rather it was an attempt to destroy favoured treatment that could well see investment flowing to low tax countries.

The old regime was clearly inequitable. If a foreign country had a lower level of tax than Australia then an Australian resident earning income from that foreign source would pay a lower level of tax than a resident with the same amount of income earned in Australia. The change to a foreign tax credit system, in which Australian residents received a credit against Australian tax for overseas tax actually paid was supposed to address this problem and produce more investment in Australia.

B *The Accruals System*

Now obviously some countries, operating as tax havens, have corporate tax rates far below even 39 per cent. This meant that companies could establish subsidiaries in tax havens and never repatriate the money to Australia. The foreign tax credit system would not then apply. Indeed even if the income were *exempt* from tax in Australia (as it was under the pre- 1 July 1987 regime) it is unlikely it would have been repatriated. This is because subsequent earnings on the repatriated income would be subject to Australian tax and the tax rate in Australia would be much higher than that in the tax haven. So the Australian Government came up with a refinement of the foreign tax credit system. For Australian companies which derive income from a country which has a broadly comparable tax system to Australia's, that income will in general be exempt.²¹ Where Australian companies have interests in entities in tax haven countries, an accruals system of taxation will operate, so that even if income is accumulated in those entities it will be taxed in the hands of the Australian company.²²

The accruals system is quite clearly aimed at international Australian companies, that is, Australian-based companies with their fingers in other countries' profit pots. Investment in countries with broadly comparable tax systems (and that includes all Australia's major trading partners) will not be discouraged. Australia's tax system is starting to reflect the fact that some sections of Australian capital are expanding beyond these shores. No more is the thrust of the foreign tax credit system in conjunction with the controlled foreign corporation regime to be to encourage productive investment in Australia; rather it is in theory to be to encourage productive Australian investment anywhere.

²⁰ Income Tax Assessment Act 1936 Division 18 Part III.

²¹ Income Tax Assessment Act 1936 ss 23AH, 23AI and 23AJ.

²² Income Tax Assessment Act 1936 Part X.

However in practice this may not be so. When account is taken of taxes that impinge on companies, Australia's company tax rate is lower than those of our major trading partners; Canada, the United States, Japan, and Europe. This should make Australia attractive for investment purposes, at least from a taxation point of view. In other words one of the rationales for lowering the company tax rate to 39 per cent is to *attract* foreign capital from our major trading partners into Australia. In that sense we are a "respectable" tax haven. Of course, the most important question for any investor will be the rate of return on their investment, and that depends not just on the rate of tax. Most importantly it depends on the rate of exploitation in each industry in each country.

C Capital Expenditure

In the 1990 Budget the Government announced that certain capital expenditure made after 21 August 1990 would be deductible against assessable foreign source income. Before that date the capital expenditure in question (for example, deductions for mining and petroleum activities) was generally only allowable if the activity was undertaken in Australia. By extending the deduction to overseas activity or investment that produces assessable income the Government has removed a fetter on Australian investment overseas and recognised the growing internationalisation of Australian capitalism. Indeed Australian companies now have investments worth \$60 billion overseas.²³

6 AIDING THE PRODUCTIVE PROCESS

The Government has made a number of major tax changes with a view to making Australian industry more competitive (judged internationally) and more attractive as an investment. The capital gains tax, dividend imputation and the lowering of the company tax rate are but three examples.

A Capital Gains

The major structural reform introduced by the Labor Government has been the capital gains tax.²⁴ Many on the left of politics have hailed this tax as one of the [few] progressive pieces of legislation of the Hawke Labor Government. However the capital gains tax is aimed not so much at taxing the rich as redistributing investment by the rich away from substantially unproductive areas into more productive areas. The non-taxation of capital gains provided an incentive for investment in areas like real estate at the expense of manufacturing investment. The taxation of capital gains was supposed to remove that disincentive.

The capital gains tax is not itself a specifically or directly international piece of legislation. But its logic is the logic of productive investment. It is an attempt to make Australia *internationally* competitive by removing the non-taxation of capital gains and thus hopefully re-directing investment into manufacturing and other wealth producing areas. Of course investment decisions are not always made solely with tax considerations in mind. If the return on Australian manufacturing is lower than that of other industries in Australia or overseas then all other things being equal, investment will occur in those areas.

²³ *Socialist*, August 1990, 5.

²⁴ Income Tax Assessment Act 1936 Part IIIA.

The capital gains tax is benign in its application. The Labor Party's social base is the trade union bureaucracy. That bureaucracy occupies a contradictory place in our class society. Trade union bureaucrats represent workers *and* deal with bosses. They try to reconcile the irreconcilable antagonisms between classes. The Labor Party is the political expression of this contradiction. Because it is not the overt representative of the capitalist class it means the Labor Party is more able to introduce measures that are in the interests of capital *in general* although the reform might adversely affect some *sections* of capital. So it is the Labor Party that can introduce a capital gains tax because it is in the long term interests of the system in general to have investment decisions that are not tax - driven. However, because it is running the capitalist state when it is in power and therefore governing in the interests of capital, the Labor Party still needs to take account of various sectional capitalist interest groups to some extent. This contradiction finds itself expressed in the Labor Government's capital gains tax which, although it taxes capital gains, only taxes real capital gains. Compare this to any other type of income gain where any nominal increase is taxed. Thus the capital gains tax is a contradiction - it taxes capital gains yet does so very favourably.

In addition the capital gains tax has a number of exemptions which favour high income earners and therefore capitalists. The tax does not apply to motor vehicles. This means that motor vehicles which are bought as an investment and which appreciate in value will not be subject to capital gains tax. The exemption of the principal residence from the tax produces a greater benefit for the rich than for the poor. The exemption is worth more to someone living in Paradis Sur Mer on the shores of Sydney Harbour than it is to an average worker in the western suburbs of Sydney. The same thing can be said of the testamentary rollover, an exemption which means the capitalist class can avoid capital gains tax on those assets which are not liquidated to provide for consumption.

B Dividend Imputation

In 1987 the Government introduced another element in its tax reform package: dividend imputation.²⁵ This system eliminates the so - called "double taxation" of company profits. Prior to the dividend imputation system profits derived by a company were taxed in the hands of the company. Dividends paid to shareholders out of those profits were then taxed in the hands of the shareholders without, in general, any recognition of the tax already paid by the company. The dividend imputation system overcomes this by including the dividend and the amount of company tax attributable to that dividend in the assessable income of the shareholder and then allowing a rebate of tax to the shareholder for the amount of the imputed company tax.

Labor Treasurer Paul Keating hailed the new system, saying that imputation would:

...put Australia at the forefront of business tax reform, and give us one of the most advanced and efficient tax regimes in the world; it will restore the position of the stock market as mobiliser of investment funds and reduce the previous bias in favour of corporate debt finance over equity; it will mean that entrepreneurs trying to get new businesses off the ground should find it easier to raise equity finance; it will make investment in these enterprises more attractive

²⁵ Income Tax Assessment Act 1936 Part IIIAA.

for investors; it will improve the climate for productive investment and enhance economic growth for Australia; and it will provide increased incentives for all Australians to participate in the ownership of Australian companies by significantly reducing taxes on dividend income.²⁶

The effect of imputation was a "reduction of up to 40 per cent in the overall tax burden for shareholders and small businesses".²⁷ The Treasurer estimated the cost to the Revenue in a full year of imputation to be \$500 million.²⁸ This is in essence a \$500 million grant to shareholders from ordinary working taxpayers.

Thus, the logic of dividend imputation is two-fold. First it is a crude but effective measure to re-direct the tax burden away from the ruling class. Secondly it acts as an incentive for investment, that is, for the "better" working of the accumulation process. Nothing can be allowed to stand in the way of incentive, of the ruling class's ability to save and accumulate.

C Company Tax Rates

In this context it is also important to look at company tax rates. The reduction of the company tax rate from 49 per cent to 39 per cent while only reducing the individual tax rate to 47 per cent is a form of legalised tax avoidance. The misalignment of rates makes it worthwhile from a tax point of view for business taxpayers to incorporate once their income has reached a certain, fairly low, level. There has been an increase in the number of taxpayers incorporating over the last year or so and one major reason must be because of the lower tax rate on companies: "It's the rich what gets the gravy".

7 THE BURDEN OF TAXATION

Any realistic assessment of the Government's tax changes must include an analysis of the changing incidence of taxation on an aggregated class basis. Which class has borne an increasing burden, which class a lesser burden? A clear indication of general trends can be found from the figures. Thus the figures on individuals are sub-divided between PAYE taxpayers (in the main people who have only their labour power to sell, that is, workers) and others (mostly individuals with investments).

In line with the drive to increase private economic activity the State will vary not only the structure of taxation (Labor's Tax Reform programme) it will also vary the incidence of taxation on capital. The most obvious way of doing this is to reduce corporate tax rates, which is precisely what the Labor Government did. They also reduced the top marginal rate on individuals, but only to 47 per cent. It's true that as part of the agreement with the trade unions the Government reduced taxes on individuals from 1 January 1991. But two things need to be said about this. First, the tax cuts are being funded by bracket creep, and secondly, they are a substitute for wages in a period of declining real wages.

At the same time the burden of taxation has shifted away from companies. The Government is now relying much more on revenue from personal income tax, which includes income from investments as well as income from personal services. There are two trends evident. First the tax burden in Australia is

²⁶ H Repts Deb 1987, Vol 154, 1945 (2 April 1987).

²⁷ *Id.*

²⁸ *Id.*

moving "inexorably upwards".²⁹ Secondly, "the tax mix ...has also changed markedly".³⁰ Over the period from the mid-1950s to the mid-1980s personal income tax has been providing an increasing share of total Commonwealth revenue, while that provided by company tax over the same period has fallen markedly.³¹ In the mid-1950s personal income tax provided 35 per cent of total Commonwealth revenue; in the 1980s that figure had risen to around 52 per cent.³² Over the same period company tax contributions fell from just under 20 per cent of total Government revenue to just over 10 per cent.³³

This increased reliance on personal services income means that middle income earners are bearing higher tax rates than previously. For example, in 1954-55 taxpayers who were on average weekly earnings had an average tax rate of 10 per cent. By 1985 that figure was 25 per cent.³⁴ Another comparison involves the top marginal rate. In 1954-55 the top marginal rate began at approximately 18 times average weekly earnings. (This would be roughly equivalent to \$450,000 in today's figures.) By 1985 the top marginal rate began at only 1.6 times average weekly earnings.³⁵ Bracket creep is alive and well.

Individuals who earn their income from investments have more tax concessions to avail themselves of and more opportunities for tax avoidance and tax evasion. This means the increasing "...burden of personal income tax tends to fall most heavily on wage and salary earners".³⁶ Although the Labor Government claimed it would address this problem by broadening the income base and reducing the high marginal tax rates borne by salary and wage earners its own figures seem to indicate that the problem has at best stabilised over the 1980s. The tax reforms of the 1980s have had seemingly no effect on this situation.

In 1980-81 PAYE taxpayers contributed 43.09 per cent of total taxation revenue, while other individuals contributed 10.41 per cent and companies 14.33 per cent. The equivalent figures in 1990-91 were 42.58 per cent, 9.31 per cent and 12.57 per cent respectively. (The figure for other individuals is artificially boosted because of the deferral of more than \$400 million from the 1989-90 income year). If the Medicare levy is added in, the figures for PAYE taxpayers and other individuals for 1990-91 increase to 44.95 per cent and 9.78 per cent.³⁷ (I have not included revenue gained from the fringe benefits tax in any of these categories because there is doubt as to its effective incidence, although its legal incidence is on the employer. It may well be that PAYE taxpayers do bear some of the incidence of the tax³⁸). So despite the Hawke Labor Government's rhetoric income tax burdens have remained the same over the 1980s. This stabilisation has been occurring at a time when income tax as a proportion of Gross Domestic

²⁹ Draft White Paper, *supra* n 13, 18.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Ibid* 29.

³⁴ *Ibid* 19.

³⁵ *Id.*

³⁶ *Id.*

³⁷ 1990-91 Budget Paper No 1 (1990) paragraph 4.47, Appendix B Revenue Statistics 1980-81 to 1990-91, Table B.I, Commonwealth Government Budget Revenue.

³⁸ D J Collins, "Taxation of Fringe Benefits" in J G Head *Australian Tax Reform in Retrospect and Prospect* (1989) 101, 105-110.

Product has actually risen from 16.0 per cent in 1980-81 to 17.8 per cent in 1989-90,³⁹ so in that sense the burden on workers has actually increased.

The Hawke Government has cut individual tax rates. But in view of the figures cited above it can only be concluded that these tax cuts have been funded by bracket creep. In addition, these tax cuts have actually made the Australian income tax system less progressive. This is because it is the highest marginal rates which are most deeply cut. In a chart in the Financial Review Senator Peter Walsh shows that in the period from 1975 to 1990 average rates of tax paid on incomes up to 200 per cent of average weekly earnings have gone up substantially. On the other hand "the average rate of tax paid at four and eight times average weekly earnings has fallen by 5 and 10.4 per cent respectively".⁴⁰ So despite the rhetoric of the Hawke Labor Government on taxation, the reality is that average salary and wage earners are no better off.

8 SIMPLICITY - THE HOLY GRAIL

A *Simplification*

The tax rhetoric of business has changed. One of those changes is the call for simplification (or certainty, or managing complexity, or clarity). Simplification of the tax system is an integral part of the Labor Government's push for tax reform. As such simplification should be seen in the light of both the continuing internationalisation of the Australian economy and tax system and the push to redress declining profit rates. One of the criteria the Government decided to use in judging the tax system was simplicity. According to the Draft White Paper on the Reform of the Australian Tax System:

A good tax system should be as simple as possible. A complex tax system makes it difficult for people to understand the law and apply it to their circumstances. The present law has become so complex that it is difficult to convey its meaning simply and adequately on tax return forms and in other printed matter. Complexity imposes high compliance costs on the community and high administrative costs on the tax authorities. Complex tax laws also result in socially unproductive and costly tax litigation. These considerations suggest that, where possible, tax reform measures capable of ready comprehension and application should be preferred over more complex alternatives.⁴¹

The content of tax legislation is part of the legal superstructure which reinforces capitalist relations of production and sets the limits for capitalist development and reproduction. Tax legislation also regulates the productive process. So tax legislation must be able to communicate those limits and regulatory patterns to its target audience. Legislation which is so unclear that it fails to perform that task is a failure of the first order. It threatens the efficient operation of the accumulation process and continuing social relations.

But there is a contradiction here. The tax system is also a system of disguised expenditures, what tax experts call tax expenditures. Tax concessions (for example, the failure to tax certain income, or the allowance of deductions not normally allowable) have the same effect as direct grants and should be judged

³⁹ 1990-91 Budget Paper No 1 paragraph 4.36.

⁴⁰ *Australian Financial Review*, 11 September 1990, 13.

⁴¹ Draft White Paper, *supra* n 13, 15.

accordingly. However one of the attractions of using tax concessions rather than direct grants is that the amount of the subsidy is hidden from public scrutiny and the beneficiaries of the concession are similarly obscured. The tax expenditure papers attached to the Budget do not alleviate this problem because they are not comprehensive and because the nature of a tax expenditure makes it very hard to quantify the benefit. In this sense the tax system is used to provide hidden benefits to the ruling class.

And it is these concessions and the Government's attempts to quarantine them against abuse which create uncertainties and complexities in the law. A simple, clear and concise Income Tax Assessment Act would number around 100 pages. The length of the present Act (over 2000 pages) and its complexity stem from the fact that the Act is used to provide subsidies or concessions. If the need for such tax expenditures was removed then the problems of lack of clarity and uncertainty would in the main disappear.

Yet these tax expenditures are an integral part of the capitalist system. They provide, for example, investment incentives which help bolster the rate of profit in either particular industries or industry in general. The move to a simplified Tax Act and system could therefore only occur if tax expenditures were to be given in another form, in other words if the State were to subsidise capital in some other way. But the tax system is such a convenient way of hiding subsidies that it will continue to be used by Governments of whatever persuasion. For example, it appears that the Prime Minister's economic statement in March 1991 will contain further tax concessions for business, perhaps in the form of another tampering with depreciation rates.

None of this means that vested interest groups, such as business, won't take up the call for simplification. They want certainty and clarity to reduce their compliance costs (among other reasons). They will attempt to manipulate the call for simplicity, and its actuality if it ever eventuates. But they also want tax expenditures, which are the major contributors to a lack of simplicity in tax legislation. This appears to me to be a contradiction which is not capable of being solved. The attempt to protect profit rates through the tax system will ensure a continued lack of simplicity.

What does "simplicity" mean? The Government has talked about measures "...to reduce the burden of record-keeping on ordinary taxpayers, to increase the certainty of what is or is not taxable, and to increase the clarity of the tax system".⁴² In practice this rhetoric falls by the way side when it stands in the way of, for example, increasing the tax burden on workers. In the same year that the government talked about simplicity, including lessening the record keeping burden on taxpayers, it introduced Subdivision F of Division 3 ("the substantiation provisions") into the Assessment Act. Those provisions impose the most stringent and onerous record-keeping requirements on ordinary taxpayers if they want to claim work-related expenses as deductions. In essence employees have to provide comprehensive receipts in relation to goods and services related to their employment to be able to claim a deduction. Clearly the Government in practice has failed in its stated aim of reducing the burden of record-keeping on ordinary taxpayers.

42 *Id.*

B Compliance Costs

A recent study estimated total compliance costs of personal income taxation in Australia for the year 1986/87 as being between \$2780 and \$3809 million, or 7.9 to 10.8 per cent of tax revenue.⁴³ However, the study found that it was taxpayers with business/investment income (that is, taxpayers completing forms A or B) who incurred 74 per cent of these estimated total compliance costs while they only accounted for 36 per cent of personal income taxpayers.⁴⁴

One third of personal income taxpayers experienced difficulties in preparing their returns. Eighty-two per cent of this group cited the complexity of the tax law as one reason for their difficulties.⁴⁵ This partly explains why 62 per cent of all taxpayers use professional tax advisers⁴⁶ with a total estimated cost to personal income taxpayers for the year 1986/87 of \$1,224 million.⁴⁷ On the other hand taxpayers also think it is cost effective to employ a tax adviser.⁴⁸ Only 39 per cent of Form S taxpayers (in general salary and wage earners) used a tax adviser compared to 70 per cent for Form A taxpayers (people with income from investments and property) and 59 per cent for Form B (business and professional taxpayers).⁴⁹

With effect from 1 July 1989 a tax deduction is allowable under s 69 of the Income Tax Assessment Act for expenditure incurred by taxpayers in connection with the management or administration of their income tax affairs. Costs associated with preparing an income tax return, disputing an income tax assessment, dealing with a Tax Office audit and tax planning will be allowable. Fees and commissions paid to a recognised professional tax adviser will also continue to be deductible. Individuals who seek professional assistance, or who are able to disguise their tax affair costs as part of their business costs, or who can set up a special tax advice unit in their business will be able to claim deductions for such costs. The personal income tax compliance costs study shows that in general these people will not be salary and wage earners; rather they will be investors, rentiers or business people. It goes without saying that companies will be able to do the same. In essence this means that s 69 is operating to socialise the tax affair costs of people who live off the labour of others, at the expense of salary and wage earners. The tax system is once again being used to implement a socially regressive policy by disguising a wealth transfer from the poor to the rich.

Times, and especially economic conditions, change. Business has moved away (or been moved away) from an overtly individualistic approach to taxation to a form of communal individualism, where the state is seen as being the referee of and for business within the framework of a cut-throat game, namely the drive for profit.⁵⁰ In terms of taxation we have seen a shift away from the rampant individualism of the 1970s expressed in the form of tax avoidance towards a

43 J Pope, R Fayle and M Duncanson, *The Compliance Costs of Personal Income Taxation in Australia, 1986/87* (1990) v.

44 *Ibid* vi.

45 *Ibid* 27-28.

46 *Ibid* 29.

47 *Ibid* 32.

48 *Ibid* 30-31.

49 *Ibid* 39.

50 J Passant, "Tax Avoidance and the Judiciary" (1989) 7(2) *Law in Context* 24.

more subtle approach which uses the state to both level the playing field and to maximise after-tax profits on a communal business scale. The state, "the executive committee of the bourgeoisie", takes whatever action necessary to allow capital accumulation to continue unhindered but at the same time attempts to ensure, within certain bounds, that the decision to accumulate is not tax driven.

This drive to accumulate profits can be seen reflected in business' call for simplicity and the assertion that "[c]omplexity imposes high compliance costs on the community".⁵¹ A recent study on public companies' compliance costs for the Australian Tax Research Foundation gives some support to this assertion, although in my view the sample base is too small, and biased, to be definitive.⁵² The fact that it was a postal questionnaire survey also raises the question of bias; that is of the 1858 companies sent a questionnaire, it is arguable that, in general, only those who thought the tax system was complex and had experienced some sort of trouble with it would respond. In any event the real question is which section of the community bears the burden of such compliance costs? Initially, the answer would appear to be consumers, not business, because business can pass on any tax compliance costs to the consumer. This would be partly true if there was only Australian based competition, that is, if competitors in the field all had to suffer the same complex Australian taxation regime and hence the same or similar compliance costs. Those compliance costs would then be a given for the industry as a whole and competition would occur on the basis of wage and machinery costs and productivity, for example. I say partly true because as the particular industry's profit rates decline as a response to increasing mechanisation, the players in the industry will search for ways of reducing both their particular production costs and more general costs such as those associated with tax compliance.

The situation becomes more complex with the introduction of foreign competition. If compliance costs for business in Australia were markedly higher than for businesses in other countries, and those compliance costs were not just a negligible part of the overall running costs of business, then the effect in capitalist terms could be to disadvantage Australian firms. However there are a whole range of other, and more important factors, such as technology and wages, which determine Australian business's profitability.

The Australian Tax Research Foundation study on compliance costs for business says that these costs are markedly higher than those of other countries. For example, the study appeared to show that gross compliance costs were around eleven times greater than those in the United Kingdom. However the net figure stood at around three to one and even then took no account of the operation of s 69 which allows companies to deduct most of these costs.⁵³

The assumption in all of this seems to be that compliance costs are caused by the complexity of tax legislation. The two are not necessarily linked. An alternative explanation may be that business (or at least its tax advisers) is continually combing tax legislation for loopholes which will enable a particular firm to reduce its tax and hence give it an edge over its competitors. It may be

51 Draft White Paper, *supra* n 13, 15.

52 J Pope, R Fayle and D L Chen, *The Compliance Costs of Public Companies' Income Taxation in Australia, 1986/87* (1990).

53 *Ibid* i-ii.

that business in doing so reduces its taxable income so that the time spent on its tax affairs is actually cost effective from the point of view of companies. A recent Four Corners report⁵⁴ showed that a large number of major Australian companies pay between one and ten per cent of their declared profits as income tax. This is at a time when the tax rate on a company's taxable income is 39 per cent. In the light of these figures the concentration on compliance costs is an obscenity. The real questions must be how do we get business to pay a more appropriate share of tax - an impossibility, in my view, under a system which is run for profit - and what are the activities business undertakes under the guise of tax compliance. This last question has yet to be answered.

If one accepts the assertion that complex tax laws cause high compliance costs, the solution then becomes simple - simplify tax legislation. And not only will simplification decrease tax compliance costs, it will democratise our tax system by empowering taxpayers and lower level officials alike. Unfortunately like all snake oil it doesn't work. There are deeply entrenched vested interests who want us to buy simplification. But simplification is not about democratising our system. It is not about certainty in communication. The call for simplification is, like the other tax reform measures, a response to the internationalisation of the Australian economy, where even tax costs become the subject of international comparison because the drive for profit by Australian companies is now in competition with foreign companies. Or, as the Business Council of Australia puts it, a disparity in compliance costs between Australia and other jurisdictions "...is obviously damaging to Australia efforts to build an internationally competitive economy".⁵⁵

It is also an attempt by business to continue the trend so evident in the Australian tax system over the last twenty years - to reduce the business tax burden. Just as complexity can be used by business as part of the process of reducing its tax bill, so can simplicity. Even if the various programs for simplification outlined by academics and the tax simplification team are implemented, the end result will not be to challenge the privileged tax position of business in our society; it will be to reinforce it. Or to be slightly more generous, it may be more appropriate to say that business will manipulate tax simplification for its own ends.⁵⁶ This is inevitable given the present economic and hence political system we have, a system based on profit.

C Tax Avoidance and Complexity

Another contributing factor, inherent in the drive for profit at the expense of competitors, is the desire on the part of the business world to pay little or no tax. In the 1970s that desire manifested itself in a mad individualistic rush towards tax avoidance. The High Court in a series of decisions⁵⁷ gave its imprimatur to a number of blatant artificial and contrived schemes. These

⁵⁴ Four Corners, 1 October 1990.

⁵⁵ Business Council of Australia Press Release 2 October 1990.

⁵⁶ *Id.* Whereas the Business Council, using Pope, Fayle and Chen, *supra* n 52, claims, for its own political purposes, that "... the cost of compliance in Australia as a percentage of tax revenue is nearly 11 times that of the U.K.", it conveniently fails to mention that this is gross costs rather than net costs.

⁵⁷ See for example *Mullens v Federal Commissioner of Taxation* (1976) 76 ATC 4288, *Slutzkin v Federal Commissioner of Taxation* (1977) 77 ATC 4076 and *Cridland v Federal Commissioner of Taxation* (1977) 77 ATC 4538.

decisions actually express one of the major aspects of capitalism, the drive to accumulate profits. The solution the High Court arrived at - to give carte blanche to tax avoidance - makes perfect (capitalist) sense given the political, economic and social climate of the time.⁵⁸

The response of the legislature to the destruction of the general anti-avoidance section was to introduce detailed and complex specific anti-avoidance provisions in various areas of the Act to overcome the judiciary's predilection for favouring tax avoidance. These provisions were and are complex because the legislature wanted to give a clear and unambiguous message to the judiciary - no tax avoidance here. And they are detailed because the legislature wanted to ensure that they caught every situation, so that there were no loopholes in the system.

CONCLUSION

What conclusions can we draw from this walk through the garden of some of Labor's tax changes? All the instances I have cited in some way or other are expressions of the Labor Government's attempts to assist capital in the accumulation process. Tax changes are made with the rate of profit, judged internationally, firmly in mind. O'Connor neatly summarises the logic of Labor's tax changes when he says:

...tax policy is largely designed to expand private profits and private economic activity, which means that the state must not impair capital's incentives to save and invest.⁵⁹

⁵⁸ For a fuller explanation of this point see *supra* n 42.

⁵⁹ J O'Connor, *supra* n 14, 206.