RE-WRITING THE TAX ACT

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There is agreement that the tax law is very complex and needs improvement. At that level of generality it is not easy to attract an argument. However once one cuts below that layer of broad agreement there has not been the same level of understanding or concord on what can be done to put things right. It is good to see positive signs that these issues deserve serious public debate so that we can reach common ground on what is achievable by the Tax Law Improvement Project.

BACKGROUND

The Joint Committee of Public Accounts recommended in its Report on an Inquiry into the Australian Taxation Office in November 1993[1] that a broadly based task force be established to re-draft the Income Tax Assessment Act 1936 (Cth) (ITAA). In an early response on 17 December 1993, the then Treasurer, the Hon John Dawkins MP, announced the Tax Law Improvement Project[2] — a three-year program to reduce the complexity of the income tax law by re-drafting it with a more coherent structure to make it more readily understood. It was made plain in the announcement that this was to achieve enduring improvements to the existing law rather than to review its substantive provisions.

It is tempting to drift into wistfulness about the state of things in 1936 when the original Act fitted neatly into 126 pages — in stark contrast to the more than 5,000 pages of difficult text that make up today's legislation. How did we get to the present position? The Act has been added to in every year since its introduction in 1936 and only seldom have existing provisions been repealed. Each set of changes has been grafted on to the existing body of law. While the Act has been amended every year, the pace of change has been accelerating. In rough measure the size of the Act has been doubling every seven years. In the decade to 1986 almost 1000 pages of text were added and the pace has hardly abated since then.

What we have been witnessing have been massive changes to the income tax system. Some measures have made the income tax base broader. Capital gains tax,[3]

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1 Report No 326, *An Assessment of Tax* (1993).

2 Treasurer, Press Release No 172, 17 December 1993.

3 Part IIIA of ITAA.

fringe benefits tax,[4] the substantiation rules for work-related expense claims[5] and anti-avoidance measures are examples. Other changes have given effect to a diverse range of economic and social policy objectives. We have seen the introduction of the company tax imputation system,[6] the foreign tax credit system,[7] rules governing the treatment of controlled foreign corporations[8] and foreign investment funds.[9] Yet other changes have dealt with tax file numbers,[10] thin capitalisation,[11] superannuation,[12] environmental issues,[13] convertible notes,[14] offshore banking units,[15] the registration of tax agents,[16] foreign exchange dealings[17] and share buy-backs.[18]

This non-stop legislative activity has been more or less keeping the tax system up to date with changing social values and commercial practices. Base broadening has allowed tax rates to be reduced and so improve Australia's international competitiveness and incentives to work, save and invest while coincidentally reducing the inducement to avoid or evade tax. While these reforms have kept the substantive law up to date they have massively added to its volume and complexity.

The Tax Law Improvement Project offers the chance to catch up and assimilate the accumulated mix of changes and original law into a coherent whole that is presented in a modern and much more user-friendly format. In doing this it is hoped to achieve some important goals. The re-writing of the tax legislation must be undertaken with the identity and needs of its main users clearly in view. With that focus it is far likelier to achieve the goal that it be easier for users to have access to the law and understand what is required of them.

That does not mean that the tax law can suddenly become simple. Expectations have to be realistic. We live in a world where the tax laws are a major instrument of commercial and social policy-making. They must carry out the substantive requirements of the tax system as the community demands through its Government and Parliament. Tax law in its re-written form must continue to reflect community expectations of fairness — that the income tax net be cast to include what is properly within its scope, but not more than that. There will often continue to be distinctions drawn by legislators in favour of equity, where a rougher form of justice that might be more simply expressed could have been adopted.

Complexities of modern business and commercial practices will continue to be reflected in a country that is a full member of the world economy, seeking out international trade and investment opportunities. The community will not be well

4 Fringe Benefits Tax Assessment Act 1986 (Cth).
5 Subdivision F of Division 3 of Part III of ITAA.
6 Part IIIAA of ITAA.
7 Division 18 of Part III of ITAA.
8 Part X of ITAA.
9 Part XI of ITAA.
10 Part VA of ITAA.
11 Division 16F of Part III of ITAA.
12 See, for example, Subdivision AA of Division 2 of Part III of ITAA.
13 Subdivision CA of Division 3 of Part III of ITAA.
14 Division 3A of Part III of ITAA.
15 Division 9A of Part III of ITAA.
16 Part VIIA of the ITAA.
17 Division 3B of Part III of the ITAA.
18 Division 16K of Part III of ITAA.

served unless the law is kept up to the mark in dealing with sharp practices. The fairness of the system and its reliance on voluntary compliance depend on this. While maintaining essential equity in the tax system and respect for the law, there should also be opportunities for practical improvements in the give and take of tax rules. Such opportunities will be in areas that can reduce compliance costs, where excessively strict rules are found to go beyond what reasonable commercial norms require.

Opportunities to debate and discuss emerging proposals for improvement of the law and to encompass a wide range of community views will be critical to the success of the project. To reach universal agreement on everything that will be proposed is clearly unattainable. There are views ranging from a minority of professional experts familiar with things as they are, who would prefer minimum change, to others with more radical views on the tax system itself for whom nothing would suffice short of the replacement of the present system by a new one based on fundamentally different ideologies. Undaunted by such polarised attitudes, it is hoped that most will come to see the emerging re-written law as delivering substantial benefits to the community.

There will be some temporary additional costs for users in familiarising themselves with the changes, but these can be expected to turn into sustainable net benefits as understanding is improved and the on-going costs of complying with the law are reduced. Savings can be expected, for example, in the future training and education of the professional staff of firms who advise in the taxation field. Tax professionals should be able to spend less of their time on providing essentially unproductive tax interpretation services. They will be able to devote their skills to helping clients' businesses operate more efficiently and competitively. These benefits promise valuable micro-economic reform and can also contribute to public support for the tax system on the grounds of enhanced fairness.

Re-writing the income tax law is not simply an end in itself. It is not just about developing a more elegant, plain language text, although there is every intention that the re-drafted law will use plain language and adopt modern drafting and presentation techniques. It will also be important to restructure the framework of the legislation to enhance its accessibility to users, with attention to the arrangement and sequencing of its provisions and best practice in written communication and publication skills. Another necessary outcome will be to develop an up-to-date and more flexible numbering system to replace the present perplexing arrangement.

In the end, the success of the project will be measured not simply by whether the bulk of the Act has been greatly reduced nor by its felicity of expression. The overarching criterion by which it will be judged is whether it will have reduced materially the community costs of compliance with the tax law. Excessive costs of compliance are generated if law is too complex in design and obscure in articulation. Law that is easier to understand, and so less costly to comply with, can also produce other valuable community benefits.

It should lessen the costs of tax administration which are also borne by the community. It should enhance the ability to comply with the law, reduce errors and the risk of innocently-incurred penalties. The need for litigation about obscure meanings should also be lessened. A more robust and logical tax law framework will also be a better instrument for implementing economic policy. And, as noted, accounting and legal talent can be freed up to improve business efficiency and profitability in a competitive world.

It is demonstrable in these ways that not only will improved tax law reduce community costs but it will also further desirable public policy objectives of social justice, equity and economic efficiency.

SCOPE OF THE PROJECT

There is a clear direction in ministerial statements that the project is concerned with re-writing the income tax law. Within that charter must be logically included the fringe benefits tax legislation because of the complementary and interdependent nature of the two sets of provisions. Ministers have made it clear that the focus is to be on improving the formulation of the existing law and not about proposing fundamental changes to the tax policies behind the law. It is entirely probable that as the project proceeds with improving the articulation of the law some instances will arise where that work will identify cases where re-consideration of policy is required. Where this occurs, it will be as a useful by-product of the project rather than a primary objective.

In the quest to reduce compliance costs it will be the intention to identify areas where excessive costs are being experienced because the laws are expressed ambiguously, with undue complexity or impose requirements that go beyond what is reasonably necessary for compliance with the substantive requirements of the law. Where it is practicable to do so, proposals will be developed to allow such excess costs to be eliminated or reduced.

The former Treasurer in establishing the project made it clear that he did not preclude the examination of substantive tax policy in the normal course, but that such considerations were seen as being outside the boundaries of the Tax Law Improvement Project. There are sound reasons for insulating this project from more direct consideration of policy issues. To have policy reviews conducted within the Tax Law Improvement Project would divert it from its central task of undertaking, for the first time since the 1936 legislation was enacted, the complete re-writing of the law to give it a modern, well-structured format. Many policy reviews and substantive changes have occurred in the intervening years. It is time now to concentrate on the long-delayed re-writing task which, in itself, is an essential undertaking which carries the prospect of delivering very considerable public benefits of the kinds described.

There is something of an inverse relationship between simplicity and compliance costs. Simpler legal requirements tend to reduce compliance costs. These costs flow from meeting the policy intent behind the substantive provisions of the tax law as well as from the way the law is expressed and administered. It has been suggested that real progress towards simpler law needs a broad charter that would admit simplification of the substantive policies of the law as well as addressing its expression. That would be a sure recipe for transforming the project into an endless debate about simplicity and equity and competing philosophical approaches to the tax system. Instead the project will be confining itself to its central task of re-writing the law to deliver practical benefits broadly distributed across the community.

CONSULTATION

Extensive public consultation will be essential to the Tax Law Improvement Project, with the emphasis being on achieving legislation that can be better understood and

followed. A starting point is to appreciate how the present law is working at a detailed practical level. That kind of detailed knowledge and practical experience is in the main held collectively by the users of the law and the project must take advantage of this. The consultative processes will draw in to the project progressively the specialist expertise necessary. In this way proposals for change should be clear and based on practical understanding. Further, draft legislation and explanatory materials will be given maximum public exposure consistent with completion in the given three-year period and with meeting government and parliamentary schedules.

Recognising that the project needed substantial direct private sector participation to ensure that community views were understood and given their proper weight, the Assistant Treasurer, the Hon George Gear MP, appointed two professional tax experts to be senior members of the project team. They will have a direct role in the decision-making processes to ensure the viability of proposals from a professional and practical point of view. Their contribution and community contacts will be invaluable in developing proposals that are realistic and well directed to achieve reductions in cost burdens and improved compliance.

The Assistant Treasurer has also appointed a widely representative Consultative Committee of 14 people to advise the project in achieving its objectives. The Consultative Committee will act as a sounding board and mentor for the project and will be able to submit to the project proposals that it generates. The consultative process will be iterative and can expect to develop from a broad-ranging focus to detailed examination of issues as the work evolves. In addition to these private sector resources and inputs, specialist expertise will be contracted where necessary to complement the skills of the project staff. By establishing consultative mechanisms with organisations and associations that represent groups in the community affected by the project, it is hoped to achieve a balanced input of views.

PLANNING TO DELIVER THE NEW LAW

Re-drafting the income tax legislation is a task of considerable dimensions and much of the early focus of the project has been on planning how to most effectively accomplish this task for best results. Detailed planning is well under way and the resulting plans will be open to public comment. In addition to producing a re-draft of such a large body of law, it will also be necessary to plan for the successful transition from the present law to implementation of the re-written law. Planning the implementation phase will include bringing about public awareness and understanding of the re-drafted law, its relationship to the replaced legislation and the development of professional expertise in applying the new framework.

As current levels of understanding and learning within the tax profession are built around the existing structure of the law, changing that structure is likely to have a significant impact. Changing the numbering system, the structure and arrangement of provisions and the way they are expressed will, for example, require well thought-out and executed public education strategies to minimise the change-over costs and maximise the benefits in moving to the improved law.

Staff within the tax administration and in the taxation areas of firms and organisations concerned with the application of the law will need to become familiar with the new legislative arrangements. Existing tax rulings and determinations written

on the basis of the law as currently drafted will need to be reviewed and, where appropriate, re-written. This will also be the case for other tax materials such as text books, official forms and information sources such as advisory pamphlets and the text of TAX pack.

TIMING AND SEQUENCING

An immediate issue in planning the delivery of re-drafted income tax legislation is how its delivery can be achieved in a timely and well sequenced process that takes account of the needs and capacities of all those concerned, including the Parliament itself. The timing of the introduction and operation of the re-drafted provisions needs to strike a balance between allowing for the development of sound workable proposals, consulting and debating their viability, and the capacity to prepare the resulting legislation for introduction in the Parliament. Linked with these considerations are questions about the options for breaking up the legislative task into a manageable sequence. Here, practical precedents from other jurisdictions may be instructive.

It is probably not feasible to deliver the whole re-written income tax law as a single package of legislation for passage by the Parliament. That option would have the advantage of allowing the maximum lead-time for preparation and implementation. It would require only one cycle of implementation and would minimise practical difficulties of having old and new law enacted and overlapping each other. It would also allow the benefits of experience gained over the life of the project to be fully utilised in the end product. An obvious concern with this option, however, is that the resulting package of legislation would be likely to be so large as to be more than could readily be digested by the public and the Parliament.

An alternative (something like the process being followed in New Zealand) could be to introduce the re-written law in two stages. The first stage would constitute a re-enactment of the existing provisions with minimal change other than to restructure and re-number them in a more coherent arrangement in order to get the desired new framework in place. Following that stage, the substantive provisions could be re-written in a second stage using improved drafting techniques and presentation to enhance comprehension and ease of compliance. At this second stage, more substantive changes directed at reducing compliance burdens could be included.

This may be easier to deal with than undertaking the entire task in one stage. It would still produce very large packages of legislation and would also mean some duplication of implementation effort. For example, the re-numbering of provisions would occur twice. Other delivery options being considered could break the task up into multiple stages delivered sequentially. These could facilitate a more focused public consultation process and may be more easily assimilated. The most attractive of these could be to enact the desired new structure reasonably early in the process in outline and to then successively incorporate re-written segments until the new Act is fully written over the life of the project.

BREVITY AND PLAIN ENGLISH

Later in this paper there is a discussion of a range of issues that are important in settling on the most effective drafting and presentation styles for assisting

comprehension and compliance.[19] A basic question is whether there is a direct relationship between the sheer size of the law and the ability of users to cope with it. In other words, should brevity become a benchmark by which to judge the success of the end product?

Views about this will affect consideration of such related things as the role that is to be played by plain English drafting techniques, the use of general principles drafting in preference to detailed elaboration of the rules, the use of purpose clauses and similar devices to make policy intention clearer, and so on. A contributing factor to the size and complexity of the law as it now stands has been the need to close-off or guard against tax avoidance loopholes caused by the excesses of the so-called schemes era of the 1970s and the then approach to tax law interpretation by appellate courts that was heavily influenced by literalism.[20]

If the quest is for simpler and briefer legislative expression, there needs to be a realisation by all concerned that an overriding consideration is that the revenue not be exposed to undue risk in the process. This is an area where it may well be possible to assist the courts to interpret the law, in cases of doubt, with an appreciation of the policy and principles underlying the provisions under review in the case. The drafting team will thus have the key responsibility of re-drafting the law so as to make its policy intent as clear as possible. This is important not only for assisting the task of the judges, but also others such as professional advisers and tax administrators whose duties will also benefit from greater clarity in the law.

It was most encouraging in this context that the Chief Justice, Sir Anthony Mason, recently acknowledged with apparent approval that emerging changes in legislative style towards broader statements of principle implied a changing role for the courts. The Chief Justice suggested that the judiciary, particularly in appellate jurisdictions, should increasingly look to resolving questions of interpretation by an understanding of the policies and purposes underlying the law.[21] The onus is now on the re-drafters, and ultimately the Parliament, to leave signposts that can assist the judges in divining the legislative intention.

As we work towards improving the structure and clarity of the law and open up possibilities for reducing detailed drafting, community support also needs to be encouraged and reinforced. There needs to be an acceptance of ethical standards such that taxpayers and professional advisers are also prepared to acknowledge and operate within the policy boundaries. If we can free ourselves from cat and mouse games where the law and tax avoiders are in perpetual pursuit of one another, this will permit more use of clear general principles supported by judicial interpretation.

One potential means of reducing volume and complexity is in a review of the very many anti-avoidance measures dotted through the income tax legislation. If reliance can be placed on a robust approach to policy interpretation by the courts, it may well be that at least some of the specific anti-avoidance rules can be eliminated and reliance placed on the general provisions contained in Part IVA of the Act. At the time of writing, the decision of the High Court on the appeal by the Commissioner in *Peabody v*

19 See below at 456 and following.

20 See *Mullens v FCT* (1976) 76 ATC 4288, *Slutzkin v FCT* (1977) 77 ATC 4076 and *Cridland v FCT* (1977) 77 ATC 4538.

21 *Australian*, 16 March 1994 at 1.

FCT[22] had just been handed down.[23] First impressions are that this decision on Part IVA, although against the Commissioner, has essentially kept intact the integrity of Part IVA as a general anti-avoidance measure. Further analysis of the High Court's judgment may well be instructive in gauging the extent of any risk to the revenue that could follow from any large-scale withdrawal of other anti-avoidance provisions.

A VISION OF THE RE-WRITTEN TAX LAW

This paper will now consider some of the analytical processes that are taking place as part of the project team's quest for a clear and concrete vision of how the re-written tax law should be constructed. The starting point is purpose. What is the writer's purpose in writing the tax law? What is the reader's purpose in reading it?

The writer's purpose

At its simplest, the purpose of writing a law is to tell people what to do and what not to do.

The reader's purpose

Once a law is enacted, there may be various reasons why someone might read it, including (possibly) idle curiosity. However, the main purpose is to find out what the reader (or some other person) needs to do to comply with the law.

Achieving the writer's purpose

Obviously, achieving the reader's purpose is essential to achieving the writer's purpose. This may in fact be all that is needed, because it is mostly readers who intend to comply with the law who will try to find out how to do so.

Achieving the reader's purpose

Achieving the reader's purpose is the basis for formulating what the re-written law is and then planning to achieve it. At a broad level, it is hoped that the reader will be able:

- to start at page one of the re-written law;
- to follow a path that takes him or her to exactly those provisions that are relevant to complying with his or her obligations;
- to know that he or she has found all the relevant provisions, and
- to understand and apply those provisions.

WHAT WE NEED TO KNOW IN ORDER TO ACHIEVE THE OBJECTIVE

Who is the reader?

In order to achieve this aim, ideally the writer needs to know quite a lot about the reader. Before the writer can begin to discover what he or she needs to know about the

22 (1993) 93 ATC 4104 (Federal Court).
23 *FCT v Peabody* (1994) 94 ATC 4663 (High Court).

reader, a *conscious choice* must be made about who the re-written law is aimed at. In other words every writer should make a choice about whom he or she is writing for. In the past, the choices in writing legislative provisions have been made by the drafters and have been *unconscious* choices. Looking at the existing tax law, it is probably fair to say that most of it has been written for the drafters themselves and for the technical experts within the Australian Taxation Office (ATO).[24]

The choice of audience for the re-written law should be undertaken within a conceptual and practical framework like the one that follows. For each area of the tax law, we need to identify the group whose behaviour we are seeking to influence. This may be called the *compliance group*. In discussing the compliance group, we need to remember that the tax law has to be complied with by *real people*, not companies, trusts and other legal fictions. The conceptual edifice of the tax law is so vast and intricate that we tend to forget that the law is actually about real people doing things in the real world.

It may seem fairly obvious why the compliance group has to be the starting point in this discussion. But it is worth looking at this more closely, because it is fundamental to tax law improvement and we need to be absolutely clear about it. If we decide not to write the law for the compliance group, we are effectively forcing the group to do one of the following:

- to take the risks associated with not knowing that they have obligations under the tax law or what exactly their obligations are; or
- to find out about their obligations in some other way, or pay someone else to do their complying for them.

The first of these outcomes reduces the effectiveness of compliance; the second may increase its costs to the compliance group. It follows that there must be good reason to justify not writing the law for the compliance group. In areas where there are such reasons, it is useful to distinguish between the compliance group and the *target group*, although they may sometimes overlap. The difference can be explained by taking the example of substantiation.

Early priority was given to re-writing the notoriously difficult substantiation rules that operate mainly in the context of claims for income tax deductions for work-related expenses and motor vehicle expenses. The re-writing of the substantiation rules gave the project opportunities to develop and test ideas for better drafting. For the purpose of re-writing these rules, the compliance group was seen to comprise three categories:

- PAYE taxpayers;
- individual taxpayers, and partnerships, who incur car expenses in the course of producing their assessable income; and
- individual taxpayers, and partnerships, who incur travel expenses in the course of producing their assessable income.

An early draft of the revised version was written with the intention of realising the needs of this compliance group and was a dramatic improvement on the existing

24 Tom Reid, the senior drafter on the Project Team, certainly admits that for the first five years or so of his own drafting career he judged his own and others' work solely by standards of excellence developed over the years in the Office of Parliamentary Counsel, without much regard to the needs of those who must comply with the law.

impenetrable law. However, it was soon appreciated that, for a number of important reasons, the draft would not achieve its purpose for the compliance group as a whole:

- The draft required reading comprehension skills equivalent to 12 years of primary and secondary schooling.
- Despite the great reduction in complexity and technicality, the draft required readers to have a basic familiarity with reading legislation.
- The draft could not be used by the compliance group as the sole reference document because other documents, such as regulations and tax determinations and rulings, contain information that taxpayers need in order to comply, but which is not appropriate for inclusion in primary legislation.
- The draft would ultimately be enacted as part of the re-written tax law. Although it is intended that this be considerably less bulky than the present law, it is unrealistic to expect many compliance group members to acquire the tax law for use in dealing with their tax affairs.

This assessment assisted the iterative process towards a better product because it presented a clear choice:

- to re-work the draft so that it would be useable and understandable for a much bigger part of the compliance group; or
- to choose a different target group and re-work the draft as necessary to meet the needs of that group.

The first option was unsuitable because it could only attempt to address the first two of the problems just identified. Also, re-writing the substantiation rules for a wider reading audience would have made the new version less suitable for the reader group who can be expected to make the greatest use of the re-written law: tax professionals.

For these reasons the first option was dismissed and attention was turned to finding an alternative relevant target group. The target group nominally chosen instead of the compliance group contains:

- an estimated 10 per cent of the compliance group;
- the great majority of tax agents and other tax professionals;
- officers in the ATO at and above a base level of inquiry staff who deal with the more straightforward tax issues;
- those who have a basic grasp of the structure and content of the income tax law and a reading and comprehension level in English of year 12 standard.

Most of this target group are tax professionals in some sense. It follows that, in re-writing the substantiation rules, it was necessary to focus mainly on the communication needs of tax professionals, not so much on those of their clients. It was also necessary to tell those tax professionals, in a way that is meaningful for them, what they have to do for their clients to comply with the tax law.

The factors determining the choice of target group for the substantiation re-write are likely to be relevant to many other areas of the tax law. This suggests that there may be relatively few areas of the re-written law where it will be feasible to adopt the compliance group as the target group. However, before a final decision is made about the target group for the substantiation rules or any other area of law to be re-written, we must not only look at the views and data available within the ATO, but also test the

views of the relevant compliance group and of others, such as tax professionals, whose interests are involved. This is an important aspect of the consultation process.

If the target group for an area of the law is not to be the compliance group, the reading needs of the target group are of primary importance to the writer. Even so, it remains appropriate for the law to be written *from the perspective of* the compliance group. In other words, while the text will be written for target group members, it will address them as if they were members of the compliance group. This has the benefit of forcing all readers of the law to consider its practical substance from the point of view of those on whom the obligations are actually imposed.

With this in mind, the substantiation re-write addresses the reader as "you". This device has contributed much to its accessibility. But clearly, it will not be suitable for all areas of the tax law (for example, provisions dealing with companies). Experience with the re-write has taught us that, when using "you", the writer must be careful not to fall into an over-familiar or patronising tone.

If a target group is chosen that is different from the compliance group, it is essential to articulate clearly how the compliance group will get the information it needs in order to comply with the law. It is also important to write from a clear understanding of what is to be the target group's role in relation to compliance by the compliance group. In the case of the substantiation rules, it is recognised that, even after the re-write is enacted, a very large section (possibly close to the current level of 70 per cent) of the compliance group will not do its own complying, but get tax professionals to do it for them. Those who wish to comply themselves must either read the text of the re-written law or rely on TAXpack, specialist information publications of the ATO, or commercially available tax publications.

It is expected that the simplicity and clarity of the substantiation re-write will make it easier and cheaper for the ATO to prepare its publications about substantiation. (These will further help the reader by incorporating information from the regulations and from determinations and rulings.) In particular, it will often be possible to quote directly from the re-written law, instead of translating or paraphrasing it. The task of commercial publishers will likewise be made easier.

There are other reader groups who must also be considered. These include the Parliament, which must decide whether or not to enact the re-draft and later changes to it, and the courts, who must resolve disputes about the application of an area of the law. Again taking as a guide the early experience with re-drafting the substantiation rules, it can be safely assumed that members of Parliament and their advisers will be within the 10 per cent of the compliance group which forms part of the target group.

Whether the re-write will satisfy the expectations of the courts is not so clear. It is hoped that courts will take account of the fact that the law has been re-written to meet the needs of the particular target group and will interpret the new version in a way that is consistent with that approach. Complementary techniques, such as the use of objects clauses and key principles, may be necessary to encourage the courts to apply purposive approaches to interpretation in appropriate cases.

Finding out about the reader

Once the target group has been chosen for an area of the law, the writer needs to become as aware as possible of how the members of that group experience the aspects of life dealt with by that area of the law. The writer needs information about:

- what is the standard terminology that the target group use in speaking about that aspect of life;
- how the target group fits compliance into their activities; and
- problems the target group has with compliance, especially problems arising from how the law is written or presented, or from the law's failure to give clear answers to practical questions involved in compliance.

The project team will be able to get relevant information on these issues from operational areas within the ATO that help with and monitor compliance. Bodies that represent target groups, and individual members of target groups, will also be consulted for their views on these questions, based on their practical experiences. Techniques for re-writing the law must be closely based on data about the target group's experience of the law. Early re-drafts that use these techniques will only represent an educated guess about how to make it easier for the target group to understand the law and apply it.

In the case of the substantiation re-write, our guess was also informed by the expertise of a leading communications consultant, Mr Tony Golsby-Smith. The Exposure Draft, released late in August 1994, was the outcome of an exhaustive process of re-thinking and re-writing that he undertook with the legislative drafters on the Project Team. His skills and efforts brought the draft much closer to realising the vision described in this paper.

However, the only way to be sure that particular re-writing techniques actually do contribute positively to readability and usability is by observing members of the target group using the re-written law. From this we can learn what works and what does not, and modify our techniques to suit the evidence. The crucial principle is that the law should address the reader in a way that is relevant to the reader's experience. The reader's obligations arise from that experience, so it should in principle be possible to describe those obligations using concepts and language that are familiar to the reader. For this purpose, the part of the Exposure Draft Bill that dealt with calculating deductions for car expenses was subjected to document testing, along with two alternative versions of the same provisions.

The testing was carried out in Sydney and Canberra by Professors Richard Buchanan and Daniel Boyarski of the Department of Design, and Professor David Kaufer of the Department of English, at Carnegie-Mellon University, Pittsburgh, Pennsylvania. They used the "reading aloud" method, also known as protocol analysis. Eighteen subjects were tested, from a range of backgrounds. Most were from the target group, but a few were members of the wider compliance group.

The version of the re-written substantiation rules introduced into the Parliament at the end of 1994[25] reflects conclusions drawn from the document testing. This information will also be invaluable in reviewing plans and techniques for delivering

25 The Tax Law Improvement (Substantiation) Bill 1994 was introduced into the House of Representatives on 8 December 1994.

the full body of re-written tax law over the life of the project. Of course, the time and resource limits that apply to the Tax Law Improvement Project will prevent us testing the whole, or even the greater part, of the re-written tax law. Careful choices will need to be made about the areas of law where most benefit can be gained from document testing. All re-drafts will, however, be exposed to public consultation.

Because the substantiation rules are quite a controversial area of the law, some subjectivity was inevitable in the public commentaries on the proposed changes. However, we are pleased that most commentators have taken the opportunity to provide comments that will assist us in analysing and improving on this first step to clearer tax law.