Two Legislations versus Two Acts: A model for Australian income tax

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This paper considers the proposal to separate personal (individual) and business (corporate) taxation into two separately distinct legislations.

For the last 17/18 years Australia's single income tax legislation, covering both individuals and businesses, has been contained in two Acts. While they do not overlap, they also do not sit comfortably together. As it is unlikely that the tax law improvement program will ever be completed, this dual-Act system could be permanently entrenched in the Australian tax landscape.

Australia also has two methods of assigning tax liability: flow-through and entity taxation. Unlike the two-Act system, this is not unique to Australia. But even older than the two-Act system is a debate which has never been adequately resolved: that of taxing trusts like companies. That is, on an entity rather than flow-through basis. While neither of these (liability assignment and the unresolved debate) are the focus of this paper, reference to them is inevitable. They are therefore outlined as part of the current situation.

This paper then analyses the different types of income tax models used by other countries. Of particular mention is the model whereby individual and corporate income taxes are contained in two separately distinct legislations. The advantages and disadvantages of this model are assessed. Special reference is made to tax design principles. The efficiency principle of tax design states that the tax system should raise revenue in a way that minimises the effect of the tax system on business decisions. That is, the tax system should not be the cause of distorting investment and production decisions. Similarly, the equity principle requires there be no discrimination between taxpayers in the same or similar situation. In addition, the tax system needs to be as simple and as certain as possible without compromising its integrity.

The paper then considers the various types of business entities and how they could be classified in a dual-legislation environment. It does not, however, purport to recommend how business structures should be classified. It is envisaged that this will be the subject of further research with comparisons to other international jurisdictions.

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