



THE TAX INSTITUTE
THE MARK OF EXPERTISE



Law Council
OF AUSTRALIA

Business Law Section

7 August 2013

Mr Andrew Johnston
National ADR Manager
Legal Services Branch
Australian Taxation Office

By Email: DRSub-committee@ato.gov.au

Dear Andrew,

Corporate Management Practice Statement *PS CM 2013/02: Information pro-disclosure*

The Tax Institute and the Business Law Section of the Law Council of Australia (**Joint Bodies**) are pleased to have the opportunity to provide comments on Corporate Management Practice Statement *PS CM 2013/02: Information pro-disclosure* (**PS CM 2013/02**).

The Joint Bodies support the principles that underpin PS CM 2013/02, namely, the promotion of community understanding about the administration of the tax and superannuation system and why particular ATO decisions are made.¹ The Joint Bodies also acknowledge and welcome the ATO's commitment to the principles of open public sector information and pro-disclosure practices.²

Notwithstanding the above, if one of the purposes of PS CM 2013/2 is to encourage and promote informal sharing of information with taxpayers and their advisers, for example, through the use of mechanisms such as administrative release, then the Joint Bodies believe that PS CM 2013/02 in its current form fails to achieve this purpose.

PS CM 2013/2 lacks the necessary level of detail concerning the procedures and processes that are to be followed by ATO personnel when dealing with informal information requests that may be received by the ATO outside of the formal processes provided by the *Freedom of Information Act 1982* (**FOI Act**). PS CM 2013/2 provides no specific guidance as to the timeframes for the consideration or processing of any such informal requests, nor does it provide any clarity around the criteria under which informal requests are to be considered. Paragraph 21 of PS CM 2013/02 provides that where ATO personnel conclude that the disclosure of information may be contrary to

¹ PS CM 2013/02, paragraph 2.

² *ibid*, paragraphs 10 and 14.

the public interest, they are to consider the application of the exemption provisions within the FOI Act. No specific guidance is given concerning circumstances where the release information which is the subject of an informal request should be considered contrary to the public interest.

Further, the reversion to the exemption provisions of the FOI Act seems inconsistent with the ATO's desire to encourage and promote informal information sharing. If the immediate fall-back for an informal request is a consideration of the request by reference to the provisions of the FOI Act, then it is difficult to understand what is achieved by making an informal request compared with formal FOI Act applications.

If you would like to discuss any of the above, please contact Tax Counsel Stephanie Caredes on 02 8223 0059 for The Tax Institute and Mark Friezer on 02 9353 4227 for the Business Law Section of the Law Council of Australia.

Yours sincerely

Handwritten signature of Michael Flynn in black ink, consisting of the letters 'M. Flynn' followed by a long horizontal flourish.

Michael Flynn
Vice President
The Tax Institute

Handwritten signature of Frank O'Loughlin in blue ink, featuring a stylized, cursive script.

Frank O'Loughlin
Chairman
Business Law Section
Law Council of Australia