



Taxation by stealth

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Photo: Glenn Campbell.

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As I write this piece we've just come out of our own 'Black Wednesday' – the day the power went out on Darwin and caused the city to come to a standstill. It is truly astounding how much we rely on our power supply and makes me wonder how prepared our city is for the aftermath of a cyclone, which could see power taking several days, rather than hours, to be restored.

Whatever the reasons for the fiscal failure, the present government is on a mission to bolster revenue and here's where it gets interesting. The government has said very clearly to date that it does not intend raising tax rates or introducing new taxes. So, what else can it do to bring in money? It seems that the government is resorting to taxation by stealth.

When it comes to taxation laws, 80 to 90 per cent of taxation matters are not contentious. In other words, you know you've got to pay tax and so there's no real argument. But there are about 10 to 20 per cent of taxation matters where there are good arguments as to whether tax is payable. What seems to be happening lately is that the government, in an attempt to raise more revenue, is aggressively going after this extra 10 to 20 per cent. And I mean aggressively. As a tax lawyer I can take a step back and look at a transaction and say: "Well, this transaction shouldn't be taxable, but there is a technical argument that it could be." Since about July last year, the government seems to be taking the technical view more often than not and this is resulting in taxpayers being exposed to additional stamp duty and, in some cases, double stamp duty. In other cases, payroll tax is being

applied to the maximum extent possible under laws that allow the government to take a very broad view of what arrangements can be subject to tax, rather than taking a pragmatic view of what is fair.

Now some would argue that tax is tax and it doesn't matter what is fair. That argument reminds me of a saying from the late Bill Herd, my equity lecturer at law school, who said: "Equity is the oil that keeps the engine of common law functioning." Applying this wisdom to taxation; you can take the heavy handed approach to taxation or you can take a pragmatic approach. A heavy handed approach may increase revenue but it comes at a cost. In this case, the cost to the Territory of taxation by stealth is that it makes doing business in the Territory more expensive because businesses are paying more tax than they expect to and they are spending more money on professionals, such as accountants and lawyers, to argue with the taxman. In short, it makes the business sector pensive about investing in the Territory. So while the government may consider it has been smart in raising revenue, the negative effects on business and the Territory economy could well outweigh the government's better fiscal result. Something to ponder... ●

Talking about power, the CLP government has been in power for more than a year and a half. In that time, it has become apparent to Territorians that the public coffers are empty. We are told that the state of our finances is dire and that this is all the fault of the previous government whose spending patterns matched that of a drunken sailor. Without wishing to sound partisan, I for one warned the previous government for many years that the GST "rivers of gold" were going to dry up one day and that their spending on public service employment was unsustainable.

