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Small business entity tax concessions: Through the eyes of the practitioner

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Abstract
Australia's small business sector has pursued often-competing imperatives of simplicity, equity and efficiency in the income tax regime (particularly focusing on the notion of simplicity) over the last decade. In 2001, there was an attempt to provide such simplification and reduce the compliance burden faced by Australian small businesses through the 'simplified tax system' ('*STS*'). However, despite amendments over the years, the regime is much criticised. This article explores how the STS (now known as the 'small business entity' regime or '*SBE*') is utilised from the perspective of tax practitioners, by analysing their recommendations to small business clients in respect of the regime. The results indicate that practitioners believe the regime did nothing to simplify the tax system for small businesses or reduce tax compliance costs. Indeed, the practitioners believed that the introduction of small business concessions had actually achieved the opposite result — it had increased tax compliance costs for their small business clients. However, tax practitioners still recommend the regime highly because it minimises their client's tax liability.

Keywords
small business, income, tax, STS, SBE, concessions, liability

SMALL BUSINESS ENTITY TAX CONCESSIONS: THROUGH THE EYES OF THE PRACTITIONER*

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Australia's small business sector has pursued often-competing imperatives of simplicity, equity and efficiency in the income tax regime (particularly focusing on the notion of simplicity) over the last decade. In 2001, there was an attempt to provide such simplification and reduce the compliance burden faced by Australian small businesses through the 'simplified tax system' ('*STS*'). However, despite amendments over the years, the regime is much criticised. This article explores how the STS (now known as the 'small business entity' regime or '*SBE*') is utilised from the perspective of tax practitioners, by analysing their recommendations to small business clients in respect of the regime. The results indicate that practitioners believe the regime did nothing to simplify the tax system for small businesses or reduce tax compliance costs. Indeed, the practitioners believed that the introduction of small business concessions had actually achieved the opposite result — it had increased tax compliance costs for their small business clients. However, tax practitioners still recommend the regime highly because it minimises their client's tax liability.

1 Introduction

Small businesses account for a sizeable portion of the Australian economy. It is estimated that Australia's two million small businesses are valued at around $1.5 trillion.[1] The same ABS report found that these businesses, with a turnover of less than $2 million per annum apiece, make up more than 97% of all businesses in Australia.[2] Furthermore, a recent report headed by Victoria University found that small businesses employ more than five million Australians.[3] The small business sector plays such an important role that the former Prime Minister of Australia, John Howard, referred to it as the 'engine room of the Australian economy'.[4]

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1 Australian Bureau of Statistics, *Counts of Australian Businesses, Including Entries and Exits: June 2007 to June 2009* (21 October 2010) <http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/4B1441D347457CF6CA2577C2000F0A05/$File/81650_jun%202007%20to%20jun%202009.pdf>.

2 Ibid.

3 Michael Adams et al, *Developing a Responsive Regulatory System for Australia's Small Corporations: Governance for Small Business*, (Governance Research Program, Victoria University, 2011).

4 John Howard, *More Time for Business* (Statement by the Prime Minister, Australian Government Publishing Service, 1997) iii.

Small businesses are largely unable to achieve the economies of scale benefits of their larger counterparts. Due to the importance of small businesses, though, governments often attempt to reduce such scale problems. For example, in Australia in 2001, the STS was introduced to provide eligible small businesses with the option of adopting a range of tax measures designed to 'simplify' their tax affairs whilst, at the same time, reducing their tax compliance costs. Ultimately, a low take-up rate and accompanying criticisms led to the 2007 remodelled and rebadged concessionary regime known as the SBE regime. The SBE regime likewise attempted to simplify the tax system, provide greater equity, and reduce the tax compliance burden of small businesses.

The current SBE regime is comprised of a number of components generally contained in s 328 of the *Income Tax Assessment Act 1997* (Cth) ('*ITAA97*') (a provision that had initially been introduced on 1 July 2001 as part of the original STS). This section contains the 'core concessions' of the SBE regime. However, there are also other divisions (and Acts) that contribute to the scheme. For example, small business capital gains tax ('*CGT*') concessions are contained in s 152 of the ITAA97. The optional goods and services tax ('*GST*') 'accounting on a cash basis' provisions[5] are likewise designed to meet the criteria of simplicity and equity.

Unfortunately, the literature analysing these concessions suggests that the SBE regime (like the STS before it) fails to achieve such simplicity. This article, using a pilot study, investigates this criticism by exploring the experience of tax practitioners in relation to small business concessions. Given the Australian Federal Government's objectives in introducing the SBE were tax simplification and reduced compliance costs, the study:

1) Determines the extent to which the SBE concessions are being adopted by tax practitioners on behalf of their clients;
2) Gains an understanding as to which individual SBE concessions are most favoured by practitioners;
3) Determines the primary motivation behind any recommendations of particular SBE concessions to small business clients; and
4) Canvasses the opinions of practitioners about the impact of the SBE concessions on tax compliance costs.

The article concludes that the survey results indicate that the SBE concessions fail to achieve their stated goals of simplicity and reduced tax compliance. Moreover, the study reveals that the intention of the legislators and the role of the tax practitioner are inconsistent — where the legislature believes that small businesses will value reduced compliance costs, tax practitioners place more of an emphasis on the value of reducing tax liability through the concessions. It is revealed that adopting particular concessions had nothing to do with compliance costs savings and, in fact, the SBE concessions merely added another layer of complexity to an already lengthy and complex tax regime, which resulted in increased compliance costs for small business clients.

[5] See *A New Tax System (Goods and Services Tax) 2000* (Cth), ('*GST Act*'), s 29–40.

2 The Tax Regime for Small Businesses

The initial objective of the STS provisions was to offer eligible small businesses a new platform to deal with their tax. At the time of initial introduction of the STS in 2001, the amendments were estimated to reduce the income tax compliance burden of 95% of businesses[6] (including 99% of farming businesses).[7] The provisions applied to businesses with a turnover of less than $1 million per annum, although the eligibility test in relation to other (related) provisions differed.[8] Interestingly, while the Act introducing the amendments was entitled the 'Simplified Tax System'[9] (giving the STS its name), its purposes, as stated within the amendments themselves, were far broader than mere simplification. Specifically, the Act suggested that the new s 328 was designed to reduce tax, provide simpler rules, and reduce compliance costs.[10]

The original STS package allowed eligible small business the option of collectively adopting a package of four tax treatments, which comprised simplified depreciation rules, cash accounting for income tax purposes (instead of the accruals method), simplified trading stock rules, and the ability to claim an immediate tax deduction for pre-paid expenses. The choice to enter the STS was optional; however, by opting into the system, a small business was required to adopt all four concessions. At the time of its introduction, the Federal Government estimated that approximately 60% of eligible small businesses would elect to enter the STS.[11] However, subsequent data released by the Australian Taxation Office on 17 April 2003, revealed that only 14% of eligible business taxpayers had opted to enter the STS[12] (a statistic that increased to 27% for the 2005 tax year).[13]

Moreover, as previously stated, additional concessions for small business include CGT relief and GST 'accounting on a cash basis'. Although there were CGT reliefs available prior to 1999, the current regime was introduced via the *New Business Tax System (Capital Gains Tax) Bill 1999* (Cth), which took effect from 1 September 1999. These concessions involve four small business reliefs (a 15-year exemption; 50% active asset reduction; retirement exemption; and rollover relief). The 1999 amendments were designed to provide simplicity for small business and reduce compliance costs by rationalising and standardising the eligibility criteria for small business CGT concessions.[14] The GST regime likewise contains measures designed to achieve simplification and greater equity for small businesses, in the form of introducing a choice to account for GST on a cash basis.

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6 Revised Explanatory Memorandum, New Business Tax System (Simplified Tax System) Bill 2000 (Cth), 1.5.

7 Peter Costello, 'The New Business Tax System' (Press Release, No. 058, 21 September 1999).

8 For example, a separate test for determining eligibility for the CGT provisions applied.

9 *New Business Tax System (Simplified Tax System) Act 2001* (Cth).

10 ITAA97, s 328-50.

11 John Ralph et al, *Review of Business Taxation: A Tax System Redesigned* (Australian Government Publishing Service, 1999) <http://www.rbt.treasury.gov.au/publications/paper4/index.htm>.

12 Commonwealth of Australia, *Taxation Statistics 2001-02* (Australian Taxation Office, 2004) <http://www.ato.gov.au/content/downloads/2002taxstats.pdf>.

13 Commonwealth of Australia, *Taxation Statistics 2004-05* (Australian Taxation Office, 2007) <http://www.ato.gov.au/content/downloads/81183_2005taxstats.pdf>. This was the last set of published figures on the STS take-up rate and is based on taxpayer's 2005 tax returns.

14 Explanatory Memorandum, New Business Tax System (Capital Gains Tax) Bill 1999 (Cth), 1.6.

On 1 July 2007, primarily as a result of the low take-up rate, the STS provisions were re-labelled the SBE provisions. Although the main operative provisions contained in s 328 remained essentially the same, there were some significant amendments. Most significantly, the annual turnover threshold in the eligibility test increased from $1 million to $2 million per annum, thereby allowing more small businesses to access the concessions.[15] Another change was that under the revised SBE framework, small businesses were now allowed to 'pick and choose' which individual tax concessions they wanted to adopt, rather than be forced to adopt the entire package of concessions. Furthermore, with the rewrite of s 328, the number of concessions available to small businesses increased.

The four concessions of the STS (now SBE), the CGT reliefs and GST provisions (which together comprise the substantive small business concessions over the past decade), all aim to increase simplicity for qualifying small businesses. The study presented in this article therefore examines these six concessions in more detail.

3 Criticisms of the SBE Concessions

Traditional tax policy theory requires a tax regime to fulfil a number of different and often conflicting criteria to be assessed as 'good policy'. Equity, certainty, convenience, and economy are cited as the traditional benchmarks,[16] with different governments and regulatory bodies generally adopting these criteria in some form when implementing new provisions of a tax regime as well as evaluating tax regimes as a whole.[17] Most recently, the criteria adopted in Australia has been equity, efficiency, simplicity, sustainability, and policy consistency.[18] When the suite of STS packages was released in 2001, the stated objective was to improve simplicity and transparency and to reduce compliance costs for small businesses.[19] Other small business concessionary packages, such as CGT and GST, were consistent with this objective.

Contrary to the Federal Government's statements, the literature analysing the small business concessions argue that they do not meet the criteria of 'good tax policy'[20] (an argument previously made in this journal).[21] These claims are based on the potential for increased complexity and compliance costs within the regime. For example, in relation to the first

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15 The $2 million threshold, it was hoped, would reach 100,000 more small businesses than the lower threshold amount: Ed Charles, 'Simplifying the Small Business Tax System', *Australasian Business Intelligence* (online), 24 May 2007, <http://www.highbeam.com/doc/1G1-163910466.html>.

16 Adam Smith, *Inquiry into the Nature and Causes of the Wealth of Nations* (University of Chicago Press, first published 1776, 1976 ed).

17 For a further discussion on the criteria and their use, see, eg, Clinton Alley and Duncan Bentley, 'A Remodelling of Adam Smith's Tax Design Principles' (2005) 20(4) *Australian Tax Forum* 579; Taxation Review Committee, Commonwealth of Australia, *Full Report 31 January 1975* (1975); Commonwealth of Australia, *Australia's Future Tax System – Final Report*, Treasury Department (2010) <http://www.taxreview.treasury.gov.au> ('Final Report 2010').

18 Final Report 2010, above n 17.

19 Explanatory Memorandum, New Business Tax System (Simplified Tax System) Act 2001 (Cth), paras 8.15, 8.19.

20 For a history of the criticisms of the STS see Paul Kenny, 'Tax Accounting Concessions for Small Business Entities: One Small Step for Small Business' (2008) 3(2) *Journal of the Australasian Tax Teachers Association* 226.

21 See specifically, John Tretola, 'The Simplified Tax System - Has It Simplified Tax At All And, If So, Should It Be Extended?' (2007) 17(1) *Revenue Law Journal* 1 ('*Tretola 2007*').

claim of increased simplicity, it has been suggested that the decision to enter the concessionary regime increases complexity by requiring a detailed personalised assessment, thereby adding layers to an already cumbersome regime.[22] This assessment was time consuming and potentially costly, depending on whether professional advice was sought. The confusing description of the eligibility criteria, evidenced by the need for ATO clarification in subsequent Taxation Rulings,[23] compounded the issue.[24] This article explores practitioners' perspectives on this criticism — that the SBE regime (and associated concessions) was anything but simple.

Reduced compliance costs, the second of the claimed benefits of the concessionary regime, is another criterion that has come under scrutiny.[25] The introduction of the STS reforms in 2001 was seen as a deliberate attempt by the Federal Government to address the increasing tax compliance cost burden faced by small businesses (particularly with the introduction of the GST on 1 July 2000) and provide some avenues of relief. In trying to sell the STS, the Federal Treasurer issued a special Press Release that promoted the STS due to its compliance cost benefits.[26] However, despite repeated claims that the introduction of the STS would reduce compliance costs faced by small businesses, literature published soon after its release concluded otherwise.[27]

Some scholars even analyse taxpayers' perceptions of the concessions.[28] Take the above issue of tax compliance costs. It is true that all businesses face costs in complying with the various taxation laws and regulations. Empirical studies reveal that, in fact, tax compliance costs are highly regressive in nature, meaning that small businesses bear a higher disproportionate share of tax compliance costs compared to larger businesses.[29] In 1995, compliance costs faced by Australian small businesses with a turnover of $100,000 per annum was likely to be 25 times higher per $1,000 of turnover, compared to the compliance

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22 Ibid; Paul Kenny 'The 1999 Review of Business Taxation: Should We Fast Track Small Business Tax Reform' (2008) 18(1) *Revenue Law Journal* 1; John Tretola, 'Changing CGT Small Business Concessions – For Better or Worse?' (2009) 19(1) *Revenue Law Journal* 1.

23 Australian Taxation Office, *Simplified Tax System Eligibility — Grouping Rules*, TR 2002/6, 13 March 2002; Australian Taxation Office, *Simplified Tax System Eligibility —STS Average Turnover*, TR 2002/11, 26 June 2002.

24 Scholars point to the fact that the STS provisions spanned some 27½ pages in the legislation and the fact that the taxation rulings were 38 pages and 33 pages respectively: Tretola 2007, above n 21; Michael Dirkis and Brett Bondfield, 'The RBT ANTS Bite: Small Business the First Casualty' (2004) 19 *Australian Tax Forum* 107.

25 Compliance costs are defined as 'those costs incurred by taxpayers, or third parties such as businesses, in meeting the requirements laid upon them in complying with a given tax structure': Cedric Sandford et al, *Administrative and Compliance Costs of Taxation* (Fiscal Publications, 1989).

26 Peter Costello, 'Small Business and Primary Producers to Benefit from the New Tax System' (Press Release No. 59, 21 September 1999).

27 See, e.g., Tretola 2007, above n 21, 9: 'It is arguable, however, that many small businesses have found that the STS system has exactly the same compliance costs (or indeed more) than the existing system'. See also Brett Bondfield, 'If there is an Art to Taxation, The Simplified Tax System is a Dark Art' (2002) 17(3) *Australian Tax Forum* 327; Dirkis and Bondfield, above n 24, 45.

28 It is, of course, the perception of the concessions, rather than their legal effect, which is the focus of this study.

29 See, eg, Jeff Pope et al, *The Compliance Costs of Public Companies' Income Taxation in Australia* (Australian Tax Research Foundation, 1991); Dirkis and Bondfield, above n 24; Chris Evans et al, *A Report Into Taxpayer Costs of Compliance* (Commonwealth of Australia, 1997); Binh Tran-Nam et al, 'Tax Compliance Costs: Research Methodology and Empirical Evidence from Australia' (2000) 53(2) *National Tax Journal* 229-252; CPA Australia, *Record Keeping: Its Effect on Tax Compliance*, *Small Business Survey Program* (CPA Australia, 2005); Margaret McKerchar et al, *Scoping Study of Small Business Compliance Costs* (Board of Taxation 2006).

costs of a business with a turnover of $10 million.[30] Other researchers found that the difference in compliance costs between Australian small, medium and large businesses was significant, with large businesses having negative compliance costs after accounting for tax offsets; medium businesses had compliance costs of around 0.01% of total turnover and small businesses had compliance costs of around 2.5% of total turnover.[31] However, only researchers such as Lignier and Evans assessed the compliance burden on small businesses by surveying taxpayers. They concluded that, from the taxpayer's perspective, small business compliance costs had become worse.[32] These researchers further concluded that taxpayers were misinformed or did not understand the concessions, leading to a perception that the concessions were complex and potentially not worth the effort (although they noted that further research was needed).[33]

Clearly, although scholars have explored the effectiveness of the SBE concessions in terms of tax policy and through the taxpayer's perspective, none has yet examined the role of the tax practitioner. Furthermore, little is known about which individual SBE concessions are favoured (or recommended) by tax practitioners for their small business entity clients and the reasons why tax practitioners recommend particular SBE concessions for their clients.

As such, the purpose of this research was to undertake a pilot study to determine whether tax practitioners believe that the SBE concessions have achieved the purposes espoused by the Federal Government; namely, increased simplicity and a reduction in the tax compliance costs borne by small businesses. This study further attempts to determine the extent to which tax practitioners of SBE taxpayers are adopting individual concessions contained in the tax regime, and their motivations for doing so.

4 Methodology

The focus of this pilot study is primarily on 'why' particular SBE concessions are adopted. As such, the research was designed to address four broad questions:

1. To what extent do tax practitioners adopt (or recommend) the SBE tax concessions for their small business clients?
2. Which of the six significant individual SBE concessions are the most commonly adopted (or recommended) by tax practitioners?
3. Overall, what is the primary reason (or motivation) for adoption of the SBE concessions?
4. Based on their experience dealing with SBE clients, do tax practitioners believe that the small business concessions have met their stated objective of reducing tax compliance costs for their SBE clients or has it increased compliance costs?

Given the nature of the research questions, and the need to provide the foundation for future research, it was determined that the most appropriate methodological approach was

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30 Evans et al, above n 29, 81.

31 Binh Tran-Nam et al, above n 29.

32 Philip Lignier and Chris Evans, 'The Rise and Rise of Tax Compliance Costs for the Small Business Sector in Australia' (Paper presented at the 10th International Tax Administration Conference, Sydney, 2–3 April 2012) 61.

33 Ibid 30.

one that was qualitative in nature. In order to answer the four research questions, data was collected and analysed based on semi-structured interviews conducted with six tax practitioners working in small to medium-sized chartered accountancy practices within a CBD metropolitan area with an estimated total of 1,730 SBE clients.[34]

The use of semi-structured interviews was viewed as the most appropriate data collection technique to determine which SBE concessions practitioners adopted (or recommended) on behalf of their clients and the specific reasons behind their adoption (or non-adoption). Semi-structured interviews allowed for the use of open-ended questions and probing questions, which are more likely to produce in-depth answers.[35] Using a multiple case study approach, the data was analysed by content and thematic analysis to identify patterns which match across questions and themes identified. An overview of the participating tax practitioners and the firms they represent is summarised in Table 1 below, revealing also the aggregate turnover and representatives of client samples.

Table 1: Interview Participants

Interviewee Identification	*Position of Interviewee*	*Size of Firm (in Gross Revenue per annum))*	*Approximate Number of SBE Clients*
A	Business Services Manager	$10 million	300
B	Tax Manager	$10 million	1,000
C	Tax Partner	$750,000	150
D	Tax Partner	$1.2 million	30
E	Tax Partner	$3 million	150
F	Tax Manager	$20 million	100

All participants were qualified chartered accountants. Each practitioner was either a manager or partner of their firm, meaning that they were suitably qualified and had the appropriate level of experience to be able to answer questions and provide opinions on the SBE tax concessions contained in the tax regime.

The smallest firm had a turnover of only $750,000 per annum, with the largest firm having a turnover of approximately $20 million per annum. The variation in sizes of firms allowed any differences between the decisions of different sized firms to be identified, along with

[34] Given that Australia's 26,000 tax agents look after the tax affairs of more than 95% of business taxpayers, it was felt that tax practitioners were the party best placed to comment on adoption of the SBE tax concessions, as tax advisors were not only likely to be more familiar with the SBE tax concessions contained in s 328 but also the party more likely to determine whether it is in the client's best interests to adopt particular concessions.

[35] Cedric Sandford, 'Improving the Methodologies' in Cedric Sandford (ed), *Tax Compliance Costs Measurement and Policy*, (Fiscal Publications, 1995) 375–401.

similarities in decisions between similar sized firms. These firms' SBE clients came from a variety of backgrounds, ranging from professional service firms, retail, building and construction, financial services, waste management, primary production, manufacturing, graphic and web design businesses, and tourism and hospitality. No firm stated that one type of industry dominated their clientele. In other words, the SBE clients came from a broad cross-section of industries. Furthermore, the practitioners interviewed confirmed the most popular business structures for their small business clients were small proprietary companies and discretionary trusts. Partnerships were not common except in the professional services industry (e.g., doctors and dentists) and in primary production.

The interviews were conducted face-to-face at the offices of the tax practitioners during August 2011. The interview questions were developed using themes evident in the prior literature. Each interview was audiotaped using a digital tape recorder, with written consent being received from each respondent prior to starting the interview. The average length of each interview ranged from between 15 and 25 minutes. The first two interviews were treated as 'pilot' cases to ensure the wording of the questions was easily understandable and to allow for both inductive and deductive findings.[36] The changes made to the interview guide were minimal and as such, the findings were able to be included in the main analysis. In conducting the interviews, the number of questions asked was minimal; instead, the objective was to let the respondent provide long, information-rich answers with only minor prompts to keep the respondent on track.[37] Two researchers attended all interviews. Involving two researchers in the data collection provided a source of triangulation to confirm the accuracy of data interpretation.[38]

Shortly after the conclusion of each interview, the digital recording containing the interview was transcribed into an electronic text file. The transcription data was then tabulated in Microsoft EXCEL with the data sorted and coded according to the research questions and themes identified in the literature review and then analysed by the researcher by content and thematic analysis to identify patterns that match across cases.[39] The four-stage process developed by Boyatzis in thematic analysis, namely: sensing themes; doing it reliably; developing codes; and interpreting the information and themes in the context of a theory or conceptual knowledge, was adhered to in conducting this research.[40]

Given this is a pilot study, the major limitation related to the small number of participants. This did not allow data analysis at the sub-sample level to be conducted to produce significant results. Secondly, the tax practitioners interviewed worked in small to medium-sized chartered accountancy practices within the same CBD metropolitan area. This leaves

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[36] Chad Perry, 'Processes of a Case Study Methodology for Postgraduate Research in Marketing' (1998) 32(9/10) *European Journal of Marketing* 785; Robert K Yin, *Case Study Research: Design and Methods* (Sage Publications, 3rd ed, 2003).

[37] Steiner Kvale, *Doing Interviews* (Sage Publications, 2007).

[38] Yin, above n 36.

[39] Dilanthi Amaratunga and David Baldry, 'Case Study Methodology as a Means of Theory Building: Performance Measurement in Facilities Management Organisations' (2001) 50(3) *Work Study* 95; Perry, above n 36; Yin, above n 36.

[40] Richard E Boyatzis, *Transforming Qualitative Information: Thematic Analysis and Code Development* (Sage Publications, 1998).

the possibility that there may be little analytic generalisability outside of this area. However, there is no reason to believe that the views of these tax practitioners would be any different to the views of practitioners in other parts of Australia. Furthermore, the clients of the case firms were not based solely within the CBD and, given the sample size of clients to which the data pertains, the results, we believe, have sufficient reliability and validity for the purposes of this study.

5 Interview Results

The analysis of the interview results addresses each of the four broad questions stated above.

6 The Choice to Adopt the SBE Tax Concessions

Adoption of one or more SBE tax concessions contained in the tax regime is optional. In other words, small business taxpayers (and their tax advisors) can choose to adopt, or not adopt, one or more SBE concessions. The first question posed to each tax practitioner was whether the decision to adopt particular SBE concessions was that of the tax practitioners or the client. If the tax practitioner indicated that they made the decision on behalf of their client, a follow-up question was asked about whether this decision is explained or communicated to the client. Table 2 below provides a summary as to the responses of each of the interviewees.

Table 2: Who Recommends Adoption of the SBE Concessions?

Practitioner	*Tax Practitioner or Client?*	*Explained/Discussed with Client?*
A	Tax Practitioner	Yes
B	Tax Practitioner	Yes
C	Tax Practitioner	No
D	Tax Practitioner	Yes
E	Tax Practitioner	Yes
F	Tax Practitioner	Yes

All tax practitioners interviewed indicated that they were the party that made the recommendation as to whether one or more SBE tax concessions should be adopted by the client. The client generally has little direct involvement in the decision other than agreeing to it. Practitioners generally commented that it was necessary to explain to the clients the concessions available and why they were being recommended. Interviewees were asked to comment on their clients' knowledge of the SBE concessions. Not surprisingly, all practitioners indicated that their clients possessed little or no knowledge of the SBE tax concessions and this was the primary reason why tax practitioners ended up making the decision.

6.1 The SBE Tax Concessions Adopted

The second research question was aimed at determining which individual SBE concessions are the most commonly adopted (or recommended) by tax practitioners. Table 3 below provides a summary as to the responses of each of the interviewees when asked which particular concessions they recommend (or adopt) on behalf of their clients.

Table 3: Which SBE Concessions are Adopted?

SBE Concession	*A*	*B*	*C*	*D*	*E*	*F*
Simplified Depreciation Rules	√	√	√	√	√	
Simplified Trading Stock Rules						
Immediate Deduction for Prepaid Expenses	√	√	√	√	√	
Cash Accounting for Income Tax			√	√	√	
GST on a Cash Basis	√	√	√	√	√	√
CGT Small Business Concessions	√	√	√	√	√	√

6.1.1 Simplified Depreciation Method

Small business entities are able to take advantage of simplified depreciation rules pursuant to ss 328-170 to 328-257 of the ITAA97. The effect of allocating depreciating assets costing $1,000 or more into one of two pools is to effectively treat the pool as a single depreciating asset. This is a significant advantage of the SBE concessions, as it avoids the need to calculate depreciation on individual assets, which can each be depreciated at a multitude of various rates.[41] Another advantage of the using the simplified depreciation rules is that when an asset is acquired during the income year, instead of pro-rating the depreciation for the number of days from the date of purchase to 30 June, the depreciating asset is only depreciated at half the pool rate for that year. As such, there is no need for time apportionment. For these reasons, it has been argued that the simplified depreciation rules has assisted the process of tax simplification by reducing compliance costs associated with depreciating assets under the rules contained in Division 40 ITAA97.[42]

From a tax liability perspective, a small business will be better off electing to adopt the simplified depreciation rules if they have many depreciable assets that cost less than $1,000 (as they will be entitled to a 100% immediate deduction) and/or have depreciable assets which have a depreciation rate of less than 30%. For example, based on the effective lives of most items of office equipment such as desktop computers, filing cabinets, furniture and fittings, facsimile machines and photocopying machines) all have individual depreciation rates of less than 30% per annum. For non-SBE taxpayers, a motor vehicle used for business purposes is depreciated at 25% per annum. By electing to adopt the simplified depreciation rules, a small business taxpayer will benefit as they are effectively be able to claim a greater

[41] Tretola 2007, above n 21, 5.
[42] Ibid 10.

tax deduction for depreciation (e.g., 30%), thereby reducing their taxable income in earlier years.

As Table 3 indicates, five of the six tax practitioners interviewed adopted the simplified depreciation rules on behalf of their SBE clients. When asked why this particular SBE concession was being adopted for their clients, the practitioners responded by asserting that adoption of the simplified depreciation rules not only resulted in significant time savings (i.e., compliance cost reduction) but also that the accelerated depreciation rates achieved a greater depreciation tax deduction for their clients, and ultimately, a lower tax liability. These dual motivations were specifically mentioned by some of the practitioners, who commented that adoption of the simplified depreciation rules greatly reduced tax compliance costs. However, they also made specific mention that adoption of the simplified depreciation rules often resulted in a reduction in the overall tax liability to their clients. When asked as to nominate the primary reason for adoption of the simplified depreciation method (i.e., compliance cost savings v tax minimisation), practitioners focused on tax savings rather than compliance savings.

Overall, the simplified depreciation rules were adopted by practitioners from all but one of the firms included in this study. The two reasons provided by interviewees were compliance costs savings (in both time and costs) as well as an opportunity to depreciate assets for their SBE clients at depreciation rates greater than those provided to non-SBE taxpayers. This was seen by many as the chief reason as to whether or not to adopt the simplified depreciation regime.

6.1.2 Simplified Trading Stock Rules

Small business entities may elect to take advantage of simplified trading stock rules contained in ss 328-280 to 328-296 of the ITAA97. Essentially, where the difference between the value of opening stock and closing stock is less than $5,000 (as determined by a 'reasonable estimate'), a SBE is not required to value each item of trading stock on hand at the end of the income year or account for any change in the value of trading stock on hand. This means that the value of opening stock can be carried forward indefinitely until the value of closing stock exceeds the value of opening stock by more than $5,000. The aim of this provision is to prevent the need for a taxpayer to undertake a detailed annual stocktake or to account for changes in trading stock. However, an obvious problem with this apparent concession is that an annual stocktake (or at least an annual reasonable estimation) will still be required in order to determine the difference in the value of trading stock.[43]

As depicted in Table 3, none of the practitioners interviewed adopted the simplified trading rules on behalf of their clients leading to the tentative conclusion that none of the practitioners perceived any benefits in adopting the simplified trading stock rules. All commented that in order to determine whether the value of closing stock exceeded the value of opening stock by more than $5,000, a business was required to conduct a stocktake, which defeated the purpose and intent of the legislation. It is evident from statements provided by interviewees that the simplified trading stock concession is not seen as being relevant for small business clients.

[43] Kenny, above n 20, 249.

Despite that the stated objective of the concession was to alleviate the requirement for small business taxpayers to conduct an annual stocktake, practitioners took a different view for two main reasons.

Firstly, all practitioners interviewed saw an annual stocktake as a vital internal control mechanism that assists the client in determining exactly how much stock they had on hand at the end of each income year. These comments are supported by Kenny, who claimed that, despite the trading stock concessions, small business taxpayers would find it beneficial to still carry out a stocktake to monitor inventory losses due to theft, obsolescence and damage.[44] Kenny argued that a law allowing a business not to conduct a stocktake violated the tax principle of efficiency.[45] While efficiency is generally focused on avoiding distortions to economic activities,[46] it stands to reason that a law should not promote operational decisions that are detrimental to the successful operation of a business, which in essence is what this particular concession is doing.

Secondly, in order to take advantage of the concession, an entity was required to make a 'reasonable estimate' of its closing stock in order to determine whether the value of its closing stock was within $5,000 of its opening stock. In effect, this requirement made the closing stocktake mandatory.

6.1.3 Immediate Tax Deduction for Prepayments

Unlike non-SBE's, SBE taxpayers are entitled to an immediate tax deduction in respect of prepaid expenditure provided: the eligible service period is less than 12 months, and the eligible service period ends before the end of the income year following the year of expenditure. Several commentators have asserted that the prepayment concession afforded to small business entities is a major advantage over non-SBE taxpayers,[47] with Tretola arguing that this concession (along with the simplified depreciation concession) is the most significant SBE concession for small business entity taxpayers.[48] In fact, he advocates that these two concessions should be extended further to apply not only to SBE taxpayers but also to all business and non-business taxpayers.[49] However, as Bondfield asserts, the prepayment deduction is only advantageous if the business has available surplus funds at year-end to make the prepayment (e.g., rent) and it makes commercial sense to do so.[50]

As Table 3 outlines, five of the tax practitioners interviewed recommended the immediate deduction for prepayments to their SBE clients. The reasons given for this were to bring the deduction forward to an earlier income year, thereby assisting with tax minimisation as well as assisting with the businesses cash flow. The partitioners who recommended the immediate deduction believed that it was a generous concession, but also noted the limited ability to prepay many expenses. Overall, the findings indicate that while five firms

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44 Ibid 228.

45 Ibid.

46 Nicole Wilson-Rogers and Dale Pinto, 'A Matter of Principle? An Integrated Framework for the Review of Australian Taxes' (2009) 7(1) *eJournal of Tax Research* 78.

47 Tretola 2007, above n 21, 8; Kenny, above n 20, 240-241.

48 Tretola 2007, above n 21, 8.

49 Ibid 12-13.

50 Bondfield, above n 27, 327.

adopted the prepayment concessions on behalf of their small business clients, use of this particular concession was not widespread as originally expected. All but one of the practitioners interviewed believed that claiming the expense upfront as a tax deduction resulted in time and cost savings for the client, due to the fact that the item is claimed once upfront rather than being expensed each month over the eligible service period.

6.1.4 Income Tax on a Cash Basis

When the original STS package was introduced in 2001, small businesses were required to account for their income tax using a cash accounting method. From 1 July 2005, this provision was repealed such that a SBE can only continue using the cash basis of accounting for income tax provided they were using the cash accounting method prior to 30 June 2005. The major simplification of using the cash accounting system under the former STS was that debtors and creditors were largely ignored and work-in-progress was only taxed when realised. By adopting a cash basis for income tax purposes, taxpayers with a large debtors balance at year-end would effectively be able to defer the payment of tax on this amount until the following income year in which the money was collected. This has the dual effect of improving the business' cash flows, as tax payments are made when the client makes the payment, not when the tax invoice is issued. According to Table 3, half of the practitioners interviewed utilised this concession on behalf of their SBE clients, with those practitioners recognising the benefits applicable, particularly for new businesses.

One of the major criticisms of the STS cash accounting method was that the majority of SBEs used accrual accounting for tax purposes and making the cash accounting method mandatory increased compliance costs as the majority of businesses would have to keep two sets of accounts – one under accrual concepts and the other under cash concepts.[51] However, this argument fails to acknowledge the potential cash flow benefits that the cash accounting method can produce. Many new businesses struggle with maintaining adequate cash flows in their first few years and any tax concession that can help with the cash flows of small businesses by matching the payment of tax to when the cash flows are received benefits small businesses. As such, the Federal Government's decision to abolish the STS cash accounting method on 1 July 2005 may have been an overreaction. All practitioners believed that the re-introduction of the cash accounting method for small businesses would greatly benefit small businesses (particularly start-ups) because it would help them match their tax payments to their cash flows.

Overall, the findings indicate that practitioners were split over recommending the cash accounting method to their SBE clients. Interestingly, those tax practitioners who favoured the cash accounting method and who continued to recommend it for their SBE clients were the ones who were doing so before the change on 1 July 2005. The primary reasons for adoption of the cash accounting method was not so much to do with compliance cost savings or tax minimisation, but cash flow advantages. The practitioners who continued to adopt the cash accounting method did so because they saw it as beneficial in allowing SBEs to match their tax payments to the ATO when they received payment from their debtors.

[51] Kenny, above n 20; Geoff Shaw, 'Changing to the Simplified Tax System' *Taxpayer* (7 November 2005) 154; Tretola 2007, above n 21.

6.1.5 Accounting for GST on a Cash Basis

An entity that qualifies as a small business entity under s 328-110 ITAA97 can elect to account for their GST on a cash basis. Apart from other limited exceptions, all other entities are required to account for their GST on a non-cash (or accruals) basis. The ATO has reported that the cash attribution basis has been adopted by 74% of eligible small businesses.[52] Based on these statistics, it is not surprising that all practitioners interviewed had recommended that their SBE clients adopt the cash basis of accounting for GST purposes. The two main reasons given were that it provided cash flow benefits, particularly for businesses in the start-up phase and, second, it was particularly useful for those clients that had a high level of debtors.

Start-up businesses can often experience cash flow problems. New businesses typically spend significant amounts acquiring assets, such as furniture and fittings, computer equipment, attending to the fit-out of their premises, as well as incurring considerable expenses, such as rent, stationery and the purchase of trading stock (particularly for retail-based businesses). If these outlays are paid by registered businesses, the registered entity is able to claim back the input tax credits associated with these outlays. When asked which SBE concession was considered the most valuable, practitioners all conclude that it was the ability to account for GST on a cash basis.

The adoption of the GST cash attribution basis has significant cash flow advantages over the accruals attribution basis. The main benefit of using a cash attribution basis for GST purposes is that it effectively delays remittance of the GST by the registered business to the ATO until the customer pays the business, thereby improving the businesses cash flow. Second, some professional services firms such as accountants, solicitors, doctors, and architects often have high level of debtors and typically experience long lead times before the client pays their fees. The cash attribution basis is seen as advantageous to these entities as the GST is not required to be remitted to the ATO until the client pays the invoice.

However, a drawback with the cash basis for GST is that the entity is required to undertake regular GST reconciliations. This is because the amount of GST payable and GST receivable in the Balance Sheet are calculated under accrual concepts. If the entity adopts the cash basis of GST, then the client (or the tax practitioner) is required to perform a relatively detailed and time-consuming GST reconciliation effectively going from the accruals-based GST figures to a cash-based GST amount. Practitioners also highlighted this drawback.

6.1.6 The CGT Small Business Concessions

A small business entity that meets the basic conditions outlined in s 152-10 ITAA97 is entitled to a range of CGT concessions, which are contained in subdivisions 152B to 152E. The effect of these CGT concessions is that the capital gain arising from the sale of an active asset may be reduced by between 50% and 100%. However, unlike the other five SBE concessions, an SBE taxpayer does not make an election to apply these provisions. If the small business entity meets the basic conditions, CGT relief is available. For these reasons, tax practitioners will

[52] Michael D'Ascenzo, 'The Australian Approach to GST Administration' (Paper presented at GST Conference, New Zealand, 16 November 2006).

always utilise the CGT small business provisions contained in Division 152 ITAA97 when their small business client sells an active asset.

Not surprisingly, all tax practitioners interviewed utilised the CGT small business concessions on behalf of their clients. By applying these particular concessions, the tax practitioner may be able to reduce the capital gains tax liability arising on the sale of their client's business to $Nil. Given that one of the key roles of the tax practitioner is to structure their client's affairs so as to minimise their tax liability, it is not surprising that the CGT small business concessions are viewed by practitioners as one of the most significant SBE tax concessions, primarily because of their ability to minimise or reduce tax to nil.

The CGT small business concessions are regarded by many commentators as some of the most complex provisions in the *Income Tax Assessment Act*.[53] Whilst practitioners were eager to apply the CGT small business concessions, several mentioned that they found the provisions extremely complex and time consuming to navigate through, thus adding to the compliance costs for their clients (via higher accounting fees). Comments were made that 'the CGT concessions are definitely very popular, although they are a lot of work'. Another went on to state that it can cost their clients anywhere between $5,000 and $10,000 for their firm to determine whether they were eligible for the CGT small business concessions and to interpret the legislation and accompanying taxation rulings and taxation determinations.

Despite the complexity and inherent costs associated with using the CGT small business concessions, practitioners see this concession as the most valuable concession. This can be explained by the sheer size of the tax minimisation benefit that can be derived through using the CGT small business concessions, a point not lost on the practitioners interviewed. The results indicate that whilst the CGT small business concessions contained in Division 152 are regarded as complex, difficult to interpret and ultimately result in significant compliance costs for the client (due to higher accounting fees), the practitioners interviewed felt that the tax benefits that potentially flow to their clients by applying these concessions outweigh these compliance costs.

Extant literature has observed that the CGT small business concessions violate the tax policy of 'simplicity'.[54] As noted by all tax practitioners interviewed, they are often forced to spend considerable time determining if their client meets the basic conditions and are therefore eligible for one (or more) of the CGT concessions. This complexity present in the eligibility rules results in the clients facing increased accounting fees due to the amount of time spent by the practitioner in evaluating each concessions and determining which concession (or concessions) if any, the client falls within. As such, it is possible that where practitioners believe the availability of the concessions is borderline, clients may be advised that the costs

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[53] See, eg, Margaret McKerchar, Laura R Ingraham and Stewart Karlinsky, 'Tax Complexity and Small Business: A Comparison of the Perceptions of Tax Agents in the United States and Australia' (2005) 8 *Journal of Australian Taxation* 289; Chris Evans, 'Studying the Studies: An Overview of Recent Research into Taxation Operating Costs' (2003) 1(1) *eJournal of Tax Research* 64-92; Jeff Pope and Dongling Chen, *The Complicance Costs of Companies Income Tax in Australia* (Australian Tax Research Foundation, 1994); Cynthia Coleman and Chris Evans, 'Tax Compliance Issues for Small Business in Australia' in Neil Warren (ed), *Taxing Small Business: Developing Good Tax Policies for SMEs* (Australian Tax Research Foundation, 2003) 147-181.

[54] See, e.g., Kenny, above n 20.

incurred in researching the availability of the concessions and applying them to the client's situation may be too high to justify. This would mean that due to the inherent costs associated with the concessions' complexity, some eligible small businesses might not use the concessions, as they cannot afford the risk of bearing the costs without any associated benefits. This violates the 'equity' tax principle.

In conclusion, while the CGT concessions are seen to be of great benefit, the complexity of the eligibility rules is quite restricting and costly and is in need of an extensive review.

6.2 Primary Reasons Behind Adoption of the SBE Tax Concessions

The third research question attempted to ascertain the primary motivation as to why practitioners adopt particular SBE tax concessions on behalf of their clients. The reason that the STS, and subsequently, the SBE tax concessions were introduced was to assist in reducing the compliance cost burden faced by small businesses in meeting their tax obligations. However, because adoption of the SBE concessions are optional, it is also possible that tax practitioners see adoption of one or more concessions as an opportunistic way to minimise their clients taxation liability.

One of the key roles of a tax practitioner is to make choices permitted under the ITAA on behalf of their client to minimise the amount of tax payable by their clients. This is at the heart of effective tax planning and one of the key reasons why clients seek the services of tax practitioners — to structure their taxation affairs in a way that legally minimises the incidence of tax.

Each of the interviewees was asked the primary reason for adopting particular SBE concessions on behalf of their clients – compliance costs savings or tax minimisation. Table 4 below provides a summary as to the responses of each of the interviewees regarding the primary motivation for adopting the SBE concessions.

Table 4: Primary Motivation in Recommending the SBE Concessions

Primary Reason	*A*	*B*	*C*	*D*	*E*	*F*
Tax Minimisation	√	√	√		√	
Reduction in Compliance Costs						
Both are Equally Important				√		√

As the table above indicates, four of the tax practitioners interviewed nominated 'tax minimisation' as the primary motivation behind adoption of the SBE tax concessions to their clients. Two stated that the reason behind adoption was a combination of tax minimisation and a reduction in compliance costs. Interestingly, none of the tax practitioners interviewed nominated a reduction in compliance costs as the sole primary motivation behind adoption of the concessions.

The responses of the practitioners allow the tentative conclusion that despite the compliance costs savings that may arise from adoption of one or more SBE tax concessions, the

overriding reason for adoption is tax minimisation. Practitioners see the SBE tax concessions are another tax planning technique that can be used to reduce their client's overall tax liability. Despite the fact that the introduction of these tax concessions was seen as a way of greatly reducing the tax compliance cost burden on eligible small businesses, this did not seem to be the primary reason as to why tax practitioners adopted the concessions. When one practitioner was asked what his primary motivation was in adopting the SBE concessions on behalf of his clients, his response was 'tax minimisation, strangely enough. Is there another answer?'

The potential reduction of tax compliance costs was not seen as the main driver for tax practitioners to adopt the SBE concessions on behalf of their clients. Conversely, the opportunity to reduce the client's tax liability was the primary reason for adoption of these concessions. This provides support for the findings of McKerchar et al who found that while all small businesses incur compliance costs they are not a major issue for all small businesses.[55]

This finding potentially has important implications for policy makers and tax regulators. The introduction of small business concessions, particularly Division 328, was seen as a way of reducing the tax compliance costs faced by small businesses. The primary reason for its introduction was to allow small business entity taxpayers the choice of adopting one or more 'simplified' rules, which was an attempt to reduce their compliance cost burden. However, that view does not seem to be shared by the tax practitioners. Instead, they saw it as an opportunity to reduce their client's tax bill.

6.3 Have the SBE Concessions Resulted in a Reduction in Tax Compliance Costs?

The fourth research question was designed to canvass the opinion of the tax practitioners interviewed as to whether they believed that the small business entity tax concessions contained have reduced compliance costs for small businesses, as they were originally intended to do.

Each of the tax practitioners was asked for their opinion as to whether the SBE tax concessions had increased or decreased the compliance cost burden faced by small businesses. Table 5 below summarises their responses.

Table 5: The SBE Concessions – Impact on Compliance Costs

Impact on Compliance Costs	*A*	*B*	*C*	*D*	*E*	*F*
Have Increased	√	√	√	√	√	√
Have Decreased						
Have Stayed the Same – No Impact						

[55] Margaret McKerchar et al, above n 29.

As can be seen, all tax practitioners interviewed believed that the introduction of the small business entity tax concessions had the effect of increasing compliance costs for their small business clients. Practitioners believed that the increased costs stemmed from both the increased workload associated with the concessions and the need to educate clients on their options. However, those interviewed also believed that the tax savings outweighed the increased compliance costs to clients.

Based on these comments, the evidence suggests that tax practitioners believe that the introduction of the SBE tax concessions have actually increased tax compliance costs for small businesses, rather than reducing them. This contradicts the original policy intent of the STS legislation, which promised to reduce tax compliance costs faced by small businesses and supports the extant literature, which claimed that the introduction of the STS actually resulted in SBE's bearing additional compliance costs.[56] However, an interesting finding is that, despite the views held by all tax practitioners that the tax compliance costs had increased for their small business clients, all believed that the SBE tax concessions were worthwhile as the potential tax savings generated by adopting the concessions outweighed the additional compliance costs incurred. For this reason, all tax practitioners saw the SBE tax concessions as worthwhile (with the exception of the simplified trading stock rules).

Our results indicate that, overall, tax practitioners believe that adoption of the SBE tax concessions are worthwhile for their clients in that the benefits (via tax minimisation opportunities) outweigh the costs (compliance costs).

7 Conclusions

The results of this study indicate that the SBE concessions are being widely adopted. The most popular SBE concessions were the CGT small business reliefs and adoption of the cash basis for GST purposes, closely followed by the simplified depreciation rules and the immediate deduction for prepaid expenses. None of the tax practitioners interviewed adopted the simplified trading stock rules.

The research findings indicate that, while there is a perception that the SBE concessions are worthwhile, contrary to the primary policy intent of the legislation, the reasons behind adopting the concessions was the opportunity to minimise their clients' tax liability. Adopting particular concessions had nothing to do with compliance costs savings, but allowed tax practitioners the opportunity to engage in effective tax minimisation, thereby fulfilling the role of the tax practitioner in maximising the client's tax privileges.

Finally, all of the practitioners interviewed believed that the SBE regime did nothing to simplify the tax system for small businesses, and did not reduce their client's tax compliance costs. In fact, the practitioners believed that the introduction of small business concessions had actually achieved the opposite result – it had increased tax compliance costs for their small business clients. This finding provides evidence to suggest that the small business concessions have failed to achieve their primary objectives.

[56] Tretola 2007, above n 21; Bondfield, above n 27; Dirkis and Bondfield, above n 24.

Despite this, the practitioners interviewed believed that overall, the small business concessions were worthwhile in that the tax savings generated by adoption of one (or more) of the concessions outweighed the increased cost. They believed that the small business concessions were worth adopting as they resulted in a low tax liability for their small business clients. The findings of this study suggest that it may be more appropriate for the government to focus on *compensating* SBEs through tax savings, rather than writing legislation with the intent of reducing their compliance burden (and to that extent, this article supports other literature arguing the same thing).

More generally, this study reveals that current tax policy may misunderstand the role played by tax practitioners with respect to their clients. Despite the favoured approach of reducing compliance costs, and the focus of the literature on investigating whether or not this was achieved, this study reveals a large gap regarding how compliance costs impact upon decision-making. The evidence provided in this study suggests that the tax practitioner weighs up the issue of tax minimisation and compliance cost savings in making tax decisions (such as whether to adopt particular concessions) on behalf of their client. Ultimately, this choice comes down to a cost/benefit analysis – in other words, a decision is made to adopt a particular concession if the tax saving benefits outweigh the associated compliance costs. The issue of compliance costs may therefore be overrepresented in the literature.

The findings of this pilot study indicate that the views of tax practitioners and literature with a tax policy focus are consistent — these concessions do not appear to achieve either objective of simplicity or reduced compliance costs. However, further research is necessary to provide policy makers with useful insights into how tax practitioners potentially view the SBE tax concessions and how they apply them to their clients — the small businesses that the legislation was intended to benefit. This study only provides a basis for future research into the effectiveness of the concessions and potential improvements that can be made.