



Australian Government

The Treasury

TAX ADMINISTRATION — ASSESSMENT OF INDIRECT TAXES

SUMMARY OF CONSULTATION PROCESS

The Government announced on 12 May 2009 that it would implement 41 of the 46 recommendations of the Board of Taxation's report on its *Review of the Legal Framework for the Administration of the GST*. This included recommendations on the period of review (recommendation 19), self assessment (recommendation 21) and net amounts (recommendation 42).

These measures were included in the Indirect Tax Laws Amendment (Assessment) Bill 2012, which was introduced into Parliament on 29 February 2012.

Consultation process

Consultation on draft legislation was conducted between 18 January 2011 and 15 February 2011. Further consultation on revised draft legislation was conducted between 22 August 2011 and 20 September 2011. Consultation meetings were held in Canberra on 31 January 2011 and 24 June 2011. A total of 12 submissions were received in response to draft legislation, including three confidential submissions.

Public submissions can be viewed by clicking on the following links.

- [First exposure draft](#)
- [Revised exposure draft](#)

Summary of key issues

Key issues

In summary, the majority of the concerns or suggestions made during consultation on the draft legislation related to the policy underlying the legislation and the level of detail in the original draft explanatory memorandum.

Key concerns included the application of a set of generic provisions to indirect taxes, the commencement of the period of review, the potential for double taxation arising where the wrong entity lodges a return and the unregistered correct entity is later assessed, the removal of existing 'stop the clock' notices, the time limit on entitlements to input tax credits, the Commissioner's discretion to retain refunds and extensions to the period of review.

Suggestions adopted

Indefinite period of review

Submissions raised concerns that unregistered taxpayers would remain open to assessments for an indefinite period of time in a system where the period of review does not commence until a notice of assessment is issued. Stakeholders were concerned that taxpayers who made a genuine error in determining whether they should be registered for GST could be subject to assessments for tax periods going back indefinitely, whilst taxpayers who were registered would have the benefit of a four year period of review.

In response, amendments were made to the registration rules for GST to limit the Commissioner's ability to backdate a taxpayer's GST registration beyond four years, except in cases of fraud or evasion. The practical effect of this is that the Commissioner will not be able to assess taxpayers who genuinely believe they are not required to be registered, for tax periods going back more than four years. This change will also remove the potential for double taxation where the wrong entity lodges a return.

Registered taxpayers have an obligation to lodge a return, so it was considered appropriate that these taxpayers remain open to assessments for an indefinite period if they fail to lodge a return.

Taxpayers who do not lodge GST returns

Stakeholders were concerned that certain taxpayers who are not able to self assess would not have any finality if the Commissioner did not make an assessment for their liabilities or entitlements.

Changes were made to give taxpayers review rights under Part IVC of the *Taxation Administration Act 1953* (TAA 1953) if the Commissioner has not issued a notice of assessment within a set period of time.

Entitlements to input tax credits during the refreshed period of review

Submissions raised concerns that an input tax credit entitlement would not be available to a taxpayer if the Commissioner amended an assessment during the refreshed period of review to change the GST treatment of a supply (to which the input tax credit relates) from input taxed to taxable.

Input tax credit entitlements are available where they are taken into account in an assessment made within four years of the tax period to which the credits would have been attributable under subsections 29-10(1) and (2) of the GST Act. A new exception has been inserted to preserve a taxpayer's entitlement to an input tax credit for a creditable acquisition where the Commissioner amends an assessment to change the treatment of the supply that the acquisition relates to from input taxed to not input taxed. The exception allows a taxpayer to take the credit into account in an assessment (including an amended assessment), as long as the Commissioner is still able to amend the assessment for the subsection 29-10(1) and (2) tax period. An assessment includes any amended assessments for that tax period made during the period of review or refreshed period of review.

Changes were made to the explanatory memorandum to better explain the interaction between the time limits on credit entitlements and the refreshed period of review.

Characterisation of indirect taxes

Submissions raised concerns that by bringing the indirect taxes into the proposed assessment regime, the characterisation of indirect taxes will be changed from indirect to direct. Concerns were also raised about the effect an assessment-based system would have on the imposition of each indirect tax.

Changes were made to the explanatory memorandum to confirm that the introduction of an assessment-based system for indirect taxes does not affect the underlying imposition of each individual indirect tax. Instead, the provisions simply provide a mechanism for the administration and calculation of the amount a taxpayer is required to pay or entitled to be refunded.

Suggestions not adopted

Extension of the period of review

Submissions raised concerns that the Commissioner's ability to request a taxpayer to consent to an extension of the period of review could result in taxpayers either granting consent, or risk being given an amended assessment just before the end of the period of review. It was suggested that this provision be cascaded with a requirement that in cases where the taxpayer refused consent, the Commissioner would be forced to apply to the Federal Court for an extension before he or she would be able to issue an amended assessment.

Submissions further suggested that taxpayers should be given an equivalent right to request an extension of the period of review.

The concerns raised apply more broadly to the system of self assessment generally, and are currently being considered by the Inspector-General of Taxation in his *Review into improving the self assessment system*. In light of this review, it would be premature and inappropriate for any legislative change to pre-empt the Inspector-General's report, which is likely to be released in mid 2012.

Deemed notices of amended assessment

Submissions raised concerns that deeming certain applications for amendments to be a notice of amended assessment from the date an amendment is reflected in the running balance account would give rise to compliance costs as taxpayers would need to monitor the running balance account to be aware of when an amendment is made. It was suggested that the Commissioner be required to issue a notice of amended assessment for every amendment made.

The deeming of applications for amendments to be notices of amended assessment only applies to amendment requests made using a revised activity statement where the Commissioner allows the taxpayer's requested amendment in full. In all other cases, the Commissioner is required to issue a notice of amended assessment. This replicates the existing system and reduces compliance costs and the volume of paperwork taxpayers receive. The explanation in the explanatory memorandum was expanded to clarify this.

Private rulings

Submissions requested that the Commissioner's ability to amend an assessment outside the period of review to give effect to a private ruling applied for during the period of review be limited to only allow amendments giving effect to favourable rulings.

Such a limitation would be inconsistent with the income tax provisions. Further, the question of what would be considered 'favourable' to a taxpayer is difficult to determine and legislate, particularly in the case of indirect tax. It was considered that these concerns would be more appropriately addressed through the Commissioner's administration of the provision. Taxpayers dissatisfied with an amended assessment may object to the assessment under Part IVC of the TAA 1953.

Reopening assessments after period of review has ceased

Submissions indicated that an amendment under the refreshed period of review should give rise to the ability to amend a related particular in a separate assessment for which the period of review had ceased.

It was considered that allowing the re-opening of assessments beyond the period of review would result in a lack of certainty and finality for taxpayers, as well as a significant increase in compliance and administration costs for the Commissioner as some submissions suggested that, in practice, taxpayers could potentially lodge amendment requests for multiple assessments for multiple tax periods at a time.

As a number of submissions had stressed the need for certainty and finality, and in light of the likely significant increase in compliance and administration costs for the ATO to cater for a limited number of cases, it was not considered appropriate to allow past assessments to be re-opened beyond the period of review.

Commissioner's discretion to retain refunds

This provision has been removed from this measure. The Government is considering this issue separately following the decision of the Full Federal Court in *Commissioner of Taxation v Multiflex Pty Ltd* [2011] FCAFC 142.

Other issues

The draft legislation has been amended to clarify and address a number of technical issues identified during consultation. The explanatory memorandum has also been updated and expanded to include more detailed explanations of how the generic assessment provisions interact with specific indirect tax law provisions and additional examples.

Other issues raised during consultation, including a change to an annual assessment system, changing the nature of the 'net amount' and concerns about the implementation of other Board of Taxation recommendations, were not addressed as they are beyond the scope of the Government's decision for this measure.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Jenny Lin on (02) 6263 3865.

Thank you to all participants in the consultation process.