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The Treasury

TAX LOSS INCENTIVE FOR DESIGNATED INFRASTRUCTURE PROJECTS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 8 May 2012 that it would uplift project losses associated with designated infrastructure projects at the government bond rate and exempt those losses from the continuity of ownership test and the same business test, with effect from the date of Royal Assent of the enabling legislation.

This measure was included in Tax Laws Amendment (2013 Measures No. 2) Bill 2013: Tax loss incentives for designated infrastructure projects, which was introduced into Parliament on 29 May 2013.

Consultation process

Consultation on the Discussion Paper was conducted between 26 October 2011 and 9 December 2011. Ten submissions were received.

Consultation on the draft legislation was conducted between 18 April 2013 and 30 April 2013. Consultation meetings were held in Canberra on 29 and 30 April 2013. Four submissions were received.

Submissions can be viewed on the [Treasury website](#).

Summary of key issues

Key concerns raised by industry

The main concerns raised in the submissions relate to: the exclusion of consolidated groups from the measure, the definition and scope of a designated infrastructure project, extending the measure to bad debts, the commencement date and the activities that may be carried on by a designated infrastructure entity.

Response to key concerns raised by industry

Amendments were made to the Bill to address the concerns raised about the exclusion of consolidated groups.

In particular, amendments were made to allow a head company of a consolidated group to be a designated infrastructure project entity, provided it otherwise satisfies the criteria. Further minor amendments dealing with the exit and entry of entities into and out of consolidated groups were made to ensure that outcomes for consolidated groups were consistent with the policy intent of the measure.



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Amendments were made to ensure that the infrastructure project that was designated by the Infrastructure Coordinator could be updated from time to time, thus ensuring that a project could not inadvertently have its designation revoked as a result of a minor omission or change to the project.

The legislation is drafted in terms that are sufficiently broad to allow the Infrastructure Coordinator to include all activities that may be undertaken by an entity for the purposes of carrying on a designated infrastructure project. In addition, placing a list of specific activities in the legislation has risks that the application of the 'rule' would be compromised because of the omission of a category, or that a revenue risk would be created by a rule that was too broadly drafted. The problem of whether an activity is relevant to a particular project has largely been overcome by the amendment that allows the Infrastructure Coordinator to update the project designation. Consequently, no further amendment to the legislation is required.

Amendments were made to extend the exemption from the continuity of ownership test and same business test to bad debts as well as altering the commencement date to the date of proclamation.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Teresa Bostle on (02) 6263 3005.

Thank you to all participants in the consultation process.