



Australian Government

The Treasury

AMENDMENTS TO THE DIRECTOR PENALTY REGIME

SUMMARY OF CONSULTATION PROCESS

The Government announced in the 2011-12 Budget, confirming an election commitment of 8 August 2010, that it would amend the tax law to counter fraudulent phoenix activity.

This measure was included in Tax Laws Amendment (2011 Measures No. 8) Bill 2011 and the Pay As You Go Withholding Non-compliance Tax Bill 2011, which were introduced into Parliament on 12 October 2011.

The Government withdrew the measure from Parliament following recommendations by the House of Representatives Standing Committee on Economics that the Government conduct further consultation.

Consultation process

Consultation on an options paper was conducted between 14 November 2009 and 15 January 2010. 28 submissions were received.

Consultation on the draft legislation was conducted between 5 July 2011 and 1 August 2011. 12 submissions were received.

A Bill was introduced to Parliament in October 2012 and withdrawn in November 2012 so that the Government could undertake further consultation.

Confidential consultation was conducted with key affected stakeholders between January and March 2012.

Consultation on the second exposure draft legislation was conducted between 18 April 2012 and 2 May 2012.

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

Submissions on the first exposure draft legislation can be viewed on the [Treasury website](#).

The outcomes of the confidential consultation can be viewed on the [Treasury website](#).

Submissions on the second exposure draft legislation can be viewed on the [Treasury website](#).



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Summary of key issues

Consultation on the first exposure draft legislation

The key issues

In summary, the majority of the concerns or suggestions made during consultation on the first exposure draft legislation related to the policy underlying the legislation.

The majority of the submissions supported the amendments. Those that did not support the amendments generally based their view on the application of the amendments to directors of companies that are not engaging in fraudulent phoenix activities but have ‘inadvertently’ not met their obligations.

Some of the concerns about the changes were based on a misunderstanding of the current operation of the existing director penalty regime.

There was both support for, and opposition to, the extension of the director penalty regime to the superannuation guarantee charge. Some parties also suggested that the amendments should be expanded further to address non-payment of Goods and Services Tax and employee entitlements beyond the superannuation guarantee charge.

Response

Changes were made to the Explanatory Memorandum to better explain the operation of the existing director penalty regime and to better identify the changes that these amendments make.

The explanation of the targeting of the measures was also clarified in the Explanatory Memorandum.

Issues regarding the policy rationale for the changes and concerns about the operation of the existing director penalty regime were not addressed as they do not relate to the implementation of these amendments.

Consultation on the second exposure draft legislation

The key issues

The confidential consultation process led to four changes to the Bill that was introduced to Parliament. These were released as part of the second exposure draft legislation.

In summary, the majority of concerns made during consultation on this draft of the legislation related to the policy objectives of the legislation.



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Support for the measure was evenly split. Those that did not support the amendments generally based their view on the application of the amendments to directors of companies that are not engaging in fraudulent phoenix activities.

The changes to the Bill were considered by some to not go far enough in addressing initial concerns and by others as an unnecessary.

Response

The director penalty regime has always had application beyond phoenix operators. The amendments were never intended to be restricted to phoenix operators. They are intended to apply to phoenix operators but also more broadly. Changes were made to the Explanatory Memorandum to make this clearer.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Kate Preston on 02 6263 3116.

Thank you to all participants in the consultation process.