

Manager
Corporate Tax Unit
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

5 March 2012

shipping@treasury.gov.au

Dear Sir,

Submission on Exposure Draft - Tax Incentives for the Shipping Industry

Greenwoods & Freehills welcomes the opportunity to make a submission on the Exposure Draft *Tax Laws Amendment (Shipping Reform) Bill 2012* (the **Exposure Draft Bill**) and associated Explanatory Memorandum (**EM**) released by Treasury on 20 February 2012.

We recognise the need for reform in the Australian shipping industry and welcome the tax incentives proposed in the Exposure Draft Bill. In this submission, we outline the need for certain amendments to the EM to clarify what appears to be the clear intention of the Exposure Draft Bill in relation to the access to the income tax exemption and accelerated depreciation reforms provided in the Exposure Draft Bill.

We set out our comments in relation to the Exposure Draft Bill and EM below.

1 Rationale for reforms

In their joint media release of 20 February 2012, the Assistant Treasurer and the Minister for Infrastructure and Transport stated that the tax reforms provided in the Exposure Draft Bill are intended to "stimulate investment in Australian shipping and encourage Australian ownership of ships and ship operations". In this regard, we note that a number of tax incentives are provided in the Exposure Draft Bill.

Relevantly, the Exposure Draft Bill provides for, amongst others, certain income tax exemption and accelerated depreciation reforms. The rationale for the proposed income tax exemption reform is provided at paragraph 2.11 of the EM.

"A key goal of the income tax exemption is to attract existing vessels and newer vessels to be registered in Australia."

Similarly, the rationale for the proposed accelerated depreciation reform is provided at paragraph 3.5 of the EM.

"A key goal of the accelerated depreciation arrangements is to support owners of older vessels to reinvest in newer vessels."

Accordingly, it is clear from the wording of the EM that the proposed accelerated depreciation and income tax exemption reforms are intended to encourage both ship ownership and ship operations in Australia.

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2 Uncertainty in draft EM

The uncertainty in the EM as currently drafted relates to whether the proposed income tax exemption and accelerated depreciation incentives are both available in relation to a single vessel (where the owner and operator are two independent parties).

By way of example, the most common situation in which this could arise are where a financier acquires and leases a vessel to a shipping company (the vessel operator). In this situation, we understand that:

- two certifications can be issued in relation to the vessel (one to the owner and the other to the operator); and
- the financing lessor can claim the depreciation and the shipping operator can claim the income tax exemption.

We consider that the draft provisions are clear and reflect the fact that this is the case.

In particular, we refer to the proposed sub-section 40-102(4A) of the Exposure Draft Bill which clearly contemplates that an entity with a shipping certificate (the owner) can claim the accelerated depreciation unless an "associate" of the owner is deriving exempt income as a result of operating the vessel (and having the relevant certificate). As such, if the owner is leasing the vessel to a shipping company that is not related to the owner (i.e. it is not an "associate" of the owner) then the owner will be, prima facie, entitled to the accelerated depreciation.

Although we consider that this position is clear from the draft provisions we believe that it would be extremely useful if the EM could include some comments (perhaps by way of an example) which confirm that this is the case .

3 Suggested amendments to EM

Having regard to the seemingly clear intention of the Exposure Draft Bill to encourage both ship ownership and ship operations in Australia, we consider that the EM should be amended to clarify that:

- an eligible ship owner and eligible ship operator could both concurrently obtain their relevant certificates under the *Shipping Reform (Tax Incentives) Act 2012* in relation to a particular vessel; and
- in those circumstances, an eligible ship owner and eligible ship operator could concurrently obtain the accelerated depreciation and income tax exemption incentives respectively in relation to a particular vessel.

In this regard, it may also prove beneficial to include an example in the EM illustrating the above.

We would be pleased to discuss these issues further with you should you desire.

Yours sincerely


PP

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