



31 October 2013

The Manager
Resource Tax Unit
Indirect, Philanthropy and Resource Division
The Treasury
Langton Crescent
PARKES ACT 2600

Attention: James O'Toole

By email: MRRTRepeal@treasury.gov.au

Dear James

Exposure draft: *Minerals Resource Rent Tax Repeal and Other Measures Bill 2013*

The Institute of Chartered Accountants Australia (**the Institute**) welcomes the opportunity to comment on the exposure draft legislation (**ED**) and explanatory memorandum (**EM**) of the *Minerals Resource Rent Tax Repeal and Other Measures Bill 2013* that was released for consultation on 24 October 2013.

Tax policy aspects

The Institute accepts that the government had already decided and announced the policy intent of the proposed legislation prior to taking office, albeit that this occurred at different stages of the election campaign. Accordingly, this submission does not address the policies reflected in the ED and we look forward to the opportunity to re-visit the relevant tax policy issues when the government embarks upon its proposed tax reform process.

Our immediate focus is rather on the practical, implementation aspects of two of the income tax measures.

Schedule 2 - Repeal of the company loss carry back

As currently proposed, there is no loss carryback for any losses for the 2013/14 year even though the ED was released on 24 October 2013.

Tax practitioners have observed that this has detrimental effects where taxpayers have entered into transactions where the effect of the loss carry back in the current year has been 'locked in' prior to the release of the ED.

For example, this occurs where a tax consolidated group has acquired a joining entity with tax losses. Transactions that commenced before the ED was released have factored in the effect of the loss carry back rules in relation to transaction pricing. On joining the consolidated group, the joining entity would have completed a stub period tax return and its 2013/14 taxable income is now determinable. The proposed repeal from commencement of 2013/14 effectively penalises those parties which had based commercial transactions on the tax law that prevailed at the time, including the vendor loss carryback. That amounts to a retrospective law change.

The Institute submits that for companies which had undergone change of ownership and had joined consolidated groups before a trigger date, the losses prior to that joining should be capable of carryback. The trigger date for this purpose should be the 24 October 2013 ED release.

Customer Service Centre
1300 137 322

NSW
33 Erskine Street
Sydney NSW 2000

GPO Box 9985
Sydney NSW 2001
Phone 61 2 9290 1344
Fax 61 2 9262 1512

ACT
L10, 60 Marcus Clarke Street
Canberra ACT 2601

GPO Box 9985
Canberra ACT 2601
Phone 61 2 6122 6100
Fax 61 2 6122 6122

Qld
L32, 345 Queen Street,
Brisbane Qld 4000

GPO Box 9985
Brisbane Qld 4001
Phone 61 7 3233 6500
Fax 61 7 3233 6555

SA / NT
L29, 91 King William Street
Adelaide SA 5000

GPO Box 9985
Adelaide SA 5001
Phone 61 8 8113 5500
Fax 61 8 8231 1982

Vic / Tas
L3, 600 Bourke Street
Melbourne Vic 3000

GPO Box 9985
Melbourne Vic 3001
Phone 61 3 9641 7400
Fax 61 3 9670 3143

WA
L11, 2 Mill Street
Perth WA 6000

GPO Box 9985
Perth WA 6848
Phone 61 8 9420 0400
Fax 61 8 9321 5141

Schedules 3 and 4 - Small business instant asset write-off threshold and deductions for motor vehicles

The small business instant asset write-off threshold of \$6,500 will be reduced and the special deduction for motor vehicles will cease from 1 January 2014.

When introducing the legislation, the government should encourage the Australian Tax Office (ATO) to embark upon an education campaign which helps make small business taxpayers aware that to benefit from the current rules, the assets must be *first used for a taxable purpose or first installed ready for use, for a taxable purpose*, before 1 January 2014. Although the italicised expression is relatively well understood in tax circles, a small business owner could come unstuck if an eligible asset was purchased before 1 January 2014 but warehoused until required at a later date: refer [Taxation Determination TD 2007/5](#) for further guidance.

We also note that although the reduction/cessation of the small business concessions is planned to occur mid-year, many small business taxpayers may only consult advisers around the end of the income tax year. Again, this highlights the need for an education campaign.

Alternatively, consideration could be given to the use of a contract date approach in determining whether an eligible asset has been acquired before the 1 January 2014 deadline. The concept of a contract (i.e. offer and acceptance) is generally well understood although we acknowledge the problems that can arise where conditions in the agreement may or may not impact the creation of a contractual relationship.

If you have any questions regarding this submission, please contact me on 02 9290 5609.

Yours sincerely



Michael Croker
Head of Tax Policy
Institute of Chartered Accountants Australia