Murrumbidgee Irrigation Ltd
Growing opportunity - water and beyond.

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10 August 2012 Ref:

General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: SRWUIP@treasury.gov.au

Dear Sir

Tax Treatment of Water Infrastructure Improvement Payments

Murrumbidgee Irrigation Ltd (MI) is pleased to provide this submission in relation to the draft legislation and explanatory material for the tax treatment of water infrastructure improvement payments released by the Assistant Treasurer on 13 July 2012.

MI is very supportive of the tax changes that are proposed. These changes are viewed by MI as critical to progressing the upgrade of Australia's important water infrastructure.

MI has been anxiously waiting on these tax reforms in order to proceed with a planned $200m upgrade of its water infrastructure, which had stalled pending this legislative reform. Without these tax reforms the timing mismatch between when payments made under the Sustainable Rural Water Use and Infrastructure Program (SRWUIP) are taxed and when deductions are available, results in a significant tax cost for MI and those involved with MI in those programs. The removal of this tax impediment will greatly contribute to participation in the SRWUIP and the consequent efficiencies in water use through infrastructure improvements facilitated by the SRWUIP.

While MI is supportive of the tax changes proposed, it offers the following comments which it hopes will assist in improving the proposed reforms:

(1) The Treasury, in releasing the exposure draft of the legislation, also released:

(a) SRWUIP programs that will be included in the initial list of eligible SRWUIP programs; and

(b) SRWUIP programs that are under consideration for approval as eligible programs.

MI is pleased that one program under which it has received funding (namely, the New South Wales Private Irrigation Infrastructure Operators Program, Round 1) is confirmed as a program to be included in the initial published list of eligible programs.

However, MI is somewhat concerned that another program under which it is to receive significant funding (namely, the New South Wales Private Irrigation Infrastructure Operators Program, Round 2) is listed as being under consideration for inclusion in the initial published list of eligible programs.

Mi's entry into Round 2 of the New South Wales Irrigation Infrastructure Operators Program has been stalled until such time as tax certainty was able to be obtained by changes to the tax treatment. While the tax changes proposed will provide this certainty, MI will not be entering into Round 2 until such time as:

(a) the proposed legislation has been passed by the Federal Parliament; and

(b) Round 2 has been confirmed as being included in the published list of eligible programs.

MI understands that while the Government has little control over point (a) and whether this legislation will be passed by the Federal parliament, it is hoped that the Government will seek to expeditiously introduce the amending legislation into Parliament.

However, in relation to point (b), it is unclear as to what processes need to be completed in order for a program under consideration for inclusion in the published list of eligible programs to be confirmed as being included in that list. It would assist in this regard if there is greater transparency in the proposed legislation as to the criteria that are required to be satisfied in order for a program under consideration for inclusion in the published list of eligible programs to be confirmed as being included. In any event, MI expects that most of those who may receive funding under programs that are not confirmed as being on the list of eligible programs will follow Mi's example and simply wait until such time as that confirmation is forthcoming.

Although the draft legislation makes provision for the amendment of a taxpayer's assessment to give effect to an addition to the published list of eligible programs, this does little to allay the concern and adverse tax outcome risk if a program is not listed.

As stalling participation in such programs is not helpful to the progress of water infrastructure improvements, MI hopes that the process involved in confirming that a program is included in the list of eligible programs, can be expedited and made more transparent.

(2) A critical element of the definition of a "qualifying water infrastructure improvement payment" is that it be received from the Commonwealth. However, under many water infrastructure programs, funding is provided by the Commonwealth and also from a number of other sources, including State funding. This is acknowledged in the draft explanatory memorandum (at paragraphs 1.5 and 1.13).

If funding is provided by the Commonwealth and also from other sources, such as a state or territory government, and that other funding would have been subject to the same tax treatment and timing mismatch as if it had been received from the Commonwealth (in the absence of the proposed legislation applying) MI believes that a "qualifying water infrastructure improvement payment" should extend to those other sources of funding. MI can see no good reason for why there should be a difference in tax treatment depending on whether the payment is received from the Commonwealth or from another source - such as a state or territory government.

Further, if there is a water infrastructure program for which some of the funding qualifies as a "qualifying water infrastructure payment" and other of the funding does not, there is then a practical issue of tracing the funding that is not a "qualifying water infrastructure payment" in order to determine what that funding has been used for.

This is required in order to determine the basis of deductibility of that expenditure. In practice this could be a difficult exercise, for which no guidance has been provided in the draft legislation.

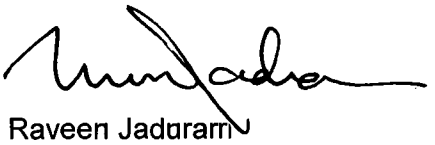
(3) The draft legislation provides that, in the event that the Commonwealth seeks to recover some or all of "qualifying water infrastructure improvement payment", that refunded payment will be treated as if it never was a qualifying payment. Accordingly, the tax relief afforded by the legislation would not apply in respect of that payment. The proposed legislation (in proposed section 59-80) would then allow the amendment of an assessment for the purpose of giving effect to that outcome if the amendment is made at any time during the period of four years after that event.

The circumstances where a refund may be required to be made to the Commonwealth of a "qualifying water infrastructure improvement payment" include situations where the refund is required to be made due to circumstances that may be out of the control of the recipient of those funds. In those circumstances, MI believes that if there is an amendment of an assessment, it would not be appropriate to impose interest and penalties in respect of amounts that, as a result, are included in the income of the recipient.

It is also unclear as to what the position would be if a program has a term longer than four years so that the provision for an amendment of an assessment does not apply in the event of a refund outside that four year period.

MI appreciates the opportunity of being able to provide comments on this important tax reform. It hopes that the comments provided in this letter will be taken into consideration as the drafting of the proposed legislation is progressed.

Yours faithfully



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