Manager
Individuals Tax Unit
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Good afternoon,

Submission on housing tax integrity – disallowing travel deductions and limiting depreciation deductions

Please keep my name and email address confidential.

The draft law and explanatory materials for the proposed changes to deny deductions for depreciating assets used in residential premises are not consistent with the budget announcement of the measure.

I draw your attention to page 31 of the Budget Paper No 2 2017-18. It states:

> These changes will apply on a prospective basis, with existing investments grandfathered. Plant and equipment forming part of residential investment properties as of 9 May 2017 (including contracts already entered into at 7:30PM (AEST) on 9 May 2017) will continue to give rise to deductions for depreciation until either the investor no longer owns the asset, or the asset reaches the end of its effective life.

The changes in the draft law in respect of assets which have been used for a non-taxable purpose prior to the budget announcement essentially have a retrospective effect and were not announced anywhere in the budget papers.

The draft law seeks to deny deductions for properties **acquired prior to the budget announcement**, but previously used for a non-taxable purpose. This is directly contrary to the budget announcement which stated “Plant and equipment forming part of residential investment properties as of 9 May 2017 (including contracts already entered into at 7:30PM (AEST) on 9 May 2017) will continue to give rise to deductions for depreciation”.

To provide an example, at 22 years of age Sarah purchased a property on 13 April 2014. Sarah lived in the property as her principle place of residence for 2 years. As a result of being made redundant and no longer being able to afford the mortgage on 13 April 2016 Sarah moved back in with her parents. Sarah has rented the property at arm’s length to a tenant from 14 April 2016 to current.

Under the laws at the time she commenced renting the property she was entitled to claim deductions for plant and equipment. The draft law changes seek to deny that deduction. Sarah commenced renting the property on the understanding that she would be able to claim deductions for plant and equipment. Nothing in the budget papers indicated an intention by the government to change that. In fact, after reading the budget papers Sarah would have felt comfortable that she would be able to continue to claim plant and equipment deductions for her property given the statement “Plant and equipment forming part of residential investment properties as of 9 May 2017 (including contracts already entered into at 7:30PM (AEST) on 9 May 2017) will continue to give rise to deductions”.

I strongly object to these unannounced changes being made in the draft law and feel the Australia public has not been made aware of these changes and in particular the government’s retrospective application of them.

I also submit that the proposed changes do not satisfy the policy intent mentioned in the EM. The EM discusses an issue of owners ‘refreshing’ the value of the asset when it commences being used for an income producing purpose. This is not a risk because under the current law the asset depreciates throughout the whole of the ownership period. When the property is used for a non-taxable purpose the depreciation is not deductible. When the asset is used for a taxable purpose the depreciation is deductible. As the owner needs to determine the opening value at the date of acquisition, not the date the property commenced being used for a taxable purpose, there is no risk in the owner ‘refreshing’ the value of the asset. These statements in the EM therefore seem to be incorrect or misleading.

I hope you take these views into account in considering the appropriateness of the amendments.

If government does intend to limit the deductibility of plant and equipment deductions for properties purchased prior to 9 May 2017 but used at some point for a non-taxable purpose the change should not be made retrospective. That is, the limitation should only apply if the non-taxable purpose occurs after the public was made aware of this intended law change. As it was not mentioned in the 2017-18 budget papers the earliest possible time this could be would be when the draft law was released, but I submit that it should not be prior to the law being enacted.

To conclude, it is unfair to restrict the deductibility of plant and equipment for properties purchased prior to 9 May 2017 but used at some point in time (for some people it may have been more than 20 years ago) for a non-taxable purpose. If a person owned a property which was being used for a taxable purpose at 9 May 2017 the deductibility of plant and equipment rules should not change. Not changing the rules for these people was clearly the intention of the parliament as published in the budget papers.

Regards,