



30 April 2012

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Dear Sir or Madam

SUBMISSION ON CHANGES TO INCOME TAX LEGISLATION

Please find attached, TPG's submission to the Exposure Draft to Tax Laws Amendment (2012 Measures 2 No. 2) Bill 2012: Consolidation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'S Banfield'.

STEPHEN BANFIELD
Chief Financial Officer

A handwritten signature in black ink, appearing to read 'A Moffatt'.

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TPG TELECOM LIMITED
SUBMISSION ON EXPOSURE DRAFT
Tax Laws Amendment (2012 Measures 2 No. 2) Bill 2012: Consolidation

TPG is an ASX Listed provider of telecommunications services and is a member of the ASX200.

TPG notes that the Government is proposing these changes to correct an error in the *Tax Laws Amendment Bill No 1 2010* that the Government passed in May 2010 (the “May Law”).

TPG identifies the following concerns with proposed amendments set out in the exposure draft:

1. The retrospective application of the change to the tax laws; and
2. The inconsistent approach to determining the start and end dates for the applicability of the Interim Rules.

A basic tenet of the rule of law is that citizens should be able to arrange their affairs having regard to the law that is in place from time to time without fear that the government will retrospectively change it, and in so doing, make a once legal act illegal.

The principle is simple: Australians should have advance warning of the laws with which they must comply and, once they comply with them, ought not retrospectively be penalised for doing so.

The Government clearly understands the principle. In the attachment to the media release issued by Mr Shorten in November 2011, the following goal appears:

“14. The transitional period changes will protect taxpayers who acted on the basis of the current law before the Board of Taxation review was announced.”

The Exposure Draft does not achieve the stated goal. The Interim Rules which are included for the purposes of “protecting taxpayers who acted on the basis of the current law” do not protect all such taxpayers.

The operation of the Interim Rules commences on 12 May 2010 (the date the May Law passed both houses of parliament) and ends on 30 March 2011 (the date the Government announced that it had asked the Board of Taxation to conduct a review of the effect of the May Law).

The rationale for the exemption period appears to be that taxpayers who made decisions between 12 May 2010 and 30 March 2011 did so on the basis of an effective law which was called into question after 30 March 2011.

The rationale for the end date of 30 March 2011 is that even though the law continued after 30 March 2011 (and continues today), taxpayers were aware from 30 March 2011 of the fact that the Government was considering changing the tax law.

The rationale for the start date of the Interim Rules is quite different. The start date is not the date on which taxpayers were made aware that the Government was considering changing the law. Rather the start date is the date the May Law actually passed both houses of parliament.

If taxpayers are required to arrange their affairs based on an announcement that the Government was undertaking a review, a more consistent approach to the Interim Period is required. TPG

submits that the Interim Rules should start when the Government introduced the May Laws into parliament (which occurred on 28 April 2009).

The impact on TPG of the proposed change to the tax laws arises primarily from its purchase of Pipe Networks Pty Ltd. TPG notes:

- TPG completed its acquisition of Pipe on 30 March 2010 – less than 2 months prior to the commencement of the Interim Period.
- TPG was aware from mid 2009 of the Government’s proposal to pass the May Laws and, throughout the course of the Pipe transaction, was anticipating the passing of that legislation.
- TPG did not and could not account for the acquisition of Pipe until July 2010, after the May Laws were passed.
- In doing its accounting for that acquisition, TPG was obliged to account on the basis of the May Laws. As such it did not create a Deferred Tax Liability provision as it would have done had the May Laws not been passed.
- TPG lodged tax returns for the 2010 and 2011 financial years and had those tax returns assessed based on the May Laws.
- As a result of the proposed change, TPG will be obliged to lodge amended tax returns for the 2010 and 2011 financial years and will be obliged to bring to account in its Income Statement for the 2012 financial year, a tax liability amounting to approximately \$23million. If the May Laws had not been introduced, TPG’s profit would not suffer the \$23million accounting charge as an appropriate tax liability would have been recognised at the time of the acquisition of Pipe.
- The \$23million hit will be reflected in TPG’s financial statements and prior year comparatives for years to come. International lenders and investors will find this abnormal hit concerning and it may rule TPG out of obtaining capital from those markets.
- Between May 2010 and March 2011, TPG conducted its business on the understanding that the May Laws would apply. It made capital investments and cash decisions on assumptions based on the May Laws. Retrospectively changing the May Laws has the effect of seriously undermining the business case decisions that TPG made based on the May Laws during that time.
- TPG is a significant competitor in the telecommunications market and has invested many millions of dollars installing infrastructure to provide benefit to Australian consumers with lower prices and innovative services. The proposed changes impact TPG’s ability to increase that investment.

TPG understands that the Government may wish to correct what it perceives to be imbalances caused by the errors in tax legislation from time to time, even mistakes of its own making.

However, to retrospectively apply changes that have such serious consequences for businesses that have done nothing more than to account accurately based on the law in place is unreasonable.

The proposed exemption which is designed to protect businesses that made decisions relying on the law in place, does not do so in TPG’s case. TPG believes that the Interim Period should apply in respect of acquisitions that completed between 28 April 2009 and 31 March 2011. Such a period would more accurately protect taxpayers who acted on the basis of the then current law.