THE TAX INSTITUTE

20 September 2011

Ms Brenda Berkeley
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The Treasury
Langton Crescent
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Email: GSTadministration@treasury.gov.au

Dear Ms Berkeley,

Tax Laws Amendment (2011 Measures No. 8) Bill 2011: Assessment of amounts under indirect tax laws

Thank you for the opportunity to provide comments on the above exposure draft legislation released on 22 August 2011 (***Exposure Draft***).

In our submissions of 15 February 2011, 23 June 2011 and 8 July 2011, The Tax Institute initially provided preliminary comments and, later, comprehensive feedback to Treasury in respect of its proposed implementation of the self-assessment regime for indirect taxes with reference to the exposure draft legislation that was released on 18 January 2011. Those submissions set out our views as to why the draft legislation would significantly curtail the rights of taxpayers and create unnecessary ambiguity in fundamental areas of indirect tax compliance and administration[1].

We are disappointed that our views and recommendations have not been reflected in the revised Exposure Draft. Significantly, we are concerned at Treasury's approach of incorporating measures from the income tax self-assessment regime that are either not suited to indirect taxes and or are already problematic in their application to income taxes. We have previously explained some of the reasons that there should be differences for indirect taxes[2]. We reiterate that Treasury needs to consider the differences between indirect taxes and income tax and not to pursue harmonisation for the sake of harmonisation. This is because the proposed measures affect taxpayer's rights and obligations and are not mere administrative provisions.

As you have once again invited feedback, we reiterate below the views expressed in our earlier submissions with additional comments, in the hope that they will be given further consideration. References to the GST Act are to the *A New Tax System (Goods and Services Tax) Act* 1999 and references to the TAA are to the *Taxation Administration Act* 1953.

[1] We note that the Institute of Chartered Accountants supported our views and made similar recommendations in its submission of 5 August 2011.
[2] See The Tax Institute's submission dated 8 July 2011 at paragraph 24.

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MAKING ASSESSMENTS

Commencement of Period of Review

We acknowledge the benefits of commencing a period of review from the date of lodgement of a return, rather than the due date for a return, as contemplated by the Exposure Draft. We agree that taxpayers *who are registered for GST* and who fail to lodge their returns, or who fail to lodge them on time, should not be given the advantages associated with a truncated review period.

However, we consider that it is an inappropriate outcome that taxpayers who are *not registered for GST*, on the basis that they do not consider that they are required to be registered[3], will face an unlimited period of review. A taxpayer in these circumstances may ultimately be subjected to a 10 or 20 year audit and, potentially, hundreds of assessments which, for practical purposes, may be near impossible to dispute.

The time limit on issuing amended assessments exists because Government acknowledges that, under a self-assessment system, whether or not a taxpayer has paid the correct amount of tax, it is important that their tax affairs for a particular year (or tax period) should become final, unless they have deliberately sought to evade their responsibilities or engaged in fraudulent activities. Why should this apply any less to a taxpayer who incorrectly applies the provisions that relate to the registration requirement than it does to a taxpayer that incorrectly applies any other provision of the GST Act? This is an entirely arbitrary outcome that simply arises from the fact that taxpayers who don't think they are required to be registered for GST do not, for obvious reasons, lodge GST returns.

If the Commissioner identifies such a taxpayer, is it not incumbent on him, under his duties of tax administration, to assess the taxpayer from the earlier of the introduction of the self-assessment regime (proposed to be 1 July 2012) or the first tax period in which the taxpayer was required to be registered? If an unlimited period of time to assess non-GST registered taxpayers had existed from the introduction of the GST Act, this could already give rise to in excess of 120 outstanding GST assessments.

We think it would be appropriate for Treasury to consider the costs that would be involved in for the Commissioner in reviewing the activities of a taxpayer over a decade, issuing 120 GST assessments and then defending 120 GST assessments in Part IVC proceedings. How are these costs likely to compare to the subsequent recovery of GST revenue from taxpayers?

How would most taxpayers cope with the resulting (potentially devastating) tax debt and interest charges that would be due and payable prior to the finalisation of any Part IVC proceedings, especially given that as the taxpayer took the view that it was not required to be registered, no amount of GST would have been collected from the recipients of its supplies over that period?

If a taxpayer disputes the position taken by the Commissioner, what are the costs likely to be in seeking to object to, review or appeal 120 GST assessments and how many taxpayers are likely to have sufficient resources with which to do so, regardless of the strength of their position? How many taxpayers would have kept sufficient records over a decade to discharge the burden of proof in demonstrating that 120 GST assessments are excessive?

We reiterate that these issues would not arise for a taxpayer who misunderstands a provision of the GST Act other than provisions relating to the requirement to register for GST. For example, a

[3] For example, on the basis that they do not consider the supplies they make to be connected with Australia for the purposes of s. 9-5 and s. 9-25 of the GST Act. Another common reason for non-registration for GST purposes is because the wrong taxpayer entity has been registered. This is more likely to arise with respect to indirect tax as compared to income tax, as more types of entities are taxpayers for indirect tax purposes eg. general law partnerships, fictional tax law partnerships and government entities.

taxpayer who never remits GST because it incorrectly believes that the supplies it makes are GST-free, but who is registered for GST and lodges nil returns or returns with negative net amounts, will have the benefit of the time limit on the issuing of assessments. We do not see how this distinction is justified and reiterate that this outcome is arbitrary, administratively problematic and unfairly onerous on taxpayers.

It is no answer to these concerns that the same position is taken in respect of income tax with respect to non-lodgers. First, assuming that this is an appropriate approach to take in the income tax context, there are, in this respect, fundamental differences between the income tax and indirect tax regimes. Income tax is a tax on the taxable income of a taxpayer and is intended to be borne by the taxpayer. The GST is (at least, ostensibly) a tax on private final consumption in Australia and in most cases, should be borne by end consumers. Second, while GST is taken to be embedded in the price of taxable supplies made by suppliers who are required to be registered, whether or not it is explicitly charged by the supplier, it is a practical reality that a taxpayer who knows that it is registered for GST and so registers, will invariably charge its customers an amount on account of GST. On the other hand, a taxpayer who takes the view that it is not required to be registered for GST will not necessarily seek to charge GST and will be forced to bear the burden of any shortfall. Third, there is no statutory right for a supplier to recover the GST from the recipient. It follows that although the GST is meant to be borne by end consumers, it is the suppliers that are accountable as taxpayers to the Commissioner for the collection and payment of the tax. Fourth, as noted above, the types of entities that are taxpayers for GST purposes is much broader than for income tax, so that, for example, a tax law partnership may genuinely make the mistake of not registering for GST whereas for income tax, the tax law partnership is not a taxpaying entity. A scenario could arise where the wrong entity has accounted for GST with no ability to recoup this from the Commissioner (because of the expiration of 4 years) but the Commissioner has unlimited time to assess the correct entity.[4]

We further note in this respect that in relation to business to business transactions, taxable supplies made by taxpayers who were required to be registered would often result in corresponding input tax credits being claimed by the recipients of those supplies. However, unlike the Commissioner, due to the operation of Division 93, the recipients of those supplies would not have the advantage of going back indefinitely and claiming the GST they (at the time, unknowingly) paid. This will result in significant windfall gains to the Commissioner in respect of transactions that would have otherwise been revenue neutral.

In addition to taxpayers who are not registered for GST, The Tax Institute also considers that the commencement of period of review may present issues (albeit less significant) for those taxpayers that are not registered nor required to be registered for GST and that choose not to submit a return for a period (see s. 58-55 of the GST Act). Should a taxpayer who legitimately decides to not submit a return which they consider to be a nil return be in a less certain position compared with a taxpayer that decides to submit a nil return? The obvious solution is for such taxpayers to always submit returns even in circumstances where the GST Act allows otherwise (thereby making those provisions redundant).

Finally, it makes policy sense for the Commissioner to also be certain of a limited time for the payment of any refunds for taxpayers that do not register for GST so that there is similarly no open-ended period. For example, an entity that has not registered but that decides to register retrospectively (subject to the Commissioner's approval), should similarly generally not be able to claim refunds for a period exceeding 4 years. In other words, the fact of non-registration for GST should not advantage taxpayers that might be able to claim refunds for a period of say 10 years.

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[4] Given this particular risk, The Tax Institute also submits that it is important to ensure the Government's proposed changes regarding tax law partnerships are implemented by the time of the commencement of the self assessment regime (refer Treasury's Second Consultation Paper on BOT's recommendations (September 2009)).

The proposed changes to Division 93 generally limit input tax credit claims to 4 years where an assessment has been made.

AMENDING ASSESSMENTS AND THE PERIOD OF REVIEW

Extension of Period of Review by the Commissioner

The Tax Institute has previously expressed concerns based on experiences in the income tax context with circumstances where the Commissioner seeks taxpayer consent for extending the period of review. As noted, a further concern is that the Commissioner may curtail the remainder of the audit process and issue an amended assessment if the process of obtaining consent from the taxpayer and or applying to the Federal Court becomes an obstacle or blocker to the Commissioner completing his review.

As there is no corresponding provision that allows the taxpayer to extend a review period in order to preserve its position, even with the consent of the Commissioner in appropriate circumstances, this is an entirely one-sided measure. This lack of symmetry is objectionable particularly as the current law provides for such equal treatment (refer ss. 105-50 and 105-55 of Schedule 1 to the TAA).

In our experience in the income tax context, it is the threat of an arbitrary amended assessment that motivates taxpayers to consent to an extension of the period of review. Indeed, on the few occasions where taxpayers have declined to give consent to the extension of a period, the Commissioner does, in our experience, issue amended assessments irrespective of whether the review process is complete and the taxpayer is then put to the cost of defending protective assessments that may have been inappropriately issued.

This is illustrated by the fact that, while s. 170(7) of the *Income Tax Assessment Act* 1936 (***ITAA 1936***) allows the Commissioner to request the Federal Court to make an order to extend a period of time to conduct a review, this provision has not once been utilised by the Commissioner (as separately corroborated in email correspondence provided by The Tax Institute to Treasury). It is implicit that in circumstances where the Commissioner has been unable to complete his review of the taxpayer's activities within the statutory time period, either the taxpayer has felt compelled to consent to an extension of time or a protective assessment has been issued by the Commissioner.

We do not consider that it is sufficient to say that the Commissioner must make a bona fide assessment. It is clear from cases such as *Commissioner of Taxation v Futuris Corporation Limited* (2008) 247 ALR 605, that short of "conscious maladministration" on the part of the Commissioner, challenges to the validity of assessments will not be available under s. 39B of the *Judiciary Act* 1903 on the basis that an assessment was not bona fide. This gives the Commissioner a very wide berth in which to issue assessments that do not reflect the true position of a taxpayer. Indeed, the very fact that the Commissioner has requested consent to extend a review period suggests that his understanding of the taxpayer's affairs is incomplete.

Relevantly, the problems with taxpayer consent are addressed in the Inspector-General of Taxation's *Report into the ATO's Large Business Risk Review and Audit Policies, Procedures and Practices* (***IGOT Report***) released by Assistant Treasurer Shorten on 7 September 2011 at paragraphs 8.71 to 8.75:

> "*8.72 Taxpayers and their advisers also expressed concern with the manner in which the ATO requests taxpayers for an extension of time to the amendment period. Taxpayers stated that they expect that the ATO will review their tax affairs within the statutory limitations (currently four years) timeframe contained in the law. They submitted that on some occasions the ATO*

has sought to extend this period but in a manner that created uncertainty and was, at times, unfair on the taxpayer.

8.73 Taxpayers submitted that in the ordinary course of dealing with the ATO when the four year timeframe is nearing, they must choose between granting an extension of the statutory review period and dealing with the ATO issuing protective assessments. In such instances, consenting to the extension request is seen as the only means of deterring the ATO from issuing an amended assessment. Taxpayers suggested that the latter option is least desirable, particularly as public companies are required to report disputed protective tax claims in their published accounts. For this reason very few ATO extension requests are refused by a public company. Currently, where the taxpayer has no practical alternative other than to grant the extension, the taxpayer must extend the amendment period for all issues, not just those identified in the audit.

8.74 In addition, taxpayers and their advisers submitted that the ATO does not show sufficient cause as to why it is necessary to extend the limitation period and does not consider the cause of the delay. This means that a taxpayer is forced to make a decision without full comprehension as to the causes for the delay, the appropriateness of the extension or the matters that will be reviewed if and when the taxpayer consents to the extension.

8.75 Taxpayers believe that as a matter of ATO practice and policy the approach to obtaining a taxpayer's consent should broadly mirror the requirements for a Federal Court order. Taxpayers also believe that the ATO should be precluded (by at least administrative policy) from issuing protective assessments unless the ATO has issued a position paper. Taxpayers were also mindful that in a different market risk segment situations may arise for the ATO where this approach may need to be differentiated from certain serious non-compliance situations where fraud or evasion may be present."

While the IGOT Report aimed to establish internal processes within the ATO, these comments are a clear demonstration to Treasury of the problematic nature of the consent provisions in the income tax context. We also call to Treasury's attention the fact that those criticisms were levelled in the large business sector. We note that smaller and medium enterprises are even more vulnerable. To the extent that the comments in the IGOT's Report are relevant, they should be taken into account by Treasury and should not be ignored for the purposes of the present reforms.

Further, it is insufficient for Treasury to deal with these issues by asserting in various explanations provided throughout consultation, including in the email dated 22 August 2011, that the objective of the reforms is to harmonise the indirect taxes self-assessment system with the income tax self-assessment system and that the consent provisions should be adopted for indirect taxes, accordingly. On that basis, presumably, when the income tax community consults on the generic self-assessment measures in the TAA including in the context of the proposed MRRT, they will be similarly advised that as the provisions have been adopted for indirect taxes, it is appropriate that they are retained for the purposes of 'harmonisation'. This is a vicious circle that does not lead to any improvements in the tax administration laws. Surely, regard must be paid to the identified shortcomings of the proposed provisions, the deficiencies of the provisions in the income tax context and the manner in which the approach could be improved to give rise to more appropriate outcomes? This, we assume, is the purpose of opening up the provisions for consultation and it is on this basis that we reiterate the following submissions.

When taxpayers feel compelled to 'consent' to an extension of the review period because of the threat that the Commissioner will issue a protective assessment, the result is a 4 year limit, not on the issuing of an amended assessment by the Commissioner, but on the commencement of a review or an audit by the Commissioner. This is confirmed by the proposed s.155-20(5) which requires only that the Commissioner has started to examine the taxpayer's affairs in order for consent to be sought. Examination is not defined in the TAA but the EM suggests that it includes

enquiries. We note that they are not necessarily enquiries of the taxpayer but it appears that they could be of third parties and also that such enquiries may in fact be unknown to the taxpayer that is being investigated. While The Tax Institute acknowledges a slight improvement in the terms of the proposed s. 155-20(5), the section is still, in our submission, deficient and problematic.

The Tax Institute reiterates that in order to better achieve the intention of the 4 year limited period of review, an alternative way of approaching the proposed amendments may be to frame the proposed amendments around when it will be expected that a taxpayer should consent to an extension of the review period, in the same way that guidelines have been drafted (in both the proposed indirect taxes and the current income tax contexts) around when the Federal Court is empowered to make an order for such an extension.

In other words, the absolute discretion of the taxpayer to consent under the exposure draft legislation could be replaced with a positive obligation on the taxpayer to consent when the taxpayer has caused a delay (generally, under the terms described in proposed s. 155-20(4)(d)). The corresponding benefit for taxpayers would be that the Commissioner is not entitled to issue an assessment in circumstances where, through no fault of the taxpayer, he has not completed his review of the taxpayer's tax affairs within the 4 year period and the taxpayer chooses not to consent to an extension of time.

Disputes that arise as to whether an extension of time is justified could be resolved by the Federal Court under proposed s. 155-20(4) but it is envisaged that the number of such disputes would be less than the number of occasions that the Commissioner would otherwise have to approach the Federal Court for an order for an extension of the period of review under the first proposal put forward by The Tax Institute in its submission dated 15 February 2011.

The Tax Institute is interested in a practical solution which meets the needs of both taxpayers and the Commissioner without imposing unnecessary Federal Court litigation. The Tax Institute is also concerned to ensure that there should not be significantly greater exposure and longer periods of uncertainty for the taxpayer. The 4 year limit was after all, struck as the right balance (in the income tax context for business taxpayers) between protecting the rights of individual taxpayers and protecting the revenue for the benefit of the Australian community. The Tax Institute accepts that a 4 year limit is appropriate to taxpayers in indirect taxes but that it should essentially be a 4 year limit for the issue of amended assessments not for the commencement of enquiries, reviews and audits etc.

The amended assessment may (and in the income tax context, often does), issue several years later. The Tax Institute's members are aware of the Commissioner having sought two annual extensions in the case of certain taxpayers keeping up to about 7 years of tax returns open, notwithstanding complete co-operation of the taxpayers concerned. If this scenario were extrapolated to taxpayers in the indirect tax area, there would be potentially 84 tax periods open. The problematic nature of taxpayer consent means that the exposure is exacerbated in indirect taxes because of the transactional nature of indirect taxes and the increased number of tax periods that may remain open.

Extension of Period of Review by the Taxpayer

Under the current self-assessment regime, taxpayers who are aware that they have a GST refund entitlement, but who require more time to confirm or specifically quantify the entitlement, can keep the review period open by issuing a notice to the Commissioner under s. 105-55 of Schedule 1 to the TAA. Allowing taxpayers an extension of time in these circumstances discourages guesswork, estimates and ill-considered claims. This is recognised by the Commissioner in MT 2009/1.

There is no equivalent to s. 105-55 in the new regime and, in fact, there is no scope for the 4 year review period to be extended by the taxpayer, other than by an amendment to the relevant

assessment (which, in circumstances where the taxpayer has not been able to confirm the exact nature or quantum of the claim, would not be appropriate).

The Tax Institute considers that, in the same way that the Commissioner can request the taxpayer's consent to the extension of a review period, the taxpayer should be given the opportunity to request the extension of a review period from the Commissioner and the Commissioner should be empowered to grant that request.

As Treasury would be aware, there are certain features of the indirect tax regime that warrant this treatment. For example, a Commissioner may amend an assessment, just prior to the end of the 4 year period, on the basis that a supply made by the taxpayer that was treated as input taxed was, in fact, a taxable supply. Acquisitions that were made by the taxpayer in relation to the making of that supply would, in many cases, have been made in earlier tax periods, and no input tax credits would have been claimed on the basis that the subsequent supply was input taxed. By the time the Commissioner re-characterises the supply as taxable, the time period in which a taxpayer could amend the relevant assessments to claim input tax credits would have expired, in part because further time is required to work out the amendments to be made to those early returns.

It would be in the interests of fairness and symmetry for such a provision to be inserted and also for the Commissioner to agree to extend the taxpayer's 4 year time limit in order for those input tax credits to be claimed. This would also support the fundamental principle underlying the GST regime that the burden of the tax should be borne by end consumers, not by businesses.

Unlimited period of review to give effect to a private ruling

Proposed s. 155-30 provides the Commissioner with an unlimited period of review to give effect to a private ruling. The effect of this provision is that if a taxpayer disagrees with a view that is taken by the Commissioner in a private ruling (which is open to the taxpayer, as such a ruling is not law and is binding only on the Commissioner), it will have never have any closure in respect of its tax affairs in respect of the relevant assessments.

We are perplexed by these provisions, both in terms of why they are considered necessary and how it could ever be considered appropriate that a taxpayer be exposed indefinitely in respect of its tax affairs simply because it has gone to the trouble of requesting a private ruling.

It has been stated by Treasury (and on behalf of the Commissioner) in the course of consultation that the purpose of this provision is to allow the Commissioner to give effect to a ruling that is favourable to the taxpayer, where the ruling has been requested, but not provided, within the period of review. However, there is nothing in the section which limits it to favourable rulings to a taxpayer and, indeed, there may well be questions about what is considered to be favourable in indirect taxes (eg. a decision that a supply is taxable and not input taxed may be favourable or unfavourable, depending on the taxpayer's circumstances).

In contrast to the proposed position in respect of private rulings, if a taxpayer takes an incorrect view of the relevant statute, in the absence of fraud or evasion, it will still have certainty in respect of its affairs after the period of review expires. To provide certainty where the law is incorrectly applied, but no certainty where the taxpayer takes an alternate view to the Commissioner in a private ruling, is tantamount to putting the Commissioner's views in a private ruling higher the law. This is not appropriate. The Commissioner is fallible, rulings are not always correct and the taxpayer has every right to take a different view in determining its liabilities and entitlements without suffering the punitive consequence of unlimited exposure.

As the Commissioner generally encourages taxpayers to seek private rulings, it would be desirable for the proposed assessment provisions to support the obtaining of private rulings and not to

dissuade taxpayers from doing so. As presently drafted, proposed s.155-30 does not encourage taxpayers to seek a private ruling.

We submit that it is unnecessary to allow the Commissioner an *unlimited* period of review in order to achieve this outcome of giving effect to private rulings that have been asked for prior to the period of review ending. We ask Treasury to reconsider what is sought to be achieved and whether an alternative way of achieving the same outcome may be to refresh the period of review from the date that the private ruling is issued in respect of the relevant particulars but, as in other contexts, to limit that refreshed period to four years.

We reiterate our comments above in respect of the inappropriateness of adopting problematic provisions simply for the sake of harmonisation.

Refreshed period of review and the meaning of 'particular' – s.155-45

Proposed s. 155-45 provides that the Commissioner may amend an amended assessment outside of the period of review where the later amendment is made within 4 years of a notice having been given of the amended assessment (i.e. the refreshed period of review) and, relevantly, provided the later amendment relates to the same particular that resulted in the earlier amended assessment (s. 155-45(2)(b)).

To promote the objectives of symmetry and relieving businesses of the economic burden of the GST, The Tax Institute proposes that Treasury give further consideration to the refreshed amendment period being expanded so that taxpayers are in a position to additionally amend an assessment other than the original amended assessment, provided that the amendment relates to the particular that resulted in the original amended assessment. This would take into account the practical reality that inputs to a supply are often acquired in earlier tax periods and taken up in returns other than the return on which the GST in relation to a supply is remitted. It also takes account of the fact that indirect taxes are about taxing value added in transactions so that if, for example, the Commissioner seeks to recover GST from transactions that were incorrectly treated as input taxed, the taxpayer is able to claim credits that were previously not taken up in the taxpayer's returns, even where those credits were more than 4 years earlier.

The situation is best illustrated by an example. Consider a residential development involving the refurbishment of a grand home into 5 luxury residential apartments. The taxpayer does not claim input tax credits for the building costs in its returns for the monthly tax periods 1 July 2012 to 31 December 2012 on the basis that it considers that the renovations are not "substantial renovations" and that the apartments will be input taxed supplies of second-hand residential premises. On this basis, the taxpayer does not remit GST in its returns for the monthly tax periods 1 April 2013 to 30 June 2013 when all the settlements occur. In May 2017, the Commissioner issues amended assessments on the basis that it considers that the sales of the apartments are taxable supplies of new residential premises. Because the related acquisitions (the building works) were made more than 4 years earlier, the refreshed period of review in respect of the assessments for the monthly tax periods of April to June 2013 still does not allow the taxpayer to claim the credits incurred in the earlier periods.

The Tax Institute asks Treasury to consider whether it would be appropriate for a refreshed period of review to be available for the same particular, notwithstanding that it is outside the 4 year period.

We think that the benefits of this approach may outweigh any disadvantages that may arise as a result of opening up assessments that would otherwise have been finalised. We further consider that the situations when it will be necessary for taxpayers (or the Commissioner) to open up assessments for tax periods beyond 4 years will be limited.

Finally, in relation to the meaning of 'particular', we note that the draft Explanatory Memorandum states at paragraph 1.78 that "particular takes on the same meaning as is currently applied in the context of objections". This guidance is limited and we query whether, if Treasury has something specific in mind this should be set out either in the legislation or in the EM. In this regard, we are also uncertain as to how the Commissioner's views in Draft Taxation Ruling, *TR 2010/D10: Income Tax; objections against income tax assessments* regarding the meaning of particular in the context of s. 14ZV and the income tax context will apply to indirect taxes. We would welcome Treasury's views on how broad or narrow the reference is and whether it is a reference to the calculations or the transactions or both. For example, does 'particular' refer to an amount (eg total GST on sales) or parts of an amount, as in the input tax credit on a particular acquisition? Does 'particular' refer to the transaction itself, for example, the sale of assets or some related matter as in the classification of goods?

We also note the different references to 'particular' in proposed s.155-45 including "in relation to *a* particular" and "*the* particular mentioned in..." especially when compared with the equivalent income tax provisions in s. 170(3)of the ITAA 1936, which refer to the situation where "[t]he Commissioner amends the earlier assessment *about a particular in a way that increases a taxpayer's liability* ..." etc We are not certain whether anything turns on these different expressions and ask Treasury whether this has been considered. Finally, we call to Treasury's attention the fact that the relevant objection provision in s. 14 ZV of the TAA relevantly provides that:- " [i]f the taxation objection is made against a taxation decision, being an assessment or determination that has been amended in any particular, then a person's right to object against the amended assessment or amended determination is limited to a right to object against *alterations or additions in respect of, or matters relating to, that particular."* We would welcome Treasury's views as to how this will work with respect to indirect taxes and suggest that perhaps an example be added to the EM.

OTHER ISSUES

Section 105-65 of Schedule 1 to the TAA 1953

The Tax Institute remains concerned as to why the Government does not want to discuss amendments to s. 105-65 in the context of the proposed self-assessment measures albeit that this the subject of a separate recommendation (Recommendation 45). As Treasury would be aware, this section requires a variety of legislative amendments including to fit into the proposed self-assessment regime so, in our view, it makes sense for this provision to also be canvassed in this consultation. In this regard, please refer to The Tax Institute's earlier submissions with respect to some of the issues that need to be addressed.

The Tax Institute reiterates that it is appropriate in all the circumstances for Treasury to canvass requisite changes, as part of the self-assessment implementation process and we look forward to providing our views.

Shortfall Interest Charge

As noted during consultation, Recommendation 16 which deals with SIC was supported by the Government in principle but "with further consideration to be deferred until fiscal conditions allow".

As previously submitted, The Tax Institute considers that it is appropriate that the Government consider the implementation of this measure at the same time as assessment of indirect taxes as they are inextricably linked matters.

Annual Assessments

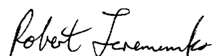
The issue of annual assessments (but with monthly and quarterly tax periods for payments) has been raised as a possible solution to address some of the difficulties that accompany the proposed the self assessment regime for indirect taxes. We ask Treasury to consider whether the merits of such an approach, particularly in light of the fact that the generic assessment framework for indirect taxes is also planned to apply to the MRRT and income taxes generally, in the future.

Drafting Issues

We ask Treasury to consider whether the references and drafting of certain provisions can be improved. See, for example, the various uses of the words "the return", "the document" and then "the 2 documents" etc in ss. 155-15 to 155-19. Also, see references to "Customs documents'', "Document communicated to Customs" and "Document given to an entity" in proposed s. 155-18. Is there a better way of referring to these? The same comment is made with respect to the references to "the entity mentioned in the item" and "the entity mentioned in column 2" in proposed s.155-17. In relation to the latter, we think there is some unnecessary confusion, particularly following the proposed s. 155-7 dealing with 'entities' for the purpose of Division 155. We also ask whether the title "Customs" is the right description in the table in proposed ss.155-17 and 155-18.

If Treasury would like any further assistance in relation to this matter, including to discuss any aspect of this submission, please contact The Tax Institute's Tax Counsel, Deepti Paton on 02 8223 0044 or Gina Lazanas (Balazs Lazanas & Welch LLP) on 02 9191 0770.

Yours sincerely



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