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The General Manager
Tax System Review Division
The Treasury
Langton Crescent
CANBERRA ACT 2600

By email: uap@treasury.gov.au

Dear Sir/Madam

Review of Unlimited Amendment Periods in the Income Tax Laws

CPA Australia welcomes the opportunity to make this submission to Treasury in respect of its discussion paper reviewing the role of unlimited amendment periods in the income tax laws.

As Australia's pre-eminent professional association, representing the diverse interests of more than 112,000 finance, accounting and business advisors, we are committed to working with governments and their agencies to ensure that current and future economic and social policies foster an environment that facilitates sustainable economic growth.

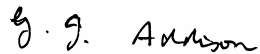
In summary, we broadly support the approach adopted in the discussion paper subject to the following points:

- the definition of 'small business' taxpayers needs to be clarified for the purposes of the 2 year standard amendment period. We believe that this category of taxpayer should include taxpayers with annual turnover of up to \$100 million per annum (as specified in the recent TOFA legislation)
- the standard fixed period for complex 'transfer pricing' cases should be capped to 6 years rather than the 8 year amendment period recommended in the discussion paper. Further, any future changes to the proposed review of these cases should only be introduced by way of regulation or be subject to appropriate consultative arrangements
- the standard fixed amendment periods should apply to those CGT transactions listed in Appendix A where there is a contingency element. Such amendment periods should commence from the date the ATO is notified that the contingency (usually a CGT event) has occurred. We believe that such an approach is preferable to the unspecified generic amendment period referred to in the discussion paper; and
- the inclusion of an unlimited amendment period for correlative relief on transfer pricing cases should not be extended to any other provision in the income tax laws without appropriate consultation.

CPA Australia's specific responses to the questions raised in the discussion paper are detailed in the attached submission.

If you have any questions regarding the above, please do not hesitate to contact me or Mr. Mark Morris on (03) 9606 9860 or via email at mark.morris@cpaaustralia.com.au.

Yours faithfully

A handwritten signature in black ink that reads "G. J. Addison". The signature is written in a cursive style.

Garry Addison FCPA

Senior Tax Counsel

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CPA Australia Comments on Questions Raised in the Treasury Discussion Paper on the ‘Review of Unlimited Amendment Periods in the Income Tax Laws’

The following responses are provided in respect to the specific questions canvassed at pages 20-21 of the abovementioned Treasury Discussion Paper (Discussion Paper).

Q. 1. *Do you support/agree with the following principles discussed in the Discussion Paper?*

Principle 1: Unlimited Amendment Periods (UAPs) for circumstances that can be dealt with within the general rules should be removed.

We note that the general or standard rules in respect to amendment periods as proposed in the Discussion Paper are as follows:

- a 2 year amendment period for the majority of individual and small business taxpayers (as applicable from the 2004/05 income year consistent with ROSA);
- taxpayers with more complex affairs (e.g. large business and/or cases involving tax avoidance) generally have a 4 year amendment period; and
- an unlimited amendment period to continue to apply in cases of fraud or evasion and in certain other cases (see below).

We support the standard rules mentioned above subject to the following:

- clarification of the small business or SME category which we believe should only include taxpayers with annual turnover of up to \$100 million per annum (as specified in the recent TOFA legislation). Accordingly, only taxpayers whose turnover exceeds this level would be designated as ‘large’ and thus potentially subject to the 4 year amendment period. (Alternatively, the SME threshold should be set at \$250 million which would be consistent with the ATO’s recent proposed recategorisation of the large business market in the context of its 2007/08 compliance program); and
- appropriate clarification of those cases that fall outside the standard 4 year period.

Principle 2: UAPs for circumstances that will take more than four years to verify because of unusual complexity or other factors should have a longer fixed amendment period.

We note from the Discussion Paper that 'transfer pricing' cases are considered to fall into this category and that a standard fixed amendment period would be 8 years.

While we acknowledge the increased complexity, etc associated with transfer pricing issues, we believe that a period of 6 years should generally be sufficient for the ATO to finalise such cases and issue an assessment.

Also, any future changes to the proposed period of review for these cases should be subject to appropriate consultation arrangements such as consultation with the community and review by an independent panel, or alternatively it may be preferable to specify that such changes can only be made by way of regulation.

Principle 3: UAPs for circumstances that arise because of a future event should be based upon a set time after the Commissioner is notified that the event has occurred.

This principle of the Discussion Paper deals with amendment periods which commence on the occurrence of an event which may arise at some unknown time in the future.

We note that the Discussion Paper proposes the following two approaches to the treatment of such events:

- a 2 year amendment period will commence at the time the Commissioner is notified that a contingent event has occurred, (other than for certain contingent CGT events). This approach will typically place the onus on the taxpayer to ensure that the Commissioner has been advised that the contingent event has occurred in order to obtain the 2 year limit on amendment periods, such as where an employer notifies the Commissioner that an employee's deductions are reimbursed. In other circumstances it will be a third party that provides such notification to the Commissioner such as the where the Industry Research and Development Board issue a certificate denying deductions under the R&D Tax concession; and
- an unspecified generic amendment period in respect of certain CGT events where the liability for CGT can often only be determined following the occurrence of a contingent event. In these circumstances the 'generic' amendment period will commence from when the Commissioner has the information to determine a taxpayer's final liability.

A full list of both categories of contingent events is detailed in Appendix A of the Discussion Paper.

We support the proposed 2 year time limit on amendment periods for contingent events such as those dealing with expenditure recoupment and the R&D tax concession.

However, we have concerns about the proposed generic amendment period for CGT transactions as we believe that a specific time period needs to be applied in such

cases given the wide range of taxpayers that are potentially affected by the CGT provisions.

There does not appear to be any compelling reason why the standard fixed amendment periods specified above should not also apply to those CGT transactions listed in Appendix A where there is a contingent element (i.e. generally 2 or 4 years depending on the complexity, etc of the particular transaction). Such amendment periods should commence from the date the ATO is notified that the contingency (usually a CGT event) has occurred. As in other cases, the time period specified should be sufficient for the ATO to obtain the necessary information to determine the taxpayer's liability.

Principle 4: UAPs (other than for fraud or evasion) should only be retained in exceptional circumstances.

We note that the only example given in the Discussion Paper relates to the ATO giving correlative relief in a transfer pricing situation where a final decision may be dependent on agreement being reached by the ATO and a foreign country's tax administration.

We support this proposed change and the general principle being espoused here but strongly suggest that any proposals to introduce any further unlimited periods in the future be subject to appropriate consultative arrangements (see above).

Principle 5: Amendments to prior year assessments to give effect to changes in the law brought about by amending Acts should be made within 2 years of Royal Assent of the amending Act .

We note that the amendments to prior year assessments in this context generally relate to assessments that need to be varied as a result of delays to proposed changes to legislation and/or where such changes may be retrospective.

Accordingly, we support this proposed change.

Principle 6: A finite period of review should apply even though taxpayers who have lodged a return do not receive a notice of assessment.

We note that changes to the law in 2005 following ROSA covered nil or loss assessments but that there remain cases where assessments are not provided (e.g. for trustees) and thus a limited amendment period still does not apply in such cases.

The proposed change is supported.

Principle 7: Transitional arrangements should close off amendments to assessments from previous years, after allowing the ATO sufficient time to review past assessments.

We note that these proposed transitional arrangements are broadly required to ensure that an appropriate finite amendment period (as agreed in the context of the current review) would also apply to assessments for prior income years in lieu of the UAPs that would otherwise apply.

We support this proposed approach.

Q. 2 *Are you aware of any other provisions that are subject to an unlimited amendment period and should be considered in this review?*

We are not aware of any other provisions of this kind at present.

Q. 3. *Are you aware of any other Acts affecting income tax that gives effect to unlimited amendment periods? Could they be replaced or removed?*

We are not aware of any other such Acts at this stage.

Q. 4. *Are there other alternatives that should be used to replace particular unlimited amendment periods?*

The alternatives proposed above to deal with particular amendment periods appear to be reasonable other than in the case of CGT transactions where we have proposed a specified period in place of the 'generic' period contained in the Discussion Paper.

Q. 5. *Are the suggested amendment periods, as listed in the Appendices, appropriate for each provision?*

We note that Appendix A lists alternative amendment periods for 107 provisions in the ITAA1936 and 1997 that currently have unlimited amendment periods. Of these, contingent amendment periods have been recommended for 76 provisions, 27 recommended for repeal, fixed 8 year amendment periods suggested for 3 and 1 is to remain unlimited.

We broadly support this approach, and the above categorisation of alternate amendment periods.

Q. 6. *Should the tax assessment and amendment provisions be consolidated into a single location in the tax laws, and if so, where?*

We note that provisions which currently allow an unlimited time for amendment of assessments are located in a number of sections throughout the income tax laws. We agree, however, that tax law simplicity and transparency would be enhanced if all provisions containing special amendment periods were consolidated into a single area (division or table) and transferred to the ITAA1997. Notes indicating the application of these periods could remain in the relevant substantive provision, with the consolidated list of all special amendment periods being the effective provision.