

12 November 2007



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

email: uap@treasury.gov.au

Dear Sir

Review of unlimited amendment periods in the income tax laws

The National Institute of Accountants (NIA) is one of the three professional accounting bodies in Australia. The NIA has over 14,000 members who work in all areas of the accounting profession. A large number of NIA members work in or provide advice on taxation matters of relevance to their clients. As such, the NIA has an interest in the review of unlimited amendment periods in the income tax laws and how any changes will affect our members and their clients.

The NIA welcomes the review and the opportunity to provide comments, which are contained in the attachment to this letter.

In general, the NIA supports principles 1, 2, 3, 5, 6 and 7 as outlined on page 20 of the discussion paper. The NIA does not support principle 4 and believes that unlimited amendment periods should not be retained in any circumstances except for fraud or evasion. However, we have made a suggestion for a provision to allow the Commissioner to seek a one-off extension to a limited amendment period.

Please don't hesitate to contact Vicki Stylianou 02 6260 8619 (or vicki.stylianou@nia.org.au) if you have any queries in relation to our comments.

Yours faithfully

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Encl.



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Comments by the National Institute of Accountants on the review of unlimited amendment periods in the income tax laws

The NIA supports the general principle that unlimited amendment periods should be removed from the income tax laws, except in the case of fraud or evasion. In all other circumstances, including 'exceptional circumstances', there should be a finite period to ensure certainty for taxpayers.

Our comments and suggestions are in relation to question 1 (principles 1 to 7) and question 6 of the discussion paper.

In general, the NIA supports principles 1, 2, 3, 5, 6 and 7 as outlined on page 20 of the discussion paper, subject to the comments below. We do not support principle 4. Overall, we believe that amendment periods should be fixed in law in all circumstances (except fraud or evasion) including those relating to cases of unusual complexity, contingent events, exceptional circumstances, amending Acts, lack of a notice of assessment and transitional arrangements.

Principle 1 – general circumstances

The NIA agrees that unlimited amendment periods for circumstances which can be dealt with within the general rules should be removed.

Principle 2 – circumstances of unusual complexity

The NIA's view is that even though unlimited amendment periods for circumstances which may take more than four years to verify should have a longer fixed amendment period, this period should not be as long as eight years as suggested in the discussion paper. We note there is no reason given as to why this period should be eight years. For instance, was it chosen because this has been the average period of time taken or needed by the ATO to finalise a review of a taxpayer's affairs; or to ensure the ATO has a comfortable period of time within which to make an amendment if necessary.

We consider that commercial reality, including the requirements of risk management, and general expediency would dictate a shorter period. On this basis we suggest that a period of no more than five years is appropriate. However, taking into consideration the constraints faced by the ATO and the objective of achieving balance between the taxpayer and the revenue needs of the community; we suggest the introduction of a mechanism to enable the ATO to seek a one-off extension by way of Court order.

The extension would be for a finite period (and could be capped at say three years, which totals the eight years suggested) to be decided by the Court (or relevant body) based on information and evidence presented by the ATO justifying the extension. The ATO would have to show that it has been active in trying to finalise the amendment of the assessment and has done everything that it can be reasonably expected to do. In addition, the ATO would have to detail what remains to be done and provide a reasonably accurate timeline for completion within the period of extension; or advise otherwise depending on the particular circumstances.

It is envisaged that the affected taxpayer would have standing in the event they wish to be heard. Further, the legal costs of seeking the extension should be borne by the ATO.

The details of the measure can be subject to consultation with all stakeholders including the representatives of the potentially affected taxpayers.

As it is unlikely this provision will be used often, administrative costs for the ATO will be kept at a minimum. Also, it should not be used except in more obvious cases where the information and evidence should be readily available, also minimising costs. In any event, this should be balanced against the equitable treatment of the taxpayer whose need for certainty should be given due weight.

It is unlikely the measure will add complexity to the tax laws as it is a well understood and simple concept enabling an extension. If there is any doubt as to the procedure or requirements the Court (or relevant body) can issue directions or it can be contained in regulations.

Principle 3 – contingent events

We agree that a two year amendment period is reasonable in the circumstances involving contingent events.

We note at the bottom of page 13 of the discussion paper that there would be no requirement for the taxpayer to provide notification in the event that a third party notifies the Commissioner that the contingent event has occurred. However, it may be preferable to advise the taxpayer of the notification to the Commissioner by the third party. We suggest that the Commissioner be given 14 days from the date of receipt of the notification to advise the taxpayer (including the contents of the notice).

Principle 4 – exceptional circumstances

We do not support the position that unlimited amendment periods should be retained in exceptional circumstances (only in cases of fraud or evasion). However, our suggestion outlined above with respect to a provision for an extension could be applied to other situations surrounding limited amendment periods, such as those outlined in Principle 4 relating to exceptional circumstances. The same points would apply, including the onus being on the ATO to show why the extension is justified.

Principle 5 – amending legislation

We agree that a two year amendment period is reasonable where amendments to prior year assessments to give effect to changes in the law brought about by amending Acts should be made within two years of Royal Assent of the amending Act.

Principle 6 – no trigger for assessment

We agree that a four year amendment period is reasonable for taxpayers who have lodged a return but do not receive a notice of assessment.

Principle 7 – transitional arrangements

We agree with the outline on page 18 of the discussion paper relating to transitional arrangements closing off amendments to assessments from previous years, subject to the comments we have made with respect to fixing amendment periods.

Question 6 – Single location for amendment provisions

The NIA supports the proposal to have tax assessment and amendment provisions consolidated into a single location in ITAA 1997 on the basis that it would promote efficiency and simplicity in the tax laws.