



Australian Government

The Treasury

MINOR AMENDMENTS

SUMMARY OF CONSULTATION PROCESS

On 20 May 2009, the Government foreshadowed through the release of exposure draft legislation and a draft explanatory memorandum that it would be introducing minor amendments to the taxation laws as part of its commitment to the care and maintenance of the tax system.

These amendments were included in the Tax Laws Amendment (No. 4) Bill 2009, which was introduced into Parliament on 25 June 2009.

Consultation process

Consultation on the draft legislation and explanatory memorandum took place between 20 May 2009 and 5 June 2009. We received [three submissions](#) (all of them public).

Please see the attachment for a summary of the key issues raised in consultation and of the resulting changes.

There is also a [finding table that shows the new-to-old item numbers](#) based on the Bill as introduced and the earlier exposure draft released on 20 May 2009.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact John Burge on (02) 6263 3119.

Thank you to all participants in the consultation process.

MINOR AMENDMENTS CONSULTATION SUMMARY

Issue raised	Comment
<p>Part IV of <i>Taxation Administration Act 1953</i>: appealable objection decisions. (items 253 to 257)</p> <p>Modify explanatory memorandum to explain that the repeal of the definition of ‘appealable objection decision’ is purely consequential on the repeal of Part IV and does not remove or reduce any currently available rights of review or appeal in relation to objections.</p>	<p>Accepted: explanatory memorandum modified as suggested.</p>
<p>Foreign income tax offsets. (item 258)</p> <p>Modify explanatory memorandum to explain that an Australian entity will still be eligible to claim a foreign income tax offset for foreign tax paid by a company in a chain of CFCs in which the Australian entity has an interest.</p>	<p>Accepted: explanatory memorandum modified as suggested.</p>
<p>Foreign income tax offsets. (item 258)</p> <p>Change the proposed new wording of subsection 770-135(1) of the <i>Income Tax Assessment Act 1997</i> to remove the exclusion of CFCs.</p>	<p>Not taken up. Section 770-135 was meant to deem foreign income tax paid by CFCs and first-tier FIFs only (on attributed amounts included in an Australian entity’s assessable income) as that paid by the underlying Australian entity (in certain circumstances). It was not meant to leave open the possibility of foreign income tax paid by second-tier FIFs also remaining eligible for an offset.</p> <p>The amendment will prevent section 770-135 from being firstly applied to, for example, a CFC interposed between an Australian entity and a FIF (a second-tier FIF) to deem foreign income tax paid by the FIF as that paid by the CFC, and then the section being applied again, this time by the Australian entity (that is, serial or double application), to deem this same foreign income tax as having been paid by the Australian entity. By preventing the first of these deemings (applications), foreign income tax paid by a second-tier FIF cannot cascade down through the CFC to be eligible for an offset in the hands of the Australian entity, consistent with the original policy intent.</p> <p>It should be noted that, as CFC income is attributed to the Australian entity directly (and not cascaded down through all the foreign entities in between, as is the case with FIFs), all CFCs are in effect first-tier foreign entities for the purposes of the attribution and foreign income tax offset rules. As such, the eligibility for a foreign income tax</p>

	<p>offset for foreign income tax paid by a CFC will not be affected by this amendment.</p> <p>Further, these provisions will continue to ensure that, where a partnership is interposed in a chain of companies with an Australian company at its base, the foreign income tax paid by the companies in which the partnership has an interest will <i>not</i> be eligible for an offset in the hands of the Australian company (including where the partnership is interposed between a CFC and a FIF company).</p>
<p>Proposed subsection 148(2A) of the <i>Fringe Benefits Tax Assessment Act 1986</i>: gifts (item 304)</p> <p>There is an underlying problem with subsection 148(2) as interpreted by the Tax Office, which the proposed amendment fails to address. The underlying problem is that any arrangement with an employee involving a benefit to a third party that would be tax deductible to the employee would give rise to an FBT liability on the employer, with no offsetting reduction under the otherwise deductible rule. A more fundamental change is needed.</p>	<p>Not taken up. The suggested approach raises issues beyond the scope of a minor amendment.</p>
<p>Capital gains tax (CGT) rules applicable to foreign residents. (items 337 and 338)</p> <p>(1) Inappropriate for the explanatory memorandum to state that the amendment accords with the Tax Office's interpretation of the existing law. (2) It is not factually correct to state that this is the Tax Office view.</p> <p>(3) What has been put beyond doubt is that 'taxable Australian real property' includes a lease over land rather than 'real property' as the explanatory memorandum suggests.</p> <p>(4) Further consideration should be given to the application of the start date of 20 May 2009 to contracts straddling that date.</p> <p>(5) A typographical error in the draft explanatory memorandum refers to 20 May 1999 rather than 20 May 2009.</p>	<p>(1) and (2) Reference in the explanatory memorandum to the amendment according with the Tax Office's interpretation of the existing law omitted. This was on the grounds that TD 2009/D1 is a draft Tax Determination for public comment and represents the Commissioner's <i>preliminary</i> views.</p> <p>(3) Accepted and explanatory memorandum modified.</p> <p>(4) Further consideration given but no change made. It is appropriate and usual practice to have CGT amendments of this kind apply in relation to CGT taxing-points from the specified date or time.</p> <p>(5) Explanatory memorandum corrected.</p>