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LIMITED RECOURSE DEBT — AMENDED DEFINITION

SUMMARY OF CONSULTATION PROCESS

The Government announced on 8 May 2012 that it would clarify that limited recourse debt includes arrangements where the creditor's right to recover the debt is effectively limited to the financed asset or security provided.

This measure, which will amend the limited recourse debt tax provisions, was included in Tax Laws Amendment (2012 Measures No. 6) Bill 2012, which was introduced into Parliament on 29 November 2012.

Consultation process

Consultation on a discussion paper was conducted between 16 July 2012 and 10 August 2012. Four submissions were received.

Consultation on exposure draft legislation and related explanatory material was conducted between 25 October 2012 and 12 November 2012. Four submissions were received.

Submissions can be viewed by clicking on the following links:

- [Discussion paper submissions](#)
- [Exposure draft submissions](#)

Summary of key issues

Key concerns raised by industry

Stakeholders raised two concerns: that the measure applies to existing loans that are terminated from 7.30 pm (AEST) on 8 May 2012; and that the measure is too broad and could unintentionally capture a wide range of situations.

Response to the key concerns raised by industry

The measure applies prospectively from the date of its announcement (at or after 7.30 pm (AEST) on 8 May 2012). Application from the date of announcement is appropriate as the measure ensures that the law reflects the original policy intent of the provisions. This ensures that there is consistent treatment of taxpayers who are, in substance or effect, not fully at risk in relation to capital expenditure.

Arrangements terminated prior to the announcement of the measure remain unaffected.



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In response to concerns that the measure is too broad, the Explanatory Memorandum to the Bill was amended to clarify that the existing ‘carve-outs’ in the limited recourse debt tax provisions continue to operate. This ensures that the limited recourse debt provisions will not apply to situations where it would be unreasonable to do so. These changes ensure that the measure appropriately targets only those arrangements within the policy intent of the measure.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Nan Wang on (02) 6263 2768.

Thank you to all participants in the consultation process.