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INCOME TAX LOOK-THROUGH TREATMENT FOR INSTALMENT WARRANTS AND SIMILAR ARRANGEMENTS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 14 December 2013 that it would proceed with this measure in a Media Release titled *Integrity restored to Australia's taxation system*. The measure was included in the 2010-11 Budget and further extensions were reported in the 2011-12 Budget.

This measure provides income tax look-through treatment for instalment warrants and instalment receipts over certain assets and, for regulated superannuation funds, certain limited recourse borrowing arrangements. This means that the income tax consequences of these arrangements flow through to the investor and not the trustee.

This measure was included in Tax and Superannuation Laws Amendment (2015 Measures No. 2) Bill 2015, which was introduced into Parliament on 24 June 2015.

Consultation process

Consultation on policy design was conducted between 10 March 2010 and 9 April 2010. A consultation meeting was also held with industry to discuss the policy design. Nine submissions were received.

Consultation on the draft legislation was conducted between 19 January 2015 and 13 February 2015. A consultation meeting to discuss the draft legislation was held with industry on 9 February 2015. Twelve submissions were received, including one which was requested to be confidential.

Submissions can be viewed by clicking on the following links.

[Policy design](#)

[Draft legislation](#)



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Summary of key issues

This income tax look-through treatment is designed to remove uncertainty about how the income tax law applies in respect of these types of secured financing arrangements, in order to avoid any disruption to the current market.

The Australian financial services industry welcomed the certainty that this approach would provide for the industry but was primarily concerned about the scope of the measure being too restrictive to cover the diverse range of arrangements that existed and too inflexible to accommodate changes over the life of such arrangements.

The policy objective to avoid disruptions to this particular market prevented substantive deviations from the specified scope of the measure. However, a number of significant issues raised by industry were addressed.

Scope of the measure

Instalment warrants and instalment receipts are commonly understood terms in commercial practice, however these arrangements have evolved over time. Other secured financing arrangements also exist that are structured in the same way as instalment warrants but are not labelled as such. In response to industry concerns about adequately covering the field of these types of arrangements, the eligibility criteria set out in this measure is based on a set of generic principles, rather than a label, allowing products with similar features to be covered by this measure. In addition, to ensure that all applicable arrangements are covered, the requirement for instalment warrants to be limited recourse in nature was removed, noting that this requirement is still imposed on regulated superannuation funds by the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

Flexibility of the measure

Income tax look-through treatment is provided under this measure where an investor makes particular types of investments in entities that are either listed on an approved stock exchange or, if unlisted, are widely held. Given the lack of control an investor typically has over such entities, industry raised concerns about events occurring outside the investor's control that would cause the arrangement to fail these requirements. To address these concerns, this measure ensures that temporary breaches of the widely held test beyond the control of the investor and additional assets received by the investor in respect of their investment are ignored. This ensures the regime is sufficiently flexible and prevents an arrangement losing income tax look-through treatment mid-term, where appropriate. This provides a high-level of certainty for taxpayers investing in these types of arrangement.



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Type of assets

This income tax look-through treatment is applied only in respect of shares, units in unit trusts and stapled securities held directly or indirectly by the trustee of the instalment warrant or receipt trust. The policy objective for covering these types of assets was to align this measure with those assets covered by the capital protected borrowing rules, as the significant market that had developed at the time of announcement of this measure covered arrangements involving these types of assets. Therefore, industry requests to expand the types of assets covered were considered to be outside of the policy objective of this measure. Furthermore, expanding the types of assets covered by this measure would cause misalignment with the capital protected borrowing regime, which was considered to be undesirable.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Tania Koit on (02) 9374 2434.

Thank you to all participants in the consultation process.