



Chartered Accountants
& Business Advisers

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Principal Adviser
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir / Madam

PKF
Submission to Federal Treasury
Consolidation Amendments

PKF welcomes the opportunity of providing a submission on the Exposure Draft for Tax Laws Amendment (2012 Measures No.2) Bill 2012: Consolidation ("Exposure Draft").

Definition of WIP amount asset

The exposure draft says the immediate deduction for WIP in the pre 12 May 2010 period is for WIP for work done and specifically excludes WIP for goods, see definition of WIP amount asset in subsection 701-63(5) (item 7) of the Exposure Draft and paragraph 1.32 of the Explanatory Materials ("EM"). However, in the Assistant Treasurer's announcement of the proposed changes in his press release on 25 November 2011, it states that there would be an immediate deduction for "Rights to receive income where the work has been done, or the goods or services have been provided, by the joining entity before the joining time" (see Category 1 in table 1 paragraph 16 and paragraph 24 of the Attachment A to Bill Shorten's announcement). There needs to be an explanation why goods have been excluded from the definition of "WIP amount assets" when it was included in the Assistant Treasurer's announcement.

There are many cases where WIP includes the unbilled provision of both work and goods, for example, engineering projects and long term construction projects where the item or project being worked on is not trading stock of the service provider but the service provider is required to provide materials in relation to the contract. We suggest that these types of arrangements should be included in the definition of WIP amount assets.

We understand the reason for allowing WIP as a deduction in this context is to avoid double taxation on the WIP amounts i.e. without the deduction for WIP to the head company, the vendor disposing of the subsidiary's shares to the consolidated group would be taxed on the value of the WIP and also the Head Company would also be assessable on the invoicing of the WIP,. The possibility of double taxation is applicable for all WIP whether it is just for work or for work and goods (provided the goods are not trading stock of the provider). Therefore we suggest that the definition of "WIP amount asset" should include the provision of goods that are not trading stock of the provider.

This issue is also relevant for the definition of "WIP amount assets" in the prospective rules. The definition of that term in those rules is the same as in the pre rules and therefore we suggest the definition for "WIP amount asset" in the prospective rules also be changes in the same way as mentioned above.

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If it is agreed to widen the definition of WIP amount asset, there would also be a requirement to change the mechanism to allow a deduction for WIP amount assets. This is because the WIP amount asset deduction in the Exposure Draft currently relies on a deduction under section 25-95, which restricts the deduction to WIP for work and not goods.

However, if it is decided to continue with the exclusion of "goods" from the definition of WIP amount assets, it is not clear from the Exposure Draft or the EM whether a WIP amount that includes both work and goods can be apportioned to only include the value of the work as a WIP amount asset i.e. it is not clear whether because there are goods included in the WIP amount then none of the WIP can be included in the WIP amount asset.

Application Rules

We have some comments regarding the application of the interim rules in relation to paragraph (3) of item 53 of the Exposure Draft and paragraph 1.82 of the EM, which relate to the timing of the application of the interim rules.

Firstly it appears these application rules have inconsistent application for taxpayers in similar positions. For example where two consolidated groups in similar positions both have a subsidiary with a joining time of before 12 May 2010 and both groups have gone to the expense of preparing the information and valuations required to make a claim for rights to future income under the original 2010 rules but one of them lodged their tax return on 29 March 2011 and the other lodged on 2 April 2011. The first would obtain the benefit of the interim rules but the second would not. Both these groups have, in good faith, incurred extensive costs in obtaining the information and valuations required for the rights to future income claim based on the legislation at the time the expenses were incurred. However, the second taxpayer will have incurred the expenses without obtaining the tax benefit that was available to them under the tax law at the time the expenses were incurred. While these expenses are probably tax deductible, they still represent an after tax economic loss to the group.

We suggest that the applicable latest date for a notice of assessment mentioned in paragraph subparagraph (3)(a)(ii) of item 53 be extended past 30 March 2011 to account for these inconsistencies and allow the relevant taxpayers the tax benefit they were entitled to at the time they incurred the expenses in relation to the rights to future income claim. The logical date for this extension appears to be 25 November 2011, which is the date on which the Assistant Treasurer issued the press release detailing the proposed changes to the law.

Secondly, we suggest the EM give more explanation of the operation of subparagraph (3)(a)(ii). Some examples of the situations intended to be covered would be helpful. For example, how does the interim application rules apply to the situation where a taxpayer has received an amended assessment during the required period in relation to a claim for WIP amount assets but, after the rules were released they realised they may be entitled to claim other rights to future income deductions under the interim rules. We assume they would be able to request a further amended assessment to allow these deductions but an example in the EM would be worthwhile..

If you have any questions regarding this submission please contact me by phone on 02 9240 9736 or email lance.cunningham@pkf.com.au



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