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WHK Central West Pty Ltd

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13 August 2012

The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Sent via email: SRWUIP@treasury.gov.au

Dear Sir/Madam

**RE: EXPOSURE DRAFT – TAX TREATMENT OF WATER
INFRASTRUCTURE IMPROVEMENT PAYMENTS**

We welcome the opportunity the opportunity to comment on the Exposure
Draft *Tax Treatment of Water Infrastructure Improvement Payments*.

WHK Central West Pty Ltd is a member firm of WHK Group, the fifth largest accounting and advisory firm in Australia. Whilst we provide all types of tax advice, the great majority of WHK Central West's clients are Small and Medium Enterprises (SMEs), many of whom operate in the primary production industry. We also act for several irrigation schemes that operate in our local region who have received funding under the Sustainable Rural Water Use and Infrastructure Program. As such, our submission includes commentary on the issues that directly affect these clients as part of their receipt of PIIOP funding.

We act as accountants for the Trangie Nevertire Co-Op Ltd (TNCL) TNCL was awarded a \$115 million grant from the Private Irrigation Infrastructure Operating Program (PIIOP). The committee of TNCL have asked us to comment on their behalf on the above Exposure Draft.

If you have any queries or require any further information, please contact Gabrielle Parnaby on (02) 6883 5600.

Yours sincerely,

A handwritten signature in black ink that reads 'gabrielle Parnaby'.

Gabrielle Parnaby
Technical Manager
WHK Central West

APPENDIX: COMMENTS ON THE EXPOSURE DRAFT

Overview

This submission provides comment on the Exposure Draft of the Tax Laws Amendment (2012 Measures No. 4) Bill 2012: Rural Water Use.

We support the measures to achieve taxation neutrality. However, we recommend that certain changes be made to the proposed bill to ensure that both the Water Schemes and their individual members are not adversely impacted by the proposed changes.

Recommendation 1: That the term “participant” as used in Section 59-65(2) be defined in Section 995-1 so that it is explicit that the term includes “chain of program participants”

Recommendation 2: That “chain of program participants” be given the option to either:

- a) Claim a CGT exemption for the transfer of water to the Commonwealth and agree to forgo deductions; or
- b) Forgo a CGT exemption for the transfer of water to the Commonwealth and be able to claim deductions for expenses attributable to qualifying water infrastructure improvement payments.

Recommendations

Recommendation 1: That the term “participant” as used in Section 59-65(2) be defined in Section 995-1 so that it is explicit that the term includes “chain of program participants”

Whilst it is clear in the explanatory memorandum that the tax relief for payments received under a SRWUIP program would extend to ‘chain of program participants’ (i.e. individual irrigators who are not a party of the agreement with the Commonwealth), this is not made explicit in the draft legislation. Section 59-65(2) simply states that a payment received by a participant in a SRWUIP program is a qualifying water infrastructure improvement payment. Therefore, we recommend that the term ‘participant’ should be defined in Section 995-1 to make it clear that it includes ‘chain of program participants’.

Further, ‘chain of program participants’ should be defined broadly to include:

- Owners of water entitlements to be transferred under SWRUIP (including those who exit the scheme as part of decommissioning) and
- Operating entities that are associated with the owner of the water entitlement and who enter into an agreement with the Irrigation Irrigation Operator to receive SWRUIP monies in order to undertake specified works on the farms they operate.

It is important that the term ‘participant’ is defined broadly as many farming enterprises are not conducted by the water licence owner. For instance, an individual may own the water rights but a related family trust may operate the farming business. Therefore, both the water owner (who transfers the water entitlement) and the operating enterprise (who may receive the funds to perform the specified works on the farms on which they operate) require taxation relief to ensure that SRWUIP payments are tax neutral.

Recommendation 2: That “chain of program participants” be given the option to either:

- a) Claim a CGT exemption for the transfer of water to the Commonwealth and agree to forgo deductions; or**
- b) Forgo a CGT exemption for the transfer of water to the Commonwealth and be able to claim deductions for expenses attributable to qualifying water infrastructure improvement payments.**

The taxation treatment of payments received under the Sustainable Rural Water Use and Infrastructure Program (SRWUIP) has been uncertain for some time. TNCL raised the issue of the taxation burden of the scheme with the former Department of Environment, Water, Heritage and the Arts in early 2010. As the total monies received under the program must be fully expended by the recipients, most schemes (including the Trangie Nevertire Irrigation Scheme) would have been bankrupted or put under excessive financial strain by the grants if taxation relief was not given. The problem was exacerbated by the lagging of related deductions.

After much negotiation with Irrigation Schemes, a joint media release was issued by the Hon Tony Burke and the Hon Simon Crean in February 2011 in which they announced that the Income Tax Assessment Act would be amended to eliminate the timing discrepancy between when payments are taxed and when deductions are available. A CGT exemption for payments under the SRWUIP was also foreshadowed in the announcement.

Although the press release did provide some taxation guidance for the individual members of the Trangie Nevertire Irrigation Scheme, a large degree of uncertainty still existed until the release of the Exposure Draft in July 2012. The Trangie Nevertire Irrigation Scheme signed the Commonwealth Agreement and many of the payments were received in the 2011 and 2012 year. Many of the other schemes would have signed in a similar timeframe.

The Australian Taxation Office released the following statement in relation to income tax returns that were lodged during the period between the press announcement and the passing of the legislation.

Administrative treatment

If a taxpayer lodges a return in accordance with the existing law, once the legislation is enacted they should seek an amendment to adjust their return as appropriate. Interest on overpayments will be payable on any refund received.

If a taxpayer chooses to anticipate the changes, we will not undertake any specific compliance activity at this time. If a taxpayer anticipates the change correctly, they will not need to take any further action once the legislation is enacted.

If a taxpayer does not anticipate the changes correctly, they will need to seek an amendment of their earlier assessment.

If a taxpayer acted reasonably in anticipating this change and as a result of an amendment to their earlier assessment they have an increased liability, there will be no tax shortfall penalty and, if they then actively seek to amend their return within a reasonable time, we will remit the general interest charge (GIC) attributable to the amendment to nil. Otherwise, the full GIC will apply from the date the change becomes law.

It is our concern that some individual irrigators may not have correctly anticipated the changes and may be forced to amend their income tax returns to their detriment. This is particularly true for those who may have claimed water facility deductions for works undertaken in the 2011 and 2012 years.

Therefore, we recommend that individual irrigators be allowed to choose between the following options:

- a) Claim a CGT exemption for the transfer of water to the Commonwealth and agree to forgo deductions; or
- b) Forgo a CGT exemption for the transfer of water to the Commonwealth and be able to claim deductions for expenses attributable to qualifying water infrastructure improvement payments to the extent that they (or a related entity) recognise a capital gain.