CPA Australia Ltd
ABN 64 008 392 452

Level 20, 28 Freshwater Place
Southbank VIC 3006 Australia

GPO Box 2820 Melbourne
VIC 3001 Australia

P 1300 737 373
Outside Aust +613 9606 9677

cpaaustralia.com.au

Director
Tax Administration Unit
Personal and Indirect Tax and Charities Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email:
TaxAdministrationConsultation@treasury.gov.au

9 August 2024

Dear Sir/Madam,

Allowing small and medium businesses four years to self-amend tax assessments

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 173,000 members in over 100 countries and regions. We make this submission in response to The Treasury's **Allowing small and medium businesses four years to self-amend tax assessments** (Exposure Draft) released on 26 July 2024 on behalf of our members and in the broader public interest.

We support allowing small and medium businesses up to four years to request amendments to their tax assessments. We make the following summary comments and key points for your consideration:

- Partnerships and self-managed superannuation funds that carry on a small or medium business should also be allowed the 4-year amendment period, apart from an individual, company or person (in the capacity as a trustee of a trust estate).
- Partners in a partnership, beneficiaries of a trust estate, or members in a self-managed superannuation fund (SMSF) that is a small or medium business entity should also be allowed the 4-year amendment period.
- An amendment application process requiring a decision by the Commissioner may significantly slow down the process and involve extensive further inquiries.
- The Commissioner's period of review should be revised to two years instead of a further four years in light of the law change.

Please refer to the Appendix for our detailed discussions. If you have any queries, contact [redacted], Tax Policy Lead on [redacted] or [redacted], Tax Technical Advisor on [redacted].

Yours sincerely,

[redacted]

Ram Subramanian
Interim Head of Policy and Advocacy

CPA AUSTRALIA

Appendix

Detailed discussion

Summary

We support allowing small and medium businesses up to four years to request amendments to their tax assessments.

Tax Audit

At present, significant time is spent debating whether a business is a small business or not in a tax audit context. We support the need for a consistent approach and therefore support the proposal to increase the amendment period to four years for small and medium businesses.

Partnerships and self-managed superannuation funds

The new law proposes to allow an individual, company or person (in the capacity as a trustee of a trust estate) that is a small or medium business entity to amend a tax assessment where the taxpayer is a small or medium business entity, within four years after the day on which the Commissioner gives notice of the assessment to the taxpayer.

We submit that partnerships and self-managed superannuation funds (SMSFs) that carry on a small or medium business should also be allowed the four-year amendment period.

Partnerships are often used as the preferred family business entity structure due to their simplicity, including primary production. SMSFs are also not prohibited from carrying on a business, as long as the business is allowed under the trust deed and the investment strategy, and operated for the sole purpose of providing retirement benefits for fund members. There is no reason why partnerships and SMSFs that carry on a small or medium business are excluded from the 4-year amendment period.

Partners, beneficiaries or members

The new law should also apply to a partner in a partnership, a beneficiary of a trust estate or members of an SMSF that is a small or medium business entity. In each of those scenarios, the two year limit applies to the individual but the individual is not a small or medium business entity themselves. However, the individual may need to self-amend because the small or medium business entity is a partnership, a trust or an SMSF and they are a partner, beneficiary or a member of has net income which has been included in their assessable income.

Commissioner's decision

Paragraph 1.7 states that:

> *The Commissioner may only amend such assessments to give effect to the decision on the taxpayer's application. The provisions do not permit the Commissioner to amend the assessment about other particulars that are not included in the taxpayer's application. This ensures that sufficient certainty is still afforded to these taxpayers, as the four-year statutory limitation period only applies in respect of those particulars mentioned in the taxpayer's application.*

The draft law does not mention anything about particulars. It simply states that the Commissioner may amend an assessment within four years if the relevant taxpayer "applies for an amendment" and the amendment is "to give effect to the decision on the application".

This suggests it is still ultimately the Commissioner's decision whether or not to amend as if it is contrary to the description of the measure as "self-amendment by small and medium businesses".

This is elaborated on in paragraph 1.11 which states that:

While the Commissioner is permitted to amend the assessment within the extended period, the provision does not require the Commissioner to make the requested amendment.

It further states that this is for integrity purposes and to prevent tax advantages from being obtained. An example of this may be where a taxpayer may wish to correct an item of income which was derived in the wrong year (e.g. it should have been in the 2026 year rather than the 2025 year). In the 2028 tax year, the taxpayer could amend the 2026 assessment by removing the item of income but choose not to amend the 2025 year to include that item of income and the Commissioner would be out of time under the 2-year amendment period that still applies to the Commissioner's initiated amended assessments. Another example could be to include only missed deductions for the year but not the associated amounts of income (for which the Commissioner is similarly out of time).

From an integrity perspective, we are concerned about an amendment application process that requires a decision by the Commissioner which may significantly slow down the process and involve extensive further inquiries. The law (as opposed to the EM) does not provide any parameters about when the Commissioner can decide to decline to amend the assessment and the process of how the Commissioner makes the "decision on the application".

We suggest an alternative approach that would be to amend section 170(3) of the *Income Tax Assessment Act 1936* (ITAA 1936) (which is about refreshed amendment periods). We propose changes in such a way that refreshes the amendment period for particulars that are directly related to any amendments made under the new item 3A, so that the Commissioner has time to amend assessments to deal with consequential adjustments he would have otherwise been out of time for.

Application of amendments

We understand the application date is to apply in relation to the amendment of 2024-25 year and later assessments. This means it may not have any practical benefit until around 2028 (i.e. when the 2-year period of review would first expire on those assessments). It would be more practical for the proposed law to apply to 1 July 2022 and later year assessments for which the 2-year period of review would start expiring for many taxpayers over the coming months.

Commissioner's amendment period

Our understanding is that s 170(3)(b) of the ITAA 1936 will apply and allow the Commissioner a further four years period of review to amend assessments about that "particular". Section 170(3)(a) which provides for an amendment period of a further two years will not apply because it is not being expanded to cover amendments made under the new item 3A.

Given the taxpayer's "application process" above, we submit the Commissioner should have sufficient information about the amendment being made such that that two years is a sufficient time for the Commissioner's period of review instead of four years.