



16 August 2019

Senate Standing Committees on Economics
PO Box 6100
Parliament of Australia
Canberra ACT 2600

Dear Sir/Madam

Senate inquiry -Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 [Provisions]

Chartered Accountants in Australia and New Zealand (CA ANZ) welcome the opportunity to provide feedback to the Senate Economic Legislation Committee for the inquiry into the provisions of the Treasury Laws Amendment (2019 Tax Integrity And Other Measures No. 1) Bill 2019 (the Bill).

CA ANZ has provided comments on the following schedules to the Bill in the submission attached:

- Schedule 3 - amends the *Income Tax Assessment Act 1997* (ITAA 1997) to deny deductions for losses or outgoings incurred that relate to holding vacant land except for land which is used or held available for use in carrying on a business;
- Schedule 5 - amends the *Taxation Administration Act 1953* (TAA 1953) to allow taxation officers to disclose the business tax debt information of a taxpayer to credit reporting bureaus when certain conditions and safeguards are satisfied;
- Schedule 6 - amends the TAA 1953 to confer on the Commissioner of Taxation functions and powers to develop and/or administer a framework or system for electronic invoicing;
- Schedule 7 – amends the *Superannuation Guarantee (Administration) Act 1992* to ensure employers cannot use salary sacrifice amounts to satisfy Super Guarantee obligations.

Our main comments address Schedule 3 and we recommend that:

- the exception to section 26-102 be expanded to include land used in carrying on a business for the purpose of gaining or producing assessable income by a third party and the landowner receives arm's length payment from the third party for the use of the land;

- a consequential amendment be made to section 110-25 so that where land holding costs are denied deduction under section 26-102, these costs are able to be included in the cost base of the land regardless of when the land was acquired;
- subsection 26-102(4) be amended so that newly constructed apartments that are not able to be lawfully occupied because of structural defects are not caught by this subsection.

We broadly support the measures contained in Schedules 5, 6 and 7.

Yours sincerely

Michael Croker CA
Tax Leader – Australia

Appendix A

Schedule 3 - Limiting deductions for vacant land

Broadly, Schedule 3 to the Bill seeks to introduce a new section 26-102 into the ITAA 1997 which will deny deductions for expenses incurred in relation to holding vacant land except for land which is used or held available for use in carrying on a business by certain entities. New section 26-102 also does not apply to a corporate tax entity; a superannuation plan that is not a self-managed superannuation fund; a managed investment trust; a public unit trust (within the meaning of section 102P of the *Income Tax Assessment Act 1936*); or a unit trust or partnership, if each member of the trust or partnership is one of the previously mentioned entities.

Exception for land used or held available for use in carrying on a business

One of the exceptions to the denial of deductions covers expenses incurred to the extent that the land is used or held available for use in carrying on a business by the taxpayer, or taxpayer's affiliate, spouse, child or a connected entity or affiliate of the taxpayer.

CA ANZ previously submitted during the consultation for the draft legislation that this exception should be expanded to include land that is used by a third party in carrying on its business where the third party has leased the land (on commercial terms) from the owner taxpayer. The Bill as it is currently drafted still excludes the use of the land by third parties in carrying on its business from the 'carrying on a business' exception.

From a policy perspective we query why the exception to the new section 26-102 has not been expanded to include vacant land that is held by a landowner for the purpose of gaining or producing assessable income, where the income is derived by the landowner from a third party at arm's length commercial terms and the third party is using the land in carrying on its business.

According to the explanatory memorandum (paragraphs 3.4 and 3.5), the purpose of the amendments is to deal with taxpayers that "have been claiming deductions for costs associated with holding vacant land when it is not genuinely held for the purpose of gaining or producing assessable income. As the land is vacant, there is often limited evidence about the taxpayer's intent other than statements by the taxpayer. The reliance on a taxpayer's assertion about their current intention leads to compliance and administrative difficulties."

Also, the 2018-19 Budget announcement of this measure indicated that the government hoped this measure would reduce the tax incentives for land banking.

CA ANZ is of the view that "vacant" land used by a third party in carrying on its business where the third party has leased (or some type of use for payment) the land on arm's length commercial terms from the landowner, and the landowner is assessed on the income derived from the third party, is not within the

scope of behaviour section 26-102 is intended to address. We strongly recommend that Schedule 3 to the Bill be amended to expand the exception to cover this scenario.

If this exception is to remain as is we are concerned about its impact on commercial arrangements for primary producers. We understand from our members there are primary producers who are paying agistment fees to a third party individual/discretionary trust for the use of the land. The land subject to the agistment would fall within the definition of vacant land as "there is no substantial and permanent structure in use or available for use on the land having a purpose that is independent of, and not incidental to, the purpose of any other structure or proposed structure".

If the landowner cannot claim the costs of holding the land for a tax deduction, it is likely that the cost would be passed on to the primary producer in the form of an increase in agistment fees. With farmers already facing financial difficulty with the drought, the 'carrying on a business' exception should be expanded to cover third parties using the land in carrying on their business.

We also note that there are other business uses of land that could be considered "vacant land" under section 26-102, for example, a car park lot. Therefore, any expansion of the 'carrying on a business' exception should not be limited to third parties that are carrying on the business of primary production.

Recommendation:

We recommend that the exception to section 26-102 be expanded to include land used in carrying on a business for the purpose of gaining or producing assessable income by a third party and the landowner receives arm's length payment from the third party for the use of the land.

Denied costs should be included in the land's cost base

Another issue is where the deduction is denied, the cost will only go into cost base under section 110-25(4) of the ITAA 1997 if the land was acquired post 20 August 1991. Section 110-25(4) states:

"(4) The third element is the costs of owning the * CGT asset you incurred (but only if you * acquired the asset after 20 August 1991). These costs include:
(a) interest on money you borrowed to acquire the asset; and
(b) costs of maintaining, repairing or insuring it; and
(c) rates or land tax, if the asset is land; and
(d) interest on money you borrowed to refinance the money you borrowed to acquire the asset; and
(e) interest on money you borrowed to finance the capital expenditure you incurred to increase the asset's value."

We recommend that where costs are denied under section 26-102, those costs should be able to be included into the cost base of the land regardless of when the land was acquired.

Recommendation:

We recommend that a consequential amendment be made to section 110-25 so that where land holding costs are denied deduction under section 26-102, these costs are able to be included in the cost base of the land regardless of when the land was acquired.

Newly constructed apartments impacted by structural defects

For the purposes of determining whether the land is "vacant", subsection 26-102(4) treats a building as not being a substantial and permanent structure if it is residential premises constructed, or substantially renovated, unless the residential premises:

- are lawfully able to be occupied; and
- are leased/hired/licensed or available to be leased/hired/licensed.

In light of the recent problems in Sydney with newly constructed apartments impacted by structural defects (e.g. Opal Towers and Mascot Towers), it has been brought to our attention that these buildings could be inadvertently caught by these provisions as they are no longer lawfully able to be occupied due to the structural defects. Subsection 26-102(4) may need to be amended so this scenario is not inadvertently caught.

Recommendation:

We recommend that subsection 26-102(4) be tweaked so that newly constructed apartments that are not able to be lawfully occupied because of structural defects are not caught by this subsection.

Schedule 5 - Disclosure of business tax debts

The legislative reforms contained in Schedule 5 to the Bill regarding the disclosure of tax debts need to be read in conjunction with:

- an exposure draft legislation legislative instrument which is currently the subject of a Treasury consultation which closes on 21 August; and
- an Australian Taxation Office (ATO) consultation paper about the ATO's administrative approach to the disclosure of tax debt information to credit reporting bureaus (which does not appear to have been updated since February 2018 although both the legislation and legislative instruments have varied).

The legislation, legislative instrument and ATO consultation paper have all been previously subject to an extensive consultation process. It appears that concerns about the original documents have been addressed. For example, it is now clearly stated in the explanatory memorandum that the ATO:

- reporting of debts will only apply to debts of more than \$100,000 (rather than \$10,000) that have been outstanding for more than 90 days and are not subject to a debt payment plan
- should wait until the expiration of the 21-day period before requesting a response from the Inspector General of Taxation and Taxation Ombudsman

- will enter agreements with credit reporting agencies that require credit reporting agencies to remove the tax debt information of the tax payer in a timely manner.

CA ANZ supports this measure.

We understand that the introduction of a similar measure in New Zealand has resulted in far greater engagement with that country's Inland Revenue department (e.g. taxpayers have entered into tax debt repayment plans).

We also believe legislative measures such as this are necessary to help rein-in worrying and growing levels of aged, unpaid and undisputed levels of tax debt.

Schedule 6 - Electronic invoicing

CA ANZ supports e-invoicing and is a member of Australian Digital Business Council.

E-invoicing has the ability to streamline payments between businesses thus reducing costs and improving cash flow between businesses – which is particularly important for small businesses. E-invoicing fits into a broader picture which has already seen the Federal government and some State and Territory governments embrace faster payment times. We commend the work of Ms Kate Carnell (Australian Small Business and Family Enterprise Ombudsman) to encourage larger businesses to also pay their small business suppliers faster.

Australia and New Zealand are also working together to produce a common approach to e-invoicing that adopts the Pan-European Public Procurement Online.

Given the information technological strengths of the ATO, its experience in dealing with businesses and its existing involvement in the development of a myriad of business software products with software development providers, it is appropriate that the Commissioner of Taxation be provided with the powers to develop and administer e-invoicing.

We do however urge the relevant Treasury Ministers and the ATO to be frank with the business community about the tax administration benefits which are also expected to accrue from greater adoption of e-invoicing. In other countries, these benefits have included:

- real time analysis of VAT / GST compliance and collection of revenue data; and
- the pre-filling of business tax return forms (with “true-up” opportunities to correct mistakes and adjustments due to, for example, bad debts or disputed invoices).

CA ANZ has long been of the view that there should be more openness – at both a policy and regulator level – about how products such as e-invoicing are part of a bigger strategy to revolutionise how Australia's business community will increasingly work in a digital, online environment.

Schedule 7 – Salary sacrifice integrity

The principle behind this proposed schedule is that an employer can use any contribution – other than employee contributions made from post-tax income but remitted by an employer – it has made for employees to satisfy its Superannuation Guarantee (SG) obligations including employer contributions made under a salary sacrifice arrangement.

CA ANZ believes that only a small number of employers would count salary sacrifice contributions towards satisfying their SG obligations.

Nevertheless we strongly support the purpose behind this schedule that “an individual’s salary sacrifice contributions cannot be used to reduce an employer’s minimum SG contributions” (explanatory memorandum, paragraph 7.1).

We believe the schedule achieves its stated aim.

We would encourage the government to amend the Bill’s explanatory memorandum to include examples involving total remuneration packages so that it is clear how these situations are expected to be covered by the suggested amendments.

Appendix B

Chartered Accountants Australia and New Zealand

CA ANZ is made up of over 120,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over.

Members of CA ANZ are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business.

We focus on the education and lifelong learning of members, and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.