

Submission on Tax Commissioner's Power to Modify Law

The National Insurance Brokers Association of Australia (NIBA) appreciates the opportunity to make a brief submission on the Government's exposure draft legislation to provide the Commissioner of Taxation with power to modify the law in certain circumstances.

NIBA represents over 300 insurance broking firms across Australia, including major international broking companies, national brokers and small to medium businesses. Insurance broking firms provide traditional insurance broking and risk management advice in the areas of property and liability insurance, and in many cases broking firms also provide advice in relation to life risk insurance (as opposed to life investment products).

NIBA is grateful for the opportunity to provide these brief comments on the draft Commissioner's Remedial Power Bill.

Draft Legislation

NIBA has received the following commentary on the draft legislation, which we believe should be drawn to your attention:

The one technical concern in relation to the exposure draft relates to the following provision:

Section 370-5

- (4) *An entity (the first entity) must treat a modification as:*
- (a) *not applying to the first entity; and*
 - (b) *not applying to any other entity;*

if the modification would produce a less favourable result for the first entity.

In relation to this provision, the Explanatory Memorandum anticipates situations where different results may arise for different taxpayers:

1.54 This application rule ensures that a modification which is less favourable to one or more entities can still be valid and apply to entities who do not have a less favourable outcome from the modification.

An application as described above in the area of GST may potentially result in anomalous outcomes and in turn disputes between the contracting parties. For example, the Commissioner may amend a GST provision in a way which makes the supply of a certain item as input-taxed rather than taxable. This change is likely to produce a less favourable result to the supplier due to the fact that it limits the supplier's ability to claim input taxed credits on the related acquisitions (inputs).

Through application of paragraph (4) of section 370-5, the supplier must treat the modification as not applicable to it. As such, it would continue to treat the supply as taxable and GST would be added to the price of the supply as normal (and as per the terms of the contract with the customer).

At the other end, the customer may secure a clear benefit from the treatment of the supply as input taxed (i.e. without GST being added to the price) and in turn choose to take advantage of the Commissioner's modification to the relevant GST provision. In addition to the foregoing, the assessment of what is "less favourable" or "more favourable" to any particular entity can be subject to interpretation.

Thank you for the opportunity to provide these brief comments on the draft legislation.

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