

18 February 2011

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

By email: [GSTboatexports@treasury.gov.au](mailto:GSTboatexports@treasury.gov.au)

Dear Sir or Madam,

### **Export of new recreational boats – comments on Exposure Draft**

Thank you for the opportunity to respond to the exposure draft for legislation to amend the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* for measures relating to the “export of new recreational boats”.

This submission has been prepared by the Taxation Committee of the Business Law Section of the Law Council of Australia (**Committee**). The submission has been endorsed by the Business Law Section.

#### *Definition of “new Australian-made recreational boat”*

The wording of the qualification that the boat “has not been renovated since the completion of its construction” needs to be reconsidered. The present drafting is too broad and will disqualify supplies that should fall within the terms of the GST-free exemption.

For example, a supplier may construct a boat to certain specifications including a standard fit-out, and then hold the finished boat as trading stock. If a purchaser buys the boat, but requests changes to the fit-out, the current drafting of the section may exclude the GST-free treatment because the boat has “been renovated since the completion of its construction”.

The draft Explanatory Memorandum states that the intention is that the GST-free treatment should not apply to a new boat “substantially reconstructed from an existing boat that has previously been used, sold or leased...”. If this is the intention, then a more appropriate word, or phrase, than the term “renovated” should be used in the text of the proposed section.

The Committee considers that the phrases “substantially modified” or “substantially reconstructed” more accurately reflect the legislative intention, as enunciated in the Explanatory Memorandum and that the use of either of these terms is likely to reduce the potential for interpretational disputes between the Commissioner of Taxation and taxpayers.

The Committee considers that proposed subparagraph (c)(ii) in the definition is not clear without the context of proposed subsection 38-185(1) of the GST Act. The proposed subparagraph may be more easily understood if it were to read:

*“a supply that qualifies as the export of a new recreational boat under item 4A of the table in subsection 38-185(1)”.*

*Disqualifying uses*

The Committee considers that the order of proposed subsections (5) and (6) should be reversed. As currently drafted, all completed boats are excluded under proposed paragraph 38-185(5)(b) of the GST Act because the boat is “used in carrying on an enterprise in Australia”, i.e. the supplier’s enterprise. This is obviously not a disqualifying use, which proposed subsection (6) makes clear.

In these circumstances, it would be appropriate to exclude the supplier’s use of the boat in connection with the supply to the recipient (the current proposed subsection (6)) before setting out the disqualifying uses. This helps to identify whose use of the boat may disqualify the supply from receiving GST-free treatment.

*Definition of “receipt day”*

The definition of "receipt day" should be inserted in the definitions section of the GST Act (section 195-1 of the GST Act), for consistency with the rest of proposed section 38-185 and ease of interpretation.

Yours faithfully



Margery Nicoll  
**Deputy Secretary-General**