

Senate Economics Legislation Committee

New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002

Submission No. 5

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3 October 2002

Dr Kathleen Dermody
Committee Secretary
Senate Economics Committee
Suite SG.64
Parliament House
Canberra ACT 2600

Dear Dr Dermody,

**Inquiry into the New Business Tax System (Consolidation, Value Shifting,
Demergers and Other Measures) Bill 2002**

Thank you for providing CSR with the opportunity to put forward its views on the proposed Bill, which are set out below.

CSR supports early introduction of the Bill. In general, CSR is strongly supportive of the Bill, and its introduction at the earliest possible opportunity. The proposed Bill is broadly consistent with the recommendations of the Ralph Committee and, during its drafting CSR was provided with the opportunity to comment and make constructive input.

While broadly supportive of the overall Bill our primary interest relates to those aspects of the Bill relating to demergers.

Proposed legislation facilitates possible demerger of CSR. CSR announced in May 2002 that it was investigating the possibility of a demerger of the Group into two Australian-listed companies. A demerger could be a value-adding alternative that would allow CSR to separate the group's businesses, and focus more effectively on the individual strengths of each of the resulting companies.

One alternative being considered is the separation of CSR into a heavy building materials company, focused on growth, and a high yield company, comprising the other CSR group businesses. This would allow different types of investors to properly value the assets of the company. For example, some investors value growth companies very highly, whilst others prefer high yield stocks.

A CSR demerger, if correctly structured and implemented, would facilitate investor choice and assist with the full market valuation of each entity. The legislation as presently drafted would allow such a demerger in a manner that would assist shareholders.

There are two aspects of the current legislation that we wish to draw to the Committee's attention.

1. Provisions needed to cover shares owned under employee share plans. The first concerns sympathetic treatment of employee shareholders. It seems to us that given the effort to encourage employee ownership of shares in their respective employer, it is not appropriate to then turn around and tax them in a demerger situation. This is notwithstanding the fact that there has been no change in their overall beneficial ownership of the assets, and they have not benefited in other ways. We are also surprised that employee shareholders are being treated differently to other classes of shareholders.

We submit that this issue should be remedied in legislation, and back dated to 1 July 2002, the commencement date of the demerger legislation. However, it is our strong preference that the drafting of the appropriate provisions *not further delay the passage of the current Bill*. It would assist us if the Committee made its position clear on this issue in its report to allow planning for the potential CSR demerger to proceed.

2. Shareholder pre CGT status needs protection. The second issue concerns the maintenance of pre capital gains tax status for shareholders in the demerged entity. This is consistent with the underlying objective that shareholders should be no worse off after a demerger. We are also concerned that the application of CGT event K6 may effectively remove pre CGT status. Such an event is clearly not appropriate in a commercial demerger situation where the demerging entity has been listed on a stock exchange for the last five years. We request that the Committee make a recommendation that, while the current Bill should be passed as it is currently drafted, a further Bill be drafted that excludes the operation of CGT event K6 caused by a demerger. Further, a shareholder's decision on whether to vote for a demerger should be driven by the overall economic and strategic arguments rather than short-term tax considerations.

We wish to re-iterate our overall position that CSR is strongly supportive of the timely passage of this Bill through the Senate. It will facilitate continuing sensible restructuring of the Australian economy and is consistent with the sort of relief available in many other developed western economies.

Yours sincerely



Peter M Kirby
Managing Director