Senate Economics Legislation Committee

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

Submission No. 14

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To whom it may concern

Submission in relation to the new Tax Consolidations regime

You may wish to consider the following matter when conducting your hearings in relation to the tax consolidations legislation next week.

The concern raised in this submission is that any group with pre-CGT shareholdings will most likely lose the benefit of pre-CGT status if the group consolidates under the proposed tax consolidation rules.

Despite a clear policy intention to preserve such pre-CGT status, the legislation contains convoluted rules that result in the loss of pre-CGT status, unless all assets held by the relevant subsidiary are non-current assets.

In practice, this means that groups are guaranteed to lose pre-CGT status, the extent of such loss being dependent on a number of factors.

One key factor is the extent to which the relevant subsidiary holds current assets compared to non-current assets. The loss of pre-CGT status is exacerbated by holding current assets, hence providing an incentive for groups to reduce their liquidity ratios.

Another key factor is the extent to which assets are funded through liabilities such as loans (compared to assets funded through equity). The rules are based on an assumption that liabilities of the relevant subsidiary are "optional" and penalises any group that decides to retain such liabilities in the subsidiary on a disposal of shares in the subsidiary.

Holdings through interposed entities add significant complexity to the calculations under the proposed rules and also invariably result in further loss of pre-CGT status.

These issues exist despite having been brought to the attention of the Taxation Office during its public workshops held in February 2002. The issues register available on the ATO's web site shows that the draft rules will remain unchanged despite the noted conflict with stated policy.

As a result of these issues, the proposed means of preserving pre-CGT status should be replaced. An example of a fairer and much simpler method would be to calculate the market values of pre-CGT interests at joining time (as presently required) and thence simply place this value in a pool indexed for inflation. A group would then be given the option of utilising the pool for any disposals of membership interests.

Yours sincerely,

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Director