

Chapter 9

Schedule 8 – Australian property trusts and stapled entities

Provisions of the bill

9.1 This bill amends the *Income Tax Assessment Act 1997* to provide a capital gains tax (CGT) roll-over for investors in a stapled group when a public unit trust is interposed between them and the stapled entities. The bill also makes a consequential amendment to the *Income Tax Assessment Act 1936* to ensure this interposed head trust is not taxed as if it were a company. Additionally, public unit trusts will be able to acquire controlling interests in, or control, foreign entities whose business consists primarily of investing in land outside Australia for the purpose, or primarily for the purpose, of deriving rent.¹

Background

9.2 The EM explains that 'stapled entities' are a group of entities that may consist of two or more trusts, or one or more companies and one or more trusts, whose ownership interests are stapled together to form stapled securities.

9.3 A stapled security is created when two or more different things are contractually bound together so that they cannot be sold separately. For example property trusts may have their units stapled to the shares of companies with which they are closely associated, often because the property trust owns rental property and the associated company manages that property.²

9.4 The measure is designed to facilitate overseas investments by Australian Listed Property Trusts and improve their international competitiveness. Stapled entities purchasing equity in overseas property trusts are currently at a disadvantage compared with single entities. The present arrangements do not enable stapled entities to offer the same level of tax deferral as those single entities offering only their own equity, and current CGT provisions do not allow stapled entities to establish a head trust with a CGT roll-over.

9.5 These amendments will enable Australian Listed Property Trusts to interpose a head trust with CGT roll-over and be treated as a single entity for the purpose of overseas acquisitions.³

1 EM, p. 159.

2 EM, p. 163.

3 EM, p. 160.

9.6 Mr Cooke of the Property Council elaborated on why the measure is seen as important for international competitiveness:

In the context of international competitiveness...our guys are now competing substantially offshore in an offshore market both for product and also for capital...International competitiveness is the benchmark by which our members are now being judged...The measure allows companies to destaple and to effectively allow...that part of a staple which is receiving active income to be a wholly owned subsidiary of the trust. Why is it important? It is important in the sense that, if a major Australian institution, for example, wanted to make a scrip bid for an offshore company...they cannot do it under a stapled arrangement because—I will use the US as an example—the staple is not recognised, there is no capital gains tax rollover relief and the whole thing becomes very uncommercial. This measure will overcome that and will allow, for example, scrip bids to occur.⁴

Issues with the bill

9.7 The Property Council of Australia told the committee that schedule 8 was a 'very welcome measure'.⁵ However, by way of submission and in evidence, the council raised a technical drafting concern, which it considered to be a simple and easily corrected drafting error:

The drafting, as we read it, currently contemplates CGT rollover relief for staples of any sort—for example, a staple which could be a trust in a company or a staple which could be a trust in a trust, stapled together. Division 6C relief, though, concomitantly, which must go with this measure, does not seem to apply to any staple, except a company and a trust.⁶

9.8 Mr Cooke emphasised that correcting this issue was 'very important', and that failure to correct it would 'cause substantial prejudice' within the property trust sector.⁷

9.9 Treasury evidence was sympathetic to the issue raised by the Property Council. Mr Ciccini of Treasury expressed agreement with the Property Council's summation of the issue:

I acknowledge that that works where you have a public unit trust stapled to a company and that it does not work if you have a trust and another trust that is taxed as a company.⁸

4 Mr Trevor Cooke, Property Council of Australia, *Proof Committee Hansard*, 28 August 2007, p. 3.

5 Mr Cooke, *Proof Committee Hansard*, 28 August 2007, p. 2.

6 Mr Cooke, *Proof Committee Hansard*, 28 August 2007, p. 3.

7 Mr Cooke, *Proof Committee Hansard*, 28 August 2007, p. 3.

8 Mr Raphael Ciccini, Manager, Small Business and Trusts, Department of the Treasury, *Proof Committee Hansard*, 28 August 2007, p. 6.

9.10 Treasury told the committee that it intended having further discussions with the relevant minister's office in relation to the issue. Mr Cicchini also acknowledged that there did not appear to be any potential revenue implications arising from a possible amendment along the lines suggested by the Property Council, but was not in a position to commit the Government to any particular position.⁹

Committee view and recommendation

9.11 The committee considers that there was some merit in the argument put forward by the Property Council in relation to this schedule. The committee believes that a clear statement of reasons should be provided when the bill is considered, should the government decide against any further amendment.

Recommendation 1

9.12 The committee recommends that Schedule 8 be passed and the Government give consideration to introducing an amendment to address the issue in relation to stapled entities identified in evidence by the Property Council.

9 Mr Cicchini, *Proof Committee Hansard*, 28 August 2007, p. 6.

