

Via email: taxboard@treasury.gov.au

The Board of Taxation
c/ The Treasury
Langton Crescent
PARKES ACT 2600

12 October 2012

Dear Sir/Madam

POST IMPLEMENTATION REVIEW OF CERTAIN ASPECTS OF THE CONSOLIDATION TAX COST SETTING PROCESS

BDO welcomes the opportunity to provide a submission on the *Discussion Paper: Post Implementation Review of Certain Aspects of the Consolidation Tax Cost Setting Process* (the Discussion Paper), released by the Board of Taxation for public consultation in September 2012.

Our submissions in respect of the matters raised in the Discussion Paper are set out in the appendix to this letter. In short, it is our view that:

- A fifth option be considered in respect of the treatment of liabilities under the consolidation measures (addressed in Chapter 2 of the Discussion Paper), namely, the repeal of s711-45(5).
- We strongly support the analysis, in Chapter 7 of the Discussion Paper, of the interaction of the Consolidation measures with the capital gains tax rollover measures and, further, support the solutions recommended in that chapter.

Should you have any questions, or wish to discuss any of the comments made in the attached submission, please do not hesitate to contact Lance Cunningham on 02 9240 9736 or lance.cunningham@bdo.com.au or Matthew Wallace on 02 9240 9760 or matthew.wallace@bdo.com.au

Yours faithfully



Lance Cunningham
BDO National Tax Director



Matthew Wallace
BDO National Tax Counsel

APPENDIX

This document sets out the submission of BDO in relation to the *Discussion Paper: A more workable approach for fixed trusts* (the Discussion Paper), released by Treasury for public consultation on 30 July 2012.

Unless otherwise indicated, statutory references are to the *Income Tax Assessment Act 1997*. References to the ITAA 1936 are to the *Income Tax Assessment Act 1936*.

- **Chapter 2 - Liabilities Held by an Entity that Joins a Consolidated Group**

None of the options 1-4 (see page 18 and following of the Discussion Paper) appear to achieve tax neutrality with a disposal of assets by the company that is being disposed of. In particular Option 1, which is favoured by the authors of the Discussion Paper, not only fails to achieve such neutrality but the requirement for deductible liabilities to be made non-deductible will increase compliance costs in having to track the liabilities acquired vis-à-vis deductible liabilities which accrue after the transfer.

We suggest an additional option (option 5), under which material tax neutrality could be achieved if s711-45(5) was repealed. This would prevent any “double counting” of the relevant deduction. Thus, adopting the facts in Example 2.1 in the Discussion Paper, we compare the consolidation treatment of Company A as if s711-45 was repealed, to the treatment if Company A disposed of its assets to Purchaser Co in consideration for Purchaser Co paying \$800 (\$600 in cash and assuming Company A’s \$200 liability).

The disposal of asset alternative would be as follows:

Capital proceeds	\$800 (being cash of \$600 and \$200 of assumed liability)
Cost Bases	(\$340)
Capital Gain	\$460

Under the Consolidation alternative the exit allocable cost amount of Vendor Co in respect of A Company would be:

Step 1	Terminating value of assets	\$340
Step 4	Accounting liabilities	(\$140) (\$200 liability less s711-45(3) reduction for future deduction)
Step 5	Exit allocable cost amount	\$200

This would cause Vendor Co to derive a gain of $\$600 - \$200 = \$400$

The \$60 difference from the asset disposal outcome is due to the liability being adjusted for tax effects (deductibility) for consolidation purposes and not being so adjusted for capital gains tax (CGT) purposes under the asset disposal.

We submit the adjustment for future deductibility in section 711-45(3) is appropriate and in fact the CGT consideration provisions in relation to the assumption of liabilities are defective in not providing for a reduction of the CGT consideration in relation to the future deductibility of the assumed liability.

Note: the assumption of liability can be included in the CGT consideration by two avenues being:

1. Section 116-55 ITAA 1936 for the assumption of liabilities that are secured over the relevant CGT asset; and
2. Applying the rule in section 103-10 that deems an amount to be received by you where that amount is applied for your benefit (including by discharging all or part of a debt you owe). This was dealt with in the NTLG Losses and CGT subcommittee meeting of 10th November 2004, agenda item 8.1.

- **Chapter 7 - CGT issues**

As observed in Chapter 7 of the Discussion Paper, there is a considerable divergence in the tax treatment under the consolidation measures between the different methods of transferring ownership interests in an entity using one of the available CGT rollovers. Similarly, as observed in that chapter, there are material differences in the interaction of the “scrip for scrip” rollover provisions in Subdivision 124M and the Consolidation measures. Depending upon whether the “common or significant stakeholder” provisions (s124-782) apply, the “restructure” measures (s124-784B) apply or neither of those measures apply. Such divergent treatment offends against the tax policy criteria of equity and neutrality.

We strongly endorse the solutions to this issue addressed in pages 51 to 53 of the Discussion Paper.