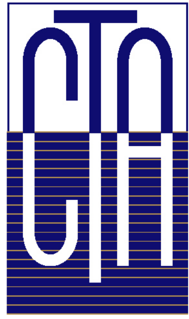

Submission

Board of Taxation's post-implementation review of certain aspects of the consolidation tax cost setting process

The Corporate Tax Association's comments on the September 2012 Position Paper

19 October 2012

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1 Executive summary

1.1 Summary

*The Corporate Tax Association (**CTA**) recognises the importance of this further review being undertaken by the Board of Taxation (**BoT**) in relation to the tax consolidation regime, with its particular focus on both liability and restructure related issues. Therefore the CTA very much appreciates the opportunity presented by the September 2012 Discussion Paper of being able to consider these issues and comment on the views being developed by the BoT.*

As is apparent from the BoT Discussion Paper, to date tax outcomes associated with the consolidation regime have primarily been focused on assets (and associated gains/losses on disposal of assets) rather than the treatment of liabilities. This reflects the absence more generally in the tax system of comprehensive and consistent policy outcomes in respect of gains and losses in respect of liabilities[1] and, in particular, the total void of clear policy, technical and practical direction in relation to the assumption/novation of liabilities in association with asset related transactions. The BoT Discussion Paper is therefore particularly useful in providing a considered review of liability related issues, focused on consolidation interactions. As is evident from this submission, with limited but important exceptions, the CTA generally supports the positions being proposed by the BoT. The table below provides a high level summary of the CTA's views in relation to the issues raised in the Discussion Paper, including summary comments in relation to each individual question listed in the Discussion Paper.

Chapter	***Aspect***	***Summary of CTA's comments***
2	*Liabilities held by an entity joining a consolidated group*	*An Option 3 approach is supported, or alternatively an Option 2 approach subject to some critical compliance shortcuts, as proposed by the CTA.* *Further, the following points are noted.* • A CGT event L7 type balancing adjustment should not be reintroduced. • The Option 2 approach should not apply in formation cases. • The BoT should give further consideration to subsequent leaving events.
3	*Deferred tax liabilities*	*On balance the CTA agrees with the proposed BoT approach of excising income tax related DTLs from entry and exit calculations.*
4	*(a) Adjustment to the value of liabilities under the tax cost setting rules: different value of liabilities for the head company (s705-70(1A))*	*The CTA believes there is an ongoing role for section 705-70(1A) even if DTLs are excised from entry calculations.*

[1] With notable exceptions of liabilities that are Division 230 'financial arrangements' and treatment of commercial debt forgiveness transactions.

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Chapter	*Aspect*	*Summary of CTA's comments*
	(b) Adjustment to the value of liabilities under the tax cost setting rules: liabilities that give rise to a future tax gain or loss (s705-80)	*The CTA agree that section 705-80 would only need to continue to apply where the Chapter 2 proposed liability treatment had no application (ie formation cases).*
5	*Assets and liabilities recognised on different bases*	*The CTA concurs with the position proposed by the BoT.*
6	*Capping the tax cost setting amount of assets*	*The CTA strongly rejects this proposal that the capping rules be extended to assets held on capital account.*
7	*(a) CGT issues: rollover interactions*	*In broad terms the CTA supports the proposed approaches but notes additional complications that will need to be addressed in the context of restructures involving non-widely held entities.*
	(b) CGT issues: CGT event J1 interactions	*The CTA has previously proposed specific approaches for dealing with these CGT event J1 issues.*

1.2 Application dates

From comments made at the 2 October 2012 BoT Consultation Meeting it is understood that the BoT's current position is that any legislative amendments resulting from this review should only have prospective application in respect of joining and leaving events entered into[2] after an announcement is made by Government endorsing these measures. The CTA would strongly endorse such an approach as the proposals raised in this Discussion Paper would represent a substantial change in the operation of a number of key consolidation regime provisions. [However, an exception in this regard is proposed amendments to subsection 711-45(2A) in the context of finance leases given that inequities associated with the applications of this provision have previously been acknowledged and brought to the attention of Treasury for legislative correction – refer 5.1(a) below.]

In relation to CGT event J1 aspects, a reference to the timing of joining and leaving events would not be relevant or appropriate. Therefore, it is proposed that, generally, CGT event J1 amendments should apply where the transaction that will trigger CGT event J1 is entered into after the date of the relevant announcement by the Government – i.e. the transaction whereby the relevant entity ceases to be wholly owned. The only exceptions in this regard are:

(a) aspects dealt with in paragraphs 7.57 and 7.58 (i.e. where a subsidiary member that is not an ET-1 leaves a MEC group) where clearly the existing provisions operate inappropriately and adversely to taxpayers, in which case

[2] In determining when an arrangement is entered into the CTA believes that the approach that has been utilised in *Tax Laws Amendment (2012 Measures No. 2) Act 2012* at clause 52 is appropriate.

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it is submitted that there is justification for retrospective application;

(b) issues that arise where the rolled over asset is an intra-group shareholding, and in such circumstances it is proposed in 7.1.2 at 'BoT Position 4.11' that any amendments only apply to roll-overs undertaken after the date of an announcement by the Government.

While the CTA makes reference above to the date of relevant announcements by the Government, the CTA is extremely concerned that increasingly there are extended delays between Government announcements and the introduction of resulting legislative amendments. Therefore, unless the Government can commit to introducing legislative provisions into the Parliament within six months of an announcement, the CTA believes that the application date of any such announcements should instead be deferred to relevant transactions occurring after the date that legislation is introduced into Parliament.

1.3 Additional issues

*In the BoT's October 2010 Position Paper, Appendix E identified a number of additional issues which the BoT believed were outside the scope of its review of the consolidation regime. In its related submission of 30 November 2010 the CTA, jointly with the Minerals Council of Australia (**MCA**), acknowledged that it was not realistic for the Board to consider and address all consolidation issues that had been identified. However, the CTA/MCA indicated that they were extremely concerned that many of these issues had been identified back as early as 2005 and had been acknowledged by both the ATO and Treasury as requiring legislative attention, but as yet nothing has been done.*

*Therefore, again, if the BoT has not already recommended to Government a course of action for considering and resolving these other longstanding issues, the CTA believes it is essential that this be done by way of this final consolidation report. Of particular concern in this regard are numerous ongoing longstanding aspects associated with the legislative provisions dealing with multiple entry consolidated (**MEC**) groups.*

2 Liabilities held by an entity that joins a consolidated group

2.1 Comments

*The CTA agrees with the BoT's comments at paragraphs 2.21 and 2.22 that the prime focus of the consolidation regime to date has been on avoiding gain and loss duplication in respect of **assets**. In this regard the ACA treatment of liabilities has, in the main, sought to generate an outcome whereby the total tax value of assets of the joining entity broadly equates to their total market values in the case of a simultaneous*

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100% acquisition of shares in a joining entity. However, as noted by the BoT and reflected in the lack of policy direction more generally in the income tax system to the treatment of liabilities, the design of the consolidation regime similarly has not focused on outcomes in respect of liabilities.

The BoT has sought to highlight consolidation liability issues by way of Example 2.1. For the purposes of this submission, the CTA has utilised basic elements of the BoT's example but simplified it further by eliminating reference to other trading profits and accounting asset revaluation reserves.[3] *The simplified example and the tax outcome summaries associated with various possible policy approaches are outlined below.*

FACTS

1 Establishment of Company A
- Vendor Co incorporates Company A and scribes capital of $400
- Company A buys land for $400

2 Company A prior to ownership change
- The land increases in value from $400 to $700
- An accounting provision of $200 is recognised for a future deductible outgoing

3 Ownership changes
- Acquirer Co purchases Company A for market value:

	Land	$700
plus	DTA (liability)	60
less	Liability	(200)
		$560

4 Post-acquisition asset/liability terminations by the Acquirer Co group
- Land sold for $700
- Liability paid out for $200

[3] The fact that the example makes reference to an accounting asset revaluation reserve introduced potential DTL issues. While in this regard a DTL is not recognised in example 2.1, in a not dissimilar fact pattern a DTL is recognised in example 3.1.

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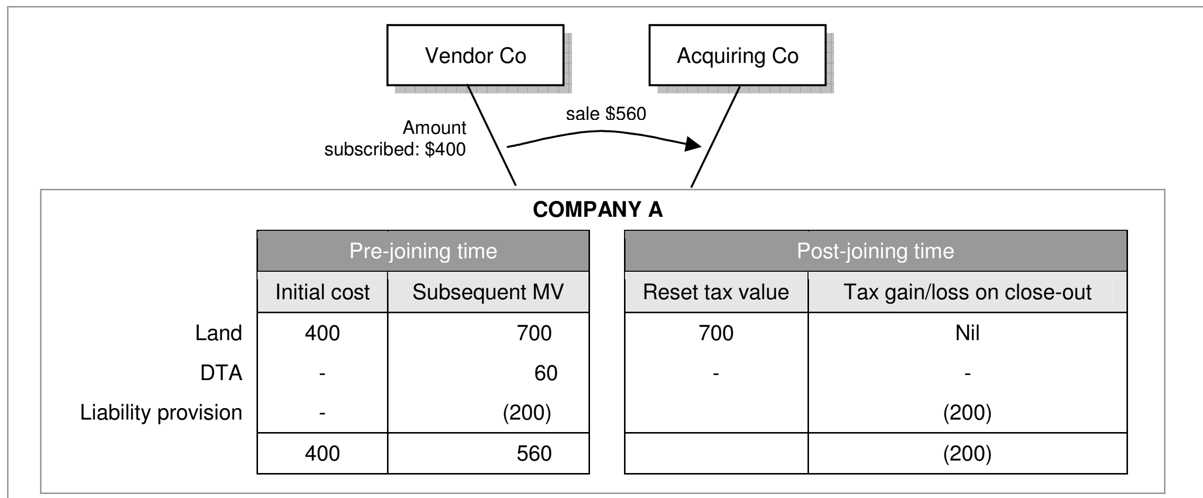
Facts summary



	Pre-joining time		Post-joining time	
	Initial cost	Subsequent MV	Reset tax value	Tax gain/loss on close-out
Land	400	700	700	Nil
DTA	-	60	-	-
Liability provision	-	(200)		(200)
	400	560		(200)

Scenario outcomes

	Scenarios	Vendor Co outcomes	Acquiring Co outcomes – tax gain/losses (after sale of land and paying out liabilities)	Overall	Comment
A	**Economic value movements in asset liabilities**	Land + 300 Liabilities - 200 + 100	No movement	100	
B	**Tax outcomes under current legislation**	Sale amount 560 *less* exit ACA (400) Taxable gain 160	Land Nil Liability (200) Tax loss (200)	(40)	The $140 reduction from the economic outcome represents the double tax recognition of the $200 liability net of the DTA of $60.
C	**Preclude Vendor Co from beneficial tax treatment for the liability provision @ 70%**	Sale amount 560 *less* exit ACA (260) Taxable gain 300	Land Nil Liability (200) Tax loss (200)	100	Net outcome equals net economic outcome but skewed split between the parties.
D	**Deny deduction to acquirer group** – **Share price still $560**	Sale amount 560 *less* exit ACA (400) Taxable gain 160	Land (60) Liability - Tax loss (60)	100	This is an unrealistic scenario as Acquiring Co would not pay an additional $60 for a $60 tax loss.
	Share price drops to $500	Sale amount 500 *less* exit ACA (400) Taxable gain 100	Land - Liability - Tax loss -	100	One of the two CTA recommended approaches: tax outcomes match economic outcomes for both parties (refer (b) below).
E	**Reduce ACA step 2 amount to acquirer group (assume share price drops to $500)**	Sale amount 500 *less* exit ACA (400) Taxable gain 100	Land 200 Liability (200) Tax loss -	100	One of the two CTA recommended approaches: double recognition of liability deduction benefit offset by double recognition of land gain.
F	**If Company A was not previously a member of a consolidated group**	Sale amount 560 Historic share cost (400) 160	Outcomes as per scenarios above, depending on tax treatment of Acquiring Co.		
G	**Transaction undertaken as an asset sale at $700**	Currently there are no stated or commonly accepted tax outcomes in relation to the assumption of liabilities associated with an asset transfer, with potential outcomes differing significantly depending			

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Scenarios		Vendor Co outcomes	Acquiring Co outcomes – tax gain/losses (after sale of land and paying out liabilities)	Overall	Comment
	plus the assumption of the $200 liability	on the nature of the liability and the legal form of the transaction. However, if Company A just sold the land to Acquiring Co and used the proceeds to directly pay out the liability, tax outcomes for both parties would be as per the Scenario A economic outcomes.			

The following points are noted, based on the above example.

(a) Current tax treatment

As recognised in the BoT Discussion Paper, the current consolidation treatment in respect of future deductible liabilities (Scenario B above) in a broad sense could be regarded as providing dual tax recognition. Firstly, the vendor consolidated group receives recognition by way of a reduction in exit gains. Secondly the acquirer consolidated group obtains recognition in respect of the liability by way of either the impact on the stepped up tax value of assets or subsequent deductions when the 'incurrence' of the liability arises.

The consolidation regime asymmetric treatment in relation to liabilities was noted by the CTA and MCA in their 12 March 2010 submission to the BoT's initial Consolidation Review Discussion Paper where the question was raised by the CTA/MCA as to whether a 'principled decision ought to be taken regarding whether any liability should continue to receive an inherited history treatment'.[4]

(b) Addressing potential duplicated liability outcomes of the vendor group or purchaser group

Obtaining an overall tax outcome that equates to the overall economic outcome (ie a net $100 gain in the above example) could be achieved by either negating the beneficial treatment of deductible liabilities to the vendor group (Scenario C above) or eliminating associated beneficial tax outcomes in respect of deductible liabilities to the acquiring group (Scenarios D and E above).

From a compliance simplification perspective, amending the Division 711 exit ACA provisions to negate the beneficial tax outcomes associated with deductible liabilities to the vendor group (Scenario C) would be the preferred approach. However, the CTA acknowledges the resulting tax outcomes would vary significantly from the underlying economic position (Scenario A above), given that both the increase in the market value of the asset and the existence of the liability arose prior to the joining time (albeit that a deduction for this liability was not available at that time). In addition, making the adjustment only at the vendor level would generate substantially different overall outcomes where the joining entity was leaving a consolidated group as compared to being an unconsolidated subsidiary or the head company of a consolidated group (Scenario F above).

Ideally, in determining whether an adjustment should be made to the vendor group or, alternatively, the acquiring group, regard should be had to what the tax outcomes would have been had the transaction been undertaken as an asset sale (with the assumption or novation of associated liabilities) as compared to an entity sale. However, unfortunately it is acknowledged that such a comparison cannot be readily and meaningfully undertaken, given the significant technical uncertainties and varying

[4] The 12 March 2010 joint CTA/MCA submission to the BoT's post-implementation consolidation regime review Discussion Paper at 4.8.

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outcomes that can arise where liabilities are transferred/assumed/novated in association with an asset transfer. [Refer a paper entitled *Tax treatment of liabilities – the unexplored parallel universe*, presented by Ken Spence at the Tax Institute's National Convention in March 2009, and in particular part 4 of that paper.]

However, if in an asset sale scenario liabilities were not 'transferred' but rather paid out by the vendor entity, then in broad terms the tax outcomes would equate to the vendor benefiting from the tax deductible status of the liabilities rather than the acquiring entity (refer Scenario G above).

Therefore, the CTA concurs with the BoT that seeking to adjust the tax treatment of the acquiring group rather than the vendor group is likely to be the most appropriate way of addressing current duplication issues.

(c) Possible adjustment approaches in respect of the acquiring group

If adjustments in respect of future deduction liabilities are to be made in respect of the acquiring group rather than the vendor group, the CTA sees some conceptual merit in the proposed Option 2 approach (i.e. reducing future deductions in respect of liabilities) but considerable simplification/compliance benefits in relation to Option 3 (disregarding deductible liabilities in entry ACA step 2).

The compliance issues associated with seeking to track movements in respect of joining time liabilities are of considerable concern and cannot be overstated. While some possible short-cut methods associated with an Option 2 approach are noted at (d) below, these will not address all circumstances and will also bring with them other timing mismatch issues.

An Option 3 approach would implement all adjustments by way of the ACA amount at the joining time, and hence would avoid these compliance complexities. In addition, from an outcome perspective it would also generate the appropriate tax value outcome for deductible liabilities that economically suppress the value of related assets, even though, legally, the liabilities do not transfer with the ownership of an asset such that subsection 705-70(2) applies (e.g. an out-of-the-money contractually committed service acquisition contract that is economically/commercially (but not legally) linked to a mining operation). Similarly, an Option 3 approach, by in effect mandating a subsection 705-70(2) outcome for all deductible liabilities, would avoid significant differential future deduction outcomes that would otherwise arise depending on whether subsection 705-70(2) applied to a liability.

Irrespective of whether an Option 2 or an Option 3 approach is adopted, the CTA draws distinctions from the BoT Position Paper in the following respects:

(1) **outcomes where liabilities are settled for an amount that differs from the step 2 amount (refer (e) below); and**

(2) **'formation' scenarios (refer (f) below).**

The CTA would not support an Option 1 approach as the *Income Tax Assessment Act* does not currently contain a comprehensive and prescriptive regime for regarding liabilities as having a 'tax value' and for dealing with gains in respect of liabilities (other than the TOFA regime in the context of financial arrangements and certain FX transactions). Without a comprehensive and prescriptive liability regime an Option 1 approach would appear to be extremely problematic.

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The Option 4 approach is regarded as totally inappropriate from both the policy and outcome perspective.

(d) Compliance issues and shortcuts

As noted above, the CTA is extremely concerned about the very significant practical and compliance issues the Option 2 approach would raise (tracking and disallowing subsequent deductions) or, alternatively, the risks that inappropriate tax burdens could be generated by various shortcut methods.

Particularly problematic in this regard are employee leave provisions and other general warranty or business restructuring provisions (including redundancy provisions) that might be calculated on a global/actuarial basis. Simply adopting a ‘first-in-first-out’ assumption as suggested in paragraph 2.35 of the BoT paper would in many circumstances not be applicable where such provisions merged with equivalent provisions of the head company.

Conversely, future outcomes in respect of certain liabilities will be readily able to be tracked, for example unrealised losses on foreign denominated liabilities (that are not otherwise dealt with under the TOFA regime) or a negligence liability provision relating to a major event.

As noted above, Option 3 avoids all compliance complications (and would also simplify subsection 705-70(2) liability characterisation aspects). However, if Option 2 were to be utilised, then at a minimum, in order to strike an appropriate balance in relation to these compliance issues, the CTA would propose the following approach:

(1) **where a taxpayer chooses to do so, future outcomes in respect of future deductible liabilities could be individually tracked such that deductions are progressively denied up to the quantum of the associated liability provision at the joining time;**

(2) **otherwise, liabilities would be fully deductible as incurred but an amount equivalent to the quantum of the associated joining time liability would be assessable progressively as follows:**

- over 12 months from the joining time in respect of a liability that was recognised as a current liability in the accounts of the joining entity at the joining time; or
- otherwise over four years in respect of non-current future deductible liabilities.

Such an approach is broadly consistent with how subsection 711-45(8)(d) has sought to address not dissimilar practical/compliance issues associated with liabilities in the context of ACA exit calculations.

(e) Liabilities are settled for an amount that differs from the step 2 amount

While not specifically stated in the Discussion Paper, the implication from the description of Option 1 and Option 2 is that the general position would be that if a joining time future deductible liability was subsequently paid out/extinguished for an amount **less** than its

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joining time step 2 amount, the amount of the difference would be included in the taxable income of the acquiring group. In effect this would reactivate CGT event L7 which was repealed by way of *Tax Laws Amendment (2009 Measures No. 4) Act 2009* but also it would treat the resulting gain as on revenue account which is an approach and outcome that would not be supported by the CTA.

In this regard the CTA notes the policy and practical issues cited by Parliament in the Explanatory Memorandum to *Tax Laws Amendment (2010 Measures No. 1) Act 2010* at the time of the repeal of CGT event L7 being:

> 5.284 In an arm's length acquisition case, the accounting value of the liabilities at the joining time genuinely reflects the value of those liabilities at that time — that is, it is the best estimate of those liabilities at the joining time and is not open to manipulation.
>
> 5.285 In addition, the value of long standing liability provisions tends to be calculated on a pooled basis, rather than on an individual basis. Tracking individual liabilities to determine whether the amount included at step 2 of the allocable cost amount for an individual liability exceeded the amount for which the liability was discharged places an unreasonable compliance cost burden on affected groups.

The CTA accepts that where the compliance shortcut method as proposed at (d) above was utilised by a taxpayer then by default a net amount would in effect be assessable if a liability was ultimately discharged for an amount less than its step 2 joining value. However the CTA regards this as an unavoidable consequence where it is not possible to track subsequent movements in respect of a joining time liability.

(f) 'Formation' scenarios

The Option 2 'allow asset step ups/disallow future deductions' method could significantly distort tax outcomes where a long held subsidiary joined a consolidated group on the initial formation of the group. This is due to the fact that this approach would in broad terms result in overstating the tax cost of an asset to the formed group while at the same time denying deductions to the group for liabilities that accrued to it prior to the formation time.

Unfortunately these formation issues are not raised in the Discussion Paper. From a general perspective the CTA believes it would be inappropriate to apply an Option 2 approach in a formation case but rather outcomes associated with the future deductibility of liabilities at the joining time should be dealt with by way of section 705-75 and section 705-80 as is currently the case.

However, the CTA recognises that applying different outcomes in a formation case as compared to an acquisition case will not always produce the appropriate outcome, depending when the relevant liabilities accrued to the subsidiary ie whether the underlying liabilities of the joining entity can broadly be regarded as being 'owned' as compared to 'acquired' by the head company. The extreme scenarios in this regard are outlined in the following table.

Most appropriate policy treatment if an Option 2 approach is introduced		
History of the Group's ownership of the joining entity	***Formation case***	***Acquisition by an existing consolidated group***
Long standing ownership 1% *Short term ownership 99%*	*Chapter 2 approach*	*Chapter 2 approach*
Long standing ownership 99% *Short term ownership 1%*	*Existing provisions*	*Existing provisions*
Long standing ownership 50% *Short term ownership 50%*	*Blended but complex approach*	*Blended but complex approach*
Pragmatic approach proposed by CTA	1 Generally existing provisions 2 If more than 20% of the shares in the joining entity have been acquired in the 12 months prior to the formation time, Chapter 2 approach would apply	1 Chapter 2 approach 2 If more than 80% of the shares in the joining entity have been acquired more than 12 months prior to the joining time, the existing provisions approach would apply

It is thought that by way of the Option 3 approach this formation case/acquisition case differential treatment issue is unlikely to arise, on the basis that on formation an Option 3 approach may generate outcomes equivalent to those under the existing provisions. However, the CTA acknowledges that this proposition would require further detailed testing.

(g) Other aspects requiring consideration

A number of other important related matters of detail have not been raised in the Discussion Paper and the CTA would be able to discuss these further with the BoT if this would be of assistance.

For example, it will be important to determine the implications of an Option 2 type approach where a relevant liability was contained in an entity that subsequently left the consolidated group and, hence, whether or not the existing provisions of section 711-45 would need to be modified in this regard.

2.2 Responses to specific BoT questions

Board of Tax question	***CTA comment***
2.1 (a) Do stakeholders agree with the Board's analysis in this chapter? Why, or why not?	*In general agreement – refer comments above.*
(b) Do stakeholders agree with the Board's preferred solution to the issues? Why, or why not?	*Modified approaches using either Option 2 or Option 3 are proposed – refer above.*
(c) Are there additional types of liabilities (other than those covered by the TOFA and insurance regimes) that should be excluded from the operation of the Board's preferred solution? If so, what are these liabilities? Should these particular types of liabilities have a particular solution?	*[To be considered.]*
(d) The Board considered that the implementation of the preferred solution should have manageable ongoing compliance costs. Do stakeholders agree? If not please provide specific details of the compliance costs involved.	*There are significant concerns regarding the compliance costs associated with the BoT's Option 2 approach, hence alternative approaches are proposed by the CTA – refer above.*
(e) If the Board's preferred solution is adopted, do any inappropriate consequences arise when the acquirer or the purchaser is not a member of a consolidated group? If so, what are those consequences and how can they be resolved?	*No inappropriate consequences identified.*
(f) If the Board's preferred solution is adopted, do any transitional issues arise? If so, what are those transitional issues? How should they be resolved?	*It would be extremely inequitable and inappropriate if this approach was to apply to arrangements that commenced to be carried on prior to a specific announcement by the Government. (An approach similar to that adopted in clause 52 of* Tax Laws Amendment (2012 Measures No. 2) Act 2012 *could be applied in determining whether an arrangement had been entered into.)*

3 Deferred tax liabilities

3.1 Comments

*The CTA has been supportive of the deferred tax liability (**DTL**) issues being considered by the BoT in its post implementation consolidation review. In particular, while DTLs were not raised by the BoT in its initial December 2009 Consolidation Discussion Paper, the joint 12 March 2010 CTA/MCA associated submission to the BoT noted the following:*

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”The CTA/MCA recommend that the BoT’s review also encompass two areas where there is broad acceptance that the existing provisions do not always operate in a manner consistent with policy objectives. However, the fact that the Government has not yet sought to address these problem areas reflects the fact that they involve very complex issues and to date Government (and the corporate community) have not committed the time and resources necessary to consider and resolve them. Therefore, it is hoped that via this BoT review some real ‘traction’ can be given to once and for all dealing with these issues.

(a) **Deferred tax assets and liabilities – entry ACA and exit ACA implications**

There has been discussion and debate for some time as to the conceptual merit in the consolidation entry ACA and exit ACA calculations of the inclusion and quantification of certain financial accounting assets and liabilities associated with the tax timing differences, being deferred tax assets (**DTAs**) and deferred tax liabilities (**DTLs**).

The Discussion Paper issued by the ATO at the National Tax Liaison Group Consolidation Subcommittee meeting of 26 February 2009 considers some aspects associated with the ACA implications of DTAs and DTLs. Although the CTA/MCA do not endorse a number of comments made in that Discussion Paper, and believe that in many respects it is substantially flawed (including a number of the examples utilised), it was seen as a very worthwhile initiative to engender consideration and discussion of these difficult issues. However, disappointingly, the ATO subsequently determined that it was inappropriate for them to seek to facilitate discussion on a tax policy issue of this nature, and therefore they terminated the consultation process in relation to these policy issues.

...

The CTA/MCA believe that it would be extremely worthwhile if the BoT could reignite the discussion and review of these consolidation DTA/DTL interaction issues, with input from Treasury, the ATO, and the taxpaying community.”

As illustrated both by the analysis contained in the Discussion Paper and also in the initial paper prepared by the ATO back in February 2009, DTLs in a consolidation context raise a number of complex policy and technical issues and very problematic practical compliance issues.

*Therefore, on balance the CTA concurs with the preliminary views of the BoT that DTLs should be excised from both ACA entry and ACA exit calculations. In this regard the CTA also notes that this approach would also be consistent with the application of recent amendments which in effect excise deferred tax assets (**DTAs**) as being assets to which ACA may need to be allocated when an entity joins a consolidated group.*

As to a matter of detail, the CTA confirms that the comments above are intended only to be limited to DTLs in respect of Australian income tax and do not extend to DTLs that relate to other Australian taxes (e.g. Minerals Resources Rent Tax, interest or additional taxes relating to income tax imposts or foreign taxes).

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3.2 Responses to specific BoT questions

Board of Tax question	*CTA comment*
3.1 (a) Do you agree with the Board's proposal to remove deferred tax liabilities from the entry and exit allocable cost amount calculations? If not please provide examples outlining when and why these liabilities need to be retained in the calculations.	*The CTA supports this approach.*
(b) Are there are other situations where deferred tax liabilities should continue to be recognised? Are there alternative solutions that could achieve the same result?	*DTLs relating to tax liabilities other than primary Australian income tax should continue to be recognised in consolidation entry and exit calculations.*
(c) If deferred tax liabilities were to be removed from the exit and entry tax cost setting calculations do you think that any additional modifications would be needed to the tax cost setting process on exit or on entry? If so please provide detailed examples showing the need for such modifications.	*Still under consideration by the CTA.*
(d) What alternatives, if any, are there for reducing the complexity introduced by deferred tax liabilities?	*None identified.*

4 Adjustments to the value of liabilities under the tax cost setting rules

4.1 Comments

4.1.1 Different value of liabilities for the head company – subsection 705-70(1A)

The CTA acknowledges that the most common application of subsection 705-70(1A) is in the context of DTLs of a joining entity. However, the fact that this provision as currently worded is not restricted in its application to DTLs is important, and reflects its broader application from a policy perspective. *Therefore, the CTA does not support the repeal of subsection 705-70(1A), even if DTLs are otherwise excised from entry ACA calculations***.**

From the perspective of the acquiring group (and its accounting policies) it may value certain liabilities differently as compared to the value ascribed to such liabilities in the accounts of the joining entity immediately before the joining time. In such circumstances, by continuing to utilise the value ascribed to such liabilities **by the acquiring group** (as facilitated by subsection 705-70(1A)), the reset tax value of assets of the joining entity will remain more closely aligned to the economic cost of those assets from the perspective of the acquiring group, and will also remain more closely aligned to the accounting value of those assets to the acquiring group.

The following points are also noted in this regard.

(a) If a liability subject to a subsection 705-70(1A) adjustment is a liability in respect of which future

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deductions will be obtained, then the future treatment of such liabilities as discussed in Chapter 2 should apply to the adjusted liability amount (i.e. the amount ultimately forming part of the ACA step 2 amount).

(b) For the avoidance of doubt, it is important that the existing note to subsection 705-70(1A) be retained to avoid creating any uncertainty regarding the ACA treatment of liabilities that become intra-group liabilities.

(c) If it is ultimately determined that DTLs should be excluded from the ACA step 2 amount, then similarly subsection 705-70(1A) should be correspondingly modified to confirm that it also can have no application in relation to DTLs.

(d) Subsection 705-70(1A) should be modified to confirm that when determining the quantum of the liability to the joined group, regard should be had to the quantum of the liability by applying the joined group's accounting principles in the context of its consolidated financial accounts.

4.1.2 Liabilities that give rise to a future tax gain or loss – section 705-80

As noted by the BoT, the principal objective of section 705-80 is to appropriately adjust the ACA in recognition of unrealised taxable gains and/or deductible losses inherent in liabilities of the joining entity. By way of section 705-80 the ACA is sought to be adjusted to reflect what it otherwise would have been had these liability-related tax gains/losses been realised prior to the joining time.

The classic example in this regard is a substantial unrealised loss in relation to a liability which, if realised prior to the joining time, would have resulted in the joining entity having a tax loss such that the ACA would have been reduced by step 5 and/or step 6.

If an Option 2 approach as outlined in Chapter 2 of BoT's Discussion Paper was implemented an applied to a particular liability then clearly section 705-80 should not similarly apply in relation to that liability. However if that Option 2/Chapter 2 approach is not to extend to formation cases as proposed by the CTA (refer 2.1(f) above) then in respect of formations section 705-80 should continue to apply.

4.2 Responses to specific BoT questions

Board of Tax question			CTA comment
4.1	*(a)*	*Do you agree with the Board's view that the adjustment which applies if the head company's accounting value of a liability is different to the joining entity's accounting value is relevant only to deferred tax liabilities? If so, do you agree that the adjustment should be removed?*	*The CTA does not believe that the operation of subsection 705-70(1A) is currently restricted only to DTLs. Therefore, the CTA does not believe that this subsection should be repealed if DTLs are to be excised from the ACA step 2 amount. Even in such circumstances, subsection 705-70(1A) would have an important role to play in seeking to set the tax cost of assets of the joining entity by reference to the economic cost of these assets to the acquiring group.*
	(b)	*If you do not agree with the Board's preliminary view that the adjustment which applies if the head company's accounting value of a liability is different to the joining entity's accounting value is relevant only to deferred tax liabilities, in what other circumstances is the adjustment relevant? How can the adjustment be modified to clarify its operation?*	
4.2	*(a)*	*Do you agree with the Board's proposal to remove the adjustment for unrealised gains and losses on liabilities in full acquisition cases? If not, why not?*	*The CTA agrees that section 705-80 should not apply to liabilities that are subject to adjustment as proposed in Chapter 2 of the BoT Discussion Paper.*

5 Assets and liabilities recognised on different bases

5.1 Comments

The CTA concurs that this 'asset/liability recognition' aspect is currently a significant problem and hence agrees with the BoT's preliminary view that accounting liability recognition for entry ACA step 2 purposes and exit ACA step 4 purposes should be aligned with either the tax recognition or non-recognition of related assets.
In this context the CTA also notes the following.

(a) For the avoidance of doubt, the CTA wishes specifically to bring to the attention of the BoT that, contrary to the description in paragraph 5.5, the current exit ACA provisions do not comprehensively address issues associated with finance leases. In particular, subsection 711-45(2A) only makes the appropriate adjustment where the relevant finance lease existed at an earlier joining time, and therefore very anomalous outcomes can arise in respect of finance leases that exist at a leaving time but were not present at an earlier joining time. The CTA submits that, if nothing else, this specific anomaly should be addressed as soon as possible and with retrospective application.

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(b) The principles as suggested by the BoT at paragraph 5.18 should apply in respect of both entry and exit ACA calculations.

(c) In circumstances where an asset is recognised under the consolidation tax cost setting rules but a related liability is not an accounting liability, the BoT is appropriately suggesting that the related liability should be recognised for tax cost setting purposes. However, the Discussion Paper does not outline how the quantum of this additional entry ACA step 2 amount or exit ACA step 4 amount should be determined. This is a very important point on which the CTA would like to consult further with the BoT.

5.2 Responses to specific BoT questions

Board of Tax question	***CTA comment***
5.1 (a) Are there other instances giving rise to the asymmetry a) of assets and liabilities in a consolidation context? If so please outline the circumstances where this occurs.	*The CTA concurs that this 'asset/liability recognition' aspect is currently a significant problem and hence agrees with the BoT's preliminary view that accounting liability recognition for entry ACA step 2 purposes and exit ACA step 4 purposes should be aligned with either the tax recognition or non-recognition of related assets.* *In regard to this issue the CTA also raises some points of detail that would need to be considered in implementing this recommendation.*
(b) Do you agree with Board's preliminary view for resolving this issue? If not, are there other approaches that should be considered?	
(c) What are the appropriate circumstances in which assets and liabilities can be said to be related?	

6 Capping the tax cost setting amount of assets

6.1 Comments

In regard to the proposal to extend the tax value capping rules to assets held on capital account at paragraph 6.8 the BoT expresses a preliminary view that 'the adoption of this proposal may result in greater neutrality, in most circumstances, between consolidated groups that acquire a business (by acquiring the entity that carries on the business) and entities that acquire a business directly'.

Importantly, at paragraph 6.9 the BoT recognises that 'in a progressive acquisition case, the market value of the asset of a business at the joining time may not reflect the price paid by the acquirer over the course of the acquisition'.

The CTA is very strongly of the view that the capping of asset tax values should not be further extended to encompass assets held on capital account. Where the tax value of assets may otherwise be reset above their joining time market value and terminating value in most cases arises in the context of progressive acquisitions where the market value of the underlying assets has diminished in value.

A simple example in this regard is where the acquiring group acquires 90% of a target entity when the underlying assets of the target entity are valued at $100. Subsequently, the market value of the underlying assets drops to $10 at which time the acquiring group acquires the 10% balance of the shares in the target entity for $1. So the final result is that the acquiring group has in total paid $91 to obtain the economic ownership of underlying assets with a then market value of $10.

An approach whereby the reset value of the underlying asset is reset to a capped amount of only $10, with the ACA balance of $81 being allocated to a notional goodwill asset, would significantly distort tax outcomes as to what otherwise would have been the case in the context of an asset acquisition.

As a result of the recently enacted provisions of paragraph 705-25(5)(d), ACA allocations (as compared to the relative market values of assets) will be skewed where assets of the joining entity are 'rights to future income (other than a WIP amount asset)'. These ACA skewing distortions would be further exacerbated by this market value capping proposal currently under consideration by the BoT.

In short, the CTA would certainly not support any approach which would further limit and distort the allocation of ACA between assets of a joining entity by skewing ACA allocations in favour of one particular asset class, being goodwill, as compared to other capital assets of a joining entity. The anomalies created by extending this capping rule as proposed by the BoT would be further exacerbated in situations where the joining entity had no goodwill, such that ACA was required to be allocated to a totally notional non-existent asset.

6.2 Responses to specific BoT questions

Board of Tax question			***CTA comment***
6.1	*(a)*	*Do you consider that rules should be introduced to cap the tax cost of all assets?*	*No*
	(b)	*Would capping the tax cost setting amount for all assets result in greater neutrality between consolidated groups that acquire a business (by acquiring the entity that carries on the business) and entities that acquire a business directly?*	*No*
	(c)	*What difficulties, if any, could arise if the tax cost setting amount for all assets was capped?*	*Distortions in tax value allocations.*
	(d)	*Do you agree with the Board's suggestion to allocate any excess*	*No*

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Board of Tax question	*CTA comment*
allocable cost amount to goodwill? If so, what should happen to the excess if a company does not have goodwill?	
(e) If you do not agree with the Board's suggestion to allocate any excess allocable cost amount to goodwill, what should happen to the excess allocable cost amount?	*The provisions should continue to apply as at present.*
(f) Are there circumstances in which capping at the greater of market value or terminating value of an asset would produce undesirable outcomes?	*Yes – as outlined above.*

7 CGT issues

7.1 Comments

7.1.1 Interaction between the CGT roll-over rules and the consolidation regime

The CTA is very supportive of the thrust of the BoT's proposal to simplify and, wherever possible, standardise consolidation outcomes associated with corporate restructures that are facilitated by way of CGT rollover relief. As identified by the BoT, the current differential and anomalous outcomes can create very significant and inequitable adverse results for taxpayers.

The following table seeks to summarise the BoT's proposals and notes the CTA comments in relation to each of these proposals.

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BoT proposal	***CTA comments***
Rule 1: differentiate between an acquisition and a restructure	
In effect where the restructure involves more than an 80% continuity of underlying interests in the rollover entity (by applying the test in section 124-784A) 'restructure' outcomes will apply irrespective of whether or not the restructure involves widely held entities.	*While conceptually the CTA agrees with the BoT's proposal, in its implementation it would be necessary to recognise the key differences between widely held and non-widely held entity restructures.* *In particular, in a widely held entity situation the acquiring entity will have no way of ascertaining which shareholders have or have not elected rollover relief. Therefore the existing provisions assume rollover relief has been elected by all shareholders or otherwise by way of section 124-795(4) the acquiring entity can elect to preclude rollover relief being obtained by any shareholders. Therefore, the provisions operate to assume all shares are rolled over or no shares are rolled over.* *In a non-widely held scenario the acquiring group may be very well aware of the fact that specific shareholders will not be electing rollover relief and in such circumstances to proceed with outcomes that assume 'full rollover utilisation' could produce inappropriate outcomes. This will also be the case where the original shareholders realise a capital loss in respect of their transferred shares such that they are not eligible to claim rollover relief, with the risk under the BoT approach of duplicating known losses.* *Possible approaches to deal with these issues in non-widely held cases are noted below.*
Rule 2: determining the cost base of membership interests	
Where a rollover relates to a 'restructure' (using the expanded definition in Rule 1) the cost base of the shares in the acquired entity should be determined using a section 124-784B type 'underlying asset approach'.	*(a) As noted above, in a non-widely held situation where rollover relief is not available or not elected in respect of certain shares/shareholders this could be dealt with by utilising the mechanism in section 124-784B(3) that otherwise applies in context of partial cash consideration.* *(b) It should be confirmed that in such circumstances a Chapter 2 type approach to liabilities will not be applied ie it should be confirmed that future liability deductions will not be denied.*
Rule 3: where a new holding company is interposed over an existing tax consolidated group	
Under a restructure the old tax consolidated group should continue to exist with the new holding company being taken to be the new head company of the old group, such that no exit or entry calculations will be required.	*The CTA agrees with this approach.*

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BoT proposal	***CTA comments***
Rule 4: retaining existing tax cost	
Where an entity is rolled into an existing tax consolidated group under restructure (as per the extended Rule 1 definition) the existing cost base of the assets of the joining entity should be compulsorily retained (i.e. the 'stick' method applies) i.e. without option or choice. *[Paragraph 7.43 appears to suggest that optionality in this regard may continue to be available in the context of Subdivision 124-M rollovers.]*	*(a) This 'stick' outcome should also be available/apply where the acquiring entity elects to consolidate with effect from immediately after the acquisition (particularly relevant where it is only by way of the restructure that a group will exist that can be consolidated).* *(b) The non-widely held situation where it is known that rollover relief is not applicable to some shareholders is not readily addressed by this rule. The CTA recommends this be given further and more detailed consideration.* *(c) It should be confirmed that in such circumstances a Chapter 2 type approach to liabilities will not be applied i.e. it should be confirmed that future liability deductions will not be denied.*
Rule 5: other interaction rules	
Additional consolidation/rollover interaction rules should be considered in implementing this approach similar to those contained in Subdivision 715-W.	*The CTA concurs that more detailed consideration needs to be given to implementation/interaction issues.*

7.1.2 CGT event J1

CGT J1/consolidation aspects were originally raised by the BoT in its November 2010 Position Paper. The CTA (at that time jointly with the Minerals Council of Australia (**MCA**)) considered the issues raised by the BoT in some detail and addressed these in its detailed submission lodged with the BoT on 30 November 2010. Therefore previous BoT questions and submissions by the CTA/MCA are reproduced below (with limited subsequent amendments being noted).

BoT POSITION 4.9 ***The Board considers that CGT event J1 should not apply when subsidiary members leave a MEC group with assets that were rolled over prior to the entity joining the group.***
SUBMISSION *The CTA/MCA concur with the BoT's view in relation to this issue.* *Additional points, October 2012:* *(i) this CGT event J1 exclusion should be limited to leaving entities that are subsidiary members, other than eligible tier-1 entities;* *(ii) this exemption should apply to all CGT event J1 situations and not be limited to assets that were rolled over prior to the entity joining a group.*

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BoT POSITION 4.10

The Board agrees that double taxation may arise when an eligible tier-1 company leaves a consolidated group with assets that were rolled over prior to the entity joining a consolidated group because of the pooling rules.

SUBMISSION

The CTA/MCA have given some consideration to the BoT's question as to how to ensure that deferred capital gains and losses are not taxed twice when an ET-1 leaves the consolidated group with assets that were previously rolled over and hence are subject to CGT event J1.

The CTA/MCA believe that the most appropriate and direct way of addressing this issue would be to:

(i) Step 1 – allow CGT event J1 to continue to apply in relation to the rolled over asset held by the existing ET-1;

(ii) Step 2 – reduce the taxable gain otherwise realised by the non-resident vendor of the shares in the exiting ET-1 by the amount of the CGT event J1 gain, but not below zero (i.e. this adjustment should not result in a capital loss for the non-resident vendor); and

(iii) Step 3 – reduce the post-divestment Subdivision 719-K MEC cost base pool by the Step 2 amount (but not below zero).

This approach would be relatively straightforward to legislate and would not involve any substantial compliance costs/complexity, but it would address concerns of the BoT regarding double taxation while not providing beneficial treatment to MEC groups as compared to consolidated groups and unconsolidated entities.

[Albeit that it would somewhat complicate the adjustment, a further refinement would be to cap the Step 2 relief (and similarly reduce the Step 3 adjustment) so that it could not exceed the CGT gain that was deferred at the time of the original rollover of the underlying asset.]

The CTA/MCA would be able to consult further with the BoT secretariat about this proposal if required.

BoT POSITION 4.11

The Board considers that:

(a) CGT event J1 should apply to rolled over membership interests when the non-resident owner disposes of its interests in the head company; and

(b) further work is needed to determine how the cost base of these membership interests in the subsidiary member should be calculated.

SUBMISSION

The objective of CGT event J1 is to in effect tax a gain on a rolled over asset that was deferred at the time of its earlier rollover, and then to reset the tax value of the rolled over asset to market value.

In the context of a rolled over membership interest in a resident company that has then joined the consolidated group of the acquiring entity, additional technical and policy issues obviously arise because:

(i) the rolled over membership interest is then disregarded under the SER (so from the head company's perspective, there is no remaining asset to which CGT event J1 can be applied);

(ii) under Division 705 the rolled over cost base has been used in resetting the cost base of underlying assets of the entity whose shares were the subject of the rollover (the joining entity); and

(iii) due to this rollover, the reset cost base of the assets of the joining entity are

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lower than they otherwise would have been.

When CGT event J1 would otherwise be triggered in these circumstances it would be inappropriate to seek to tax the deemed disposal and reacquisition of the head company's shareholding in the joining entity, for the following reasons:

(i) at that time these shares do not have a cost base, and it would impose a significant compliance cost to seek to deem a Division 711 exit for the purposes of calculating this cost base;

(ii) additional compliance complexity would arise in then using the market value cost base of these shares for the purposes of Division 705 to reset the tax value of underlying assets of the relevant entity; and

(iii) prior to the triggering of CGT event J1, many of the underlying assets of the joining entity may already have been disposed of so that, in effect, the gain deferred by way of the rollover may have already been partially clawed back by way of an additional taxable gain triggered on such assets (or may have resulted in lower tax depreciation deductions than would otherwise have been the case in respect of depreciating assets).

Therefore, the CTA/MCA submit that the only realistic way of dealing with this issue is to instead trigger a CGT event J1 deemed market value disposal and reacquisition in respect of certain key assets that were held by the joining entity at the joining time and continue to be owned by the consolidated group.

Such an approach would satisfy CGT event J1 policy objectives, but would avoid the complexities and anomalies associated with a deemed 'leaving' and then a deemed 'joining' by the previously rolled over entity.

Further, it is submitted that, pragmatically, a deemed disposal/reacquisition of underlying assets should not apply in respect of:

(i) trading stock, because it is assumed that normally these assets are turned over regularly, such that any deferred gain would likely have already been subject to tax (for similar reasons, there are arguments that CGT event J1 treatment should also not apply to other assets held on revenue account); and

(ii) depreciating assets of the joining entity because the suppressed tax value would already have resulted in reduced depreciation deductions and any deemed disposal and reacquisition would trigger a balancing adjustment – but also a subsequent increase in depreciation deductions.[5]

It is accepted that this CGT event J1/intra-group membership interest issue raises a number of difficult and complex issues, and therefore it is accepted that the CTA's/MCA's proposed approach may require further analysis and refinement.

Finally, and importantly, the CTA/MCA are concerned that without specific direction from the BoT this measure could have inequitable retrospective application. This would be the case if it were to apply in respect of intra-group shareholdings that were acquired by way of a roll-over <u>prior to</u> this issue being flagged as a concern by the Government or the BoT (albeit that the relevant CGT event J1 event may not occur until some time in the future). Therefore, it is requested that the BoT recommend that this measure only apply to CGT event J1 events occurring after the date of a specific Government announcement, but also that such a measure should only apply where the earlier roll-over event involving the intra-group shareholding occurred <u>after</u> the BoT first raised this issue in its initial Discussion Paper issued on 9 December 2009 (at paragraph 4.69).

[5] In addition, it is noted that if such underlying depreciating assets had themselves been directly rolled over, under section 40-340 no CGT event J1 gain or associated balancing adjustment would have been triggered.

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BoT QUESTION 4.12

Do stakeholders consider that issues which currently arise because of CGT event J1 could be resolved if:

- ***a time limit applied to the provision;***
- ***minority interest divestments were exempted from the provision; and***
- ***the sub-group break-up exemption applied where less than 100 per cent of the interests in the sub-group is disposed of to non-group entities?***

SUBMISSION

As raised previously with the BoT, the CTA/MCA definitely believe that most of the other CGT event J1 equity and compliance concerns faced by taxpayers (now predominantly non-resident taxpayers) would be addressed if the 'time limit', 'minority interest divestment exemption', and the 'sub-group break-up exemption' proposals identified by the BoT were adopted, and that to do so would be straightforward from a legislative drafting/implementation perspective. In addition, a further CGT event J1 issue of concern is noted below, which could similarly be readily addressed.

ADDITIONAL KEY POINTS

As a result of the commencement of Division 855, in implementing upstream corporate re-organisations many foreign corporate groups now have to seek Australian CGT roll-over relief under Subdivision 126-B.

As a result of choosing a roll-over, a CGT gain or loss to the transferee subsidiary can subsequently be triggered under CGT event J1 if at any time while it continues to hold the rolled-over asset it ceases to be a wholly-owned subsidiary of the "ultimate holding company" of the foreign group.

As previously identified in a July 2006 joint submission by the CTA, MCA and Australian Petroleum Producers and Exploration Association (**APPEA**), there are a number of longstanding significant problems associated with the scope and application of CGT event J1 and these problems are amplified where intra-group transactions have to be implemented under the protection of a CGT roll-over because of the introduction of Division 855. For example, a full-CGT gain could be triggered, based on the then market value of the rolled-over asset, if subsequently even just one share in the roll-over transferee entity (or any entity interposed between the ultimate holding company and this transferee entity) is acquired by a non-group member. Further, in such circumstances the section 104-180 sub-group break-up exemption will not provide any protection.

In relation to each of the aspects noted in BoT Question 4.2, the following points are reiterated from the earlier CTA/MCA/APPEA submission.

1 <u>*Introduction of a time limitation*</u>

CGT event J1 could be modified to introduce a time limitation to its application, such that it could only apply if the relevant "break-up time" occurred within, say, three years of the relevant roll-over event. An equivalent provision to CGT event J1 in the UK only applies for six years after the relevant event . In the context of stamp duty exemptions for intra-group transactions, claw back provisions only operate for example, for three years in Queensland and in Victoria.

It is submitted that a time limitation of this nature would strike an appropriate balance between the "integrity" concerns of Government and ongoing compliance costs of taxpayers (e.g. continuing to have to monitor potential share related transactions to ensure that a CGT event J1 exposure is not inadvertently triggered).

Even with a three year limitation being introduced, the following two points would also need to be addressed in relation to anomalous outcomes that could otherwise occur within that three year period.

2 <u>*Exempt minority interest divestments*</u>

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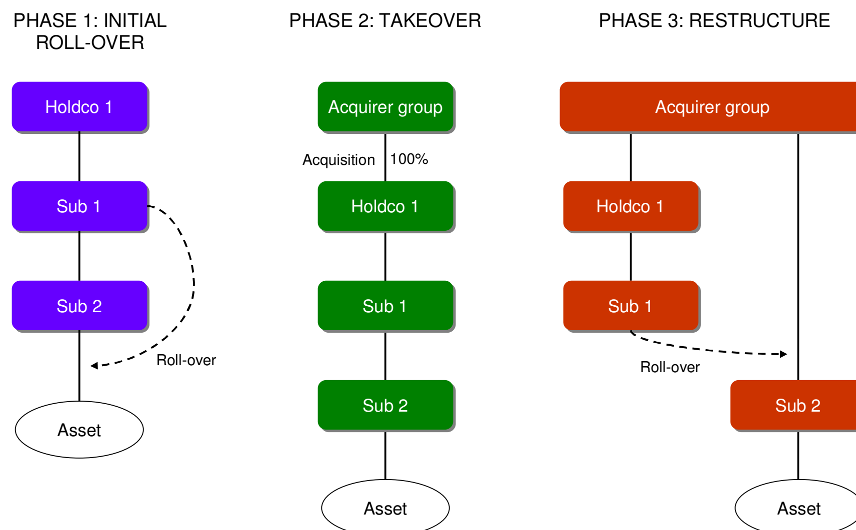
As noted above, CGT event J1 can be triggered where only one share in the transferee entity (or an entity interposed between the ultimate holding company and the transferee) is acquired by a non-group entity. At a minimum, as is the case under the relevant stamp duty provisions, a more appropriate minimum threshold would be the acquisition by a non-group entity of at least a 10% interest in a relevant company.

3 *Address sub-group exemption anomalies*

To qualify for the Subdivision 104-180 sub-group break-up exemption from CGT event J1, it is necessary that a 100% interest in the relevant sub group is disposed of to a non group entity. This is anomalous and therefore the sub-group exemption should be amended to also apply where a lesser interest in the sub group is disposed of to non-group entities.

Until this deficiency is corrected, non-tax motivated legitimate upstream divestments could be adversely impacted and, as such, commercial decisions regarding the divestment of a sub-group could be inappropriately distorted.

In addition, it is becoming increasingly apparent that an additional CGT event J1 anomaly can apply in the context of foreign takeovers of foreign groups in which there have previously been CGT roll-overs. This is illustrated in the following simple example where, as a result of the post-takeover restructure of the group's ownership of Sub 2, CGT event J1 can arise in respect of the underlying assets that had been rolled over prior to the takeover. This is the case even though Sub 2 has remained a wholly-owned subsidiary of the acquirer's group. There appears to be no policy rationale for why CGT event J1 should apply in such circumstances.



7.2 Responses to specific BoT questions

Board of Tax question	***CTA comment***
7.1 (a) Do you agree with the CGT rollover interaction issues that are outlined in this chapter?	*Yes, subject to specific points noted at 7.1.1 above.*
(b) Do you agree with the Board's proposal to introduce systemic rules dealing with CGT rollovers of entities into consolidated groups? If not, please outline why you do not believe that it is appropriate.	*Yes, subject to specific points noted at 7.1.1 above.*

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Board of Tax question	*CTA comment*
(c) Do you agree with the Board's suggested rules for dealing with CGT rollovers into consolidated groups? If you do not agree with one or more of the rules, why do you disagree?	*Yes, subject to specific points noted at 7.1.1 above.*
(d) Are there any consequential issues which arise if the Board's suggested rules for dealing with CGT rollovers into consolidated groups are adopted?	*Requires further consideration.*
7.2 (a) Do you have any suggestions as to how the difficulties that arise with CGT event J1 can be addressed? If so, what do you suggest?	*Refer to the detailed comments at 7.1.2 above.*