Submission

Board of Taxation's post-implementation consolidation regime review

CTA/MCA comments on the October 2010 Position Paper

30 November 2010

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EXECUTIVE SUMMARY

The Corporate Tax Association (**CTA**) and the Minerals Council of Australia (**MCA**) both recognise the importance of the Board of Taxation's (**BoT's**) review of the tax consolidation regime, and therefore very much appreciate the opportunity presented by the BoT's Position Paper of being able to comment on the views being developed by the BoT.

As will be evident from this joint CTA/MCA submission, with limited exceptions the bodies support the positions being proposed by the BoT. In addition, in a number of cases the CTA/MCA have raised points which they request be considered by the BoT in addressing relevant issues in a way that will minimise inequities and/or compliance costs.

The table immediately below summarises the CTA/MCA submission in relation to each specific BoT position, with the full submission (and associated additional points) included on the following pages.

Obviously, the proposal regarding the asset acquisition approach is of particular importance. The CTA/MCA support this proposal, as it would provide future clarity as to the objectives of tax outcomes in relation to tax cost setting amounts, and in so doing would address a number of anomalous current issues. The asset acquisition approach would also substantially reduce tax differentials in respect of assets of a joining entity between transactions undertaken as asset acquisitions as compared to entity acquisitions. As noted in the detailed submission points, the CTA/MCA also note some important matters of detail that the BoT is requested to recommend to Government in association with adopting the asset acquisition approach.

As also noted in our 12 March 2010 submission to the BoT, the CTA and the MCA have a combined membership of over 120 corporate groups that represent a significant portion of total corporate income tax paid. The fact that the bodies are working jointly on considering these consolidation issues and responding to the BoT request for submissions is evidence that they do not see the future development of the consolidation regime as an industry/sectoral specific issue, but rather as a broader corporate policy issue. As such, the CTA and the MCA would at any time be more than willing to meet with the BoT or further consult with the BoT secretariat on any matter of policy or detail as required.

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DETAILED SUBMISSION POINTS

A: POLICY FRAMEWORK FOR THE CONSOLIDATION REGIME

BoT POSITION 2.1

The Board considers that the asset acquisition approach should be adopted.

SUBMISSION

The CTA/MCA support the BoT's proposed asset acquisition approach as it would provide future clarity as to the objectives of tax outcomes in relation to tax cost setting amounts allocated to assets of a joining entity, and in so doing would address a number of anomalous current issues. The asset acquisition approach would also substantially reduce tax differentials in respect of assets of a joining entity between transactions undertaken as an asset acquisition as compared to an entity acquisition.

The proposal to limit the asset acquisition approach only to the tax treatment of assets of a joining entity and not seeking to extend it to liabilities of a joining entity and leaving events is pragmatic and appropriate, as to do otherwise would raise very significant technical issues (particularly in relation to the treatment of liabilities) and very substantial additional compliance costs (particularly in relation to leaving events).

The CTA/MCA also submit that in association with recommending the asset acquisition approach to Government, it will be necessary for the BoT to provide recommendations regarding some matters of detail that must be addressed to ensure that the asset acquisition approach operates efficiently and as intended. These aspects are outlined below.

ADDITIONAL KEY POINTS

1 *Division 40 aspects – specific BoT confirmation*

It is submitted that the BoT, in association with recommending the asset acquisition approach, should also specifically confirm that to address existing anomalous treatments this acquisition approach should consistently apply to all Division 40 depreciating assets of a joining entity (subject to 2 below) such that:

(i) the 200% diminishing value uplift rate would be applicable;

(ii) pre-1 July 2001 mining rights would become depreciable;

(iii) Division 57 treatment would be terminated;

(iv) future depreciation amounts would be determined based on new effective life rates; and

(v) a prime cost/diminishing value option would be available to the acquiring group.

2 *No change of majority beneficial ownership*

In the detailed discussion of the asset acquisition approach, the Position Paper contains two identical footnotes (numbers 20 and 26) which, it has been confirmed with the BoT secretariat, contain a minor typographical error. It is understood that these footnotes were intended to state:

> For example, modifications may be required for the treatment of pre-CGT assets and depreciating assets (including pre-July 2001 mining rights) in formation cases or in cases where there is **not** a change in ownership of a joining entity. [**Correction/inclusion confirmed by BoT secretariat**.]

While the CTA/MCA concur that from a policy perspective the scope and application of the asset acquisition approach may need to be limited where there has not been a change of

majority underlying ownership, the application of these modifications should be restricted and targeted so that they have very limited application. It would create unnecessary complication if these continuity of majority underlying ownership (**CMUO**) modifications had broader application. In particular, the following points are noted.

(i) Modified treatment should be restricted to CMUO situations and therefore in formation cases it should only apply where a CMUO exists in relation to a joining entity/assets. As such, it should not apply on formation to a joining entity/assets where prior to electing to consolidate the forming group had acquired the particular entity from unrelated parties such that there is not a CMUO situation.

(ii) Modified treatment should only apply if CMUO has applied for an extended period (say, three years). For example, it would clearly be inappropriate to apply a modified CMUO treatment to a progressive acquisition where the acquiring group will inevitably own a very substantial interest in the joining entity immediately prior to acquiring the balance of outstanding shares (as would be the case in an on-market takeover where more than 90% of the shares in the target entity are first acquired, followed by a compulsory acquisition of the remaining shares under section 606 of the *Corporations Act*).

(iii) Where there is a CMUO, rather than applying a totally separate regime which would add a further layer of unnecessary complexity, as a general principle the asset acquisition approach should continue to apply but with modifications in relation to particular types of assets considered necessary from a policy or integrity perspective. This 'targeted asset' approach is currently successfully applied in CMUO cases in relation to trading stock[1] and certain 'internally generated assets'[2].

(iv) An additional advantage of applying a modified CMUO approach only to limited types of targeted assets is that the CMUO testing can then be by way of reference to those assets themselves (eg as is currently the case in relation to pre-CGT status under Division 149), rather than applying more broadly to a joining entity. [This would also address integrity concerns which could otherwise arise under recommendation (ii) above in circumstances where assets were transferred to a newly incorporated company within an associated consolidated group, with that newly incorporated company then being transferred to the acquiring group.]

Related issues as to the appropriateness of the asset acquisition approach will also arise where, under the BoT's proposed SME concession and other limited duration formation concessions, assets of a joining entity can retain their existing tax cost bases (ie 'stick entities'). These aspects are separately discussed in that context at H on page 26 below.

3 *Deemed asset acquisition treatment*

Paragraph 2.50 of the Position Paper broadly describes the objectives of the asset acquisition approach as being that 'the outcomes for assets would broadly replicate the outcomes that would arise if there was a direct acquisition … of the underlying assets of an entity by a consolidated group, rather than the acquisition … of membership interests in the entity'.

It will be important to specify the context of this deemed asset acquisition so that resulting tax outcomes can be ascertained. Therefore, there are three possible approaches that could be adopted in this regard:

(i) a deemed acquisition of each individual asset of the joining entity separate from other assets of the joining entity (ie an acquisition of an individual asset);

[1] Section 701A-5 of the *Income Tax (Transitional Provisions) Act 1997*.

[2] Section 701-A-10 of the *Income Tax (Transitional Provisions) Act 1997*.

(ii) a deemed simultaneous acquisition of all the assets of the joining entity or a joining consolidated group under Subdivision 705-D (ie an acquisition of the businesses of the joining entity);

(iii) a deemed simultaneous acquisition of all the assets of the linked group of entities where Subdivision 705-D applies.

It is submitted that the BoT's policy objectives could be best met if the relevant contexts as applicable in (ii) and (iii) above were stated to apply.

4 *Clarity as to tax outcomes in respect of certain assets*

One of the major advantages of the asset acquisition approach is that it will provide a consistent context in which to determine outcomes in relation to tax cost setting amounts allocated to assets of a joining entity. However, unfortunately, in relation to a limited class of assets even in a direct asset acquisition scenario under current tax law there can be some uncertainty as to the tax outcome. Therefore, in relation to some very specific classes of asset it would be appropriate to provide some direction as to post-joining time tax outcomes (either by way of legislation or explanatory memorandum (**EM**) guidance). This would build on the substantial amount of work undertaken in developing some of the provisions and EM guidance contained in *Tax Laws Amendment (2010 Measures No.1) Act 2010* (**2010 Measures Act**).

This limited class of assets in respect of which specific guidance is provided could include:

(i) consumable stores – clarify that their deductible status would apply where the acquiring group adopts an 'incurred' basis in relation to consumables;

(ii) rights relating to the performance of work or services – guidance regarding a 'profit emerging' type outcome, similar to that previously provided in the 2010 Measures Act in relation to the right to future income under:

- a long-term construction contract;
- rights to receive trailing commissions;
- land development agreements; and
- the rights to unbilled income for the supply of gas.

5 *Doubtful debts*

Paragraph 2.37 and the associated footnote (14) raise related issues in relation to trade debts, and in this regard the CTA/MCA note the following points.

(i) The statement is made in the Position Paper that under the asset acquisition approach trade debts held by a joining entity that are written off as bad after the joining time will only be deductible if the group is a money-lender.

While in many situations this will be the case, the CTA/MCA would be concerned about confining the availability of bad debt deductions to only this case as in certain circumstances debts acquired on the acquisition of a business that are subsequently written off as bad may be deductible under the general provisions of section 8-1.[3]

In addition, the CTA/MCA request legislative acknowledgement that to minimise associated compliance costs a 'reasonable estimate' approach can be taken in seeking to subsequently identify those bad debts that may have arisen before the joining time.[4] This concern has been raised by members who have practical experience of acquiring

[3] For example, in situations as outlined in TR 2001/9.

[4] An example of legislative endorsement of an estimation approach in the consolidation context is subsection 705-90(9).

entities and businesses with hundreds of thousands of trade debts.

(ii) Footnotes 14 states that 'a consequential amendment may be required to ensure that trade debts are not retained cost base assets'. The CTA/MCA would be concerned about any general approach by which Australian dollar trade debts and other Australian dollar receivables would cease to be retained cost base assets, for the following reasons:

- this could significantly increase compliance costs if an evaluation had to be made of the market value of individual trade debts;
- in an asset acquisition, trade debts are normally acquired at their face value (equating to retained cost base asset status), with any differential in market values being in effect allocated to goodwill; and
- via the ACA cost base resetting principles, this could result in taxable gains being triggered in respect of trade debts collected at their face value, and such an outcome would not reflect commercial expectations and hence would distort decision-making.

6 *Leaving entities*

Paragraph 2.61 suggests that under the asset acquisition approach, when an entity leaves a group it will be taken to acquire all its assets at that time, at their then tax values, and prior history in relation to those assets would no longer apply.

The CTA/MCA do not concur with this approach, in that they do not believe that it is consistent with an asset acquisition approach, and are also concerned that it would lead to unnecessary technical complexity etc.

The CTA/MCA concur that under the asset acquisition approach, where the tax values of assets are reset at a joining time, it is appropriate that the prior history in respect of those assets ceases to apply. However, the tax values of assets of the leaving entity are not reset when an entity leaves a group, and may only be reset if that entity subsequently joins another tax consolidated group. As such, it is thought that it would be more appropriate for the leaving entity to continue to inherit and apply the past history in respect of its assets until it joins another tax consolidated group and the tax value of its assets are then reset.

7 *Liabilities and non-asset deductions*

The CTA/MCA agree with the proposal in the Position Paper that the asset acquisition approach not apply to liabilities and non-asset deductions, and hence the entry history rule would continue to apply in relation to associated subsequent tax outcomes in respect of such liabilities and non-asset deductions. While no problems are currently envisaged, further consideration should be given as to whether this limited ongoing application of the entry history rule to liabilities and non-asset related deductions could raise any specific technical or practical issues that may require specific legislative modifications. Therefore, it is recommended that this be a matter which is further considered in the course of preparing the legislative provisions to implement the asset acquisition approach.

8 *Previous private binding rulings*

CTA/MCA members request that the BoT acknowledge that private binding rulings that relate to the tax status of liabilities and/or non-asset related deductions should not be rendered invalid by a joining event, because the entry history rule should continue to apply in these contexts. Further, it would be beneficial if it could also be confirmed that private binding rulings in respect of an asset should not be invalidated if the ruling relates to factors other than the tax value, acquisition or holding status of the asset. For example, rulings relating to the Division 974 debt/equity status of an asset held by a joining entity should not be impacted by the asset acquisition approach.

B: INTRA-GROUP ASSETS

BoT POSITION 3.1

The Board considers that:

(a) the tax costs of an intra-group asset that does not have a corresponding accounting liability which is recognised elsewhere in the consolidated group should be recognised for income tax purposes;

(b) this tax cost should be recognised when the consolidated group subsequently disposes of the asset or when the asset lapses intra-group; and

(c) the income tax history the intra-group asset had prior to coming into the consolidated group is irrelevant when the consolidated group subsequently disposes of the intra-group asset or the asset lapses.

SUBMISSION

The CTA/MCA support the acknowledgment by the BoT that tax recognition should be provided in respect of the tax value of an asset that becomes an intra-group asset on an entity joining a group (with this tax cost being the tax cost setting amount if the asset is an asset of the joining entity). However, as outlined below:

(i) The CTA/MCA have significant concerns regarding the Position Paper's proposal that this tax cost recognition should only be available on a subsequent disposal of the intra-group asset or when the asset lapses. In this regard, the CTA/MCA instead propose that an amortisation treatment be applied in relation to tax outcomes associated with the tax cost setting amount of an intra-group asset. This amortisation approach should balance the apparent revenue cost concerns of the BoT with the technical and practical issues noted below.

(ii) Clarification is required regarding the treatment of intra-group assets where there is a 'corresponding accounting liability'.

(iii) Specific consideration needs to be given to issues associated with intra-group loans, and the CTA/MCA would be available to consult further with the BoT secretariat in this regard.

ADDITIONAL KEY POINTS

1 *The post-joining time tax recognition of intra-group assets*

For the following reasons the CTA/MCA have significant concerns regarding the Position Paper's proposal that tax cost recognition should only be available on a subsequent disposal of the intra-group asset or when the asset lapses.

(i) Timing and compliance costs

It may be some time (potentially years) before the intra-group asset lapses or is disposed of, during which time the intra-group asset would have been ignored for tax purposes under the single entity rule (**SER**). Therefore, particularly in the case of the lapse of an intra-group asset, it is probable that the group will not otherwise identify this event and it will increase compliance costs to have to continue to track assets of this nature and their notional tax cost.

(ii) Tax status

Determining the tax status of an intra-group asset at the time it subsequently lapses or is disposed of could be problematic, and therefore we assume it would have to be legislatively clarified that such assets will be taken to have retained the tax status they had at the joining time. When such assets are owned by a joining entity and the asset

acquisition approach is applied, in many cases the tax status would be that the tax cost setting amount equates to an amount paid by the acquiring group to terminate what previously was an economic obligation to the group.

(iii) Terminating intra-group assets

After the joining time, an intra-group asset will be of no economic relevance to a group, and therefore it would not be unreasonable for the group to seek to legally terminate such an asset soon thereafter. However, such actions are likely to raise uncertainties for taxpayers, given that the ATO may well then argue that the anti-avoidance provisions of Part IVA should be applied because the termination of this asset has no economic impact on the group, but may well accelerate a substantial income tax deduction or capital loss.

Therefore, the CTA/MCA propose that tax recognition be provided in respect of the tax value of an intra-group asset progressively over, say, the remaining contractual life of the intra-group asset at the joining time, or five years if the intra-group asset does not have a contractual life. If, in the interim, the intra-group asset is either disposed of outside the group or held by an entity that leaves the group, the then unamortised balance should become immediately available at that time as a revenue loss or as a capital loss (depending on the tax status of the earlier amortisation amounts). Such an approach should balance the apparent revenue cost concerns of the BoT with the technical and practical issues noted above.

2 *'A corresponding accounting liability'*

Paragraph (a) of the BoT's Position 3.1 proposes an exception in respect of an intra-group asset that has a 'corresponding accounting liability which is recognised elsewhere in the consolidated group'. The CTA/MCA note that, prima facie, this paragraph (a) statement is unduly wide, but read in association with paragraph 3.42 it is understood that this proposed treatment would appropriately only apply where the corresponding accounting liability has been taken into account in applying the tax cost setting rules when another member previously joined the group.

3 *Intra-group loans and receivables*

Specific consideration needs to be given to the treatment of loans and receivables that become intra-group assets when an entity joins a group. Prima facie, it would generally be thought that the appropriate tax outcome should equate to the loan being taken to be repaid on becoming an intra-group asset. However, in such circumstances a range of revenue deductions, capital losses, debt forgiveness, and TOFA interactions could arise if there are differences between the tax value, face value, and/or market value of the loan. Therefore, the CTA/MCA request the opportunity to further consult with the BoT secretariat regarding details as to the proposed treatment of intra-group liabilities and intra-group loans.

B: INTRA-GROUP ASSETS

BoT POSITION 3.2

The Board considers that the intra group liability adjustment should be modified so that:

(a) the adjustment is triggered when an intra group asset that does not have a corresponding liability owed to it by a member of the old group leaves a consolidated group with a leaving entity; and

(b) the adjustment applies to liabilities and to other similar types of obligations.

SUBMISSION

The CTA/MCA support the broad approach underlying this BoT position, that in most circumstances the current section 711-40 exit ACA step 3 treatment should remain unchanged (and as such this would substantially reduce the proposed adverse and inappropriate impacts of an associated previous Government announcement in May 2007). However, as outlined below, there are some important points of detail that need to be addressed and the proviso in the BoT statement regarding 'corresponding liabilities' is very ambiguous and requires further clarification. In addition, more consideration needs to be given as to how Position 3.1 above should impact on section 711-40 outcomes.

ADDITIONAL KEY POINTS

1 *Adopting a broader concept of 'liability'*

The CTA/MCA concur with BoT Position 3.2(b) that the fact that section 711-40 currently only applies to 'liabilities owed by members of the old group to the leaving entity' is inappropriately restrictive, in that it does not necessarily encompass equivalent obligations of the old group to the leaving entity that may increase the market value of the leaving entity. Therefore, the CTA/MCA agree that the term 'liability' be extended to also encompass other similar types of obligations that may not be regarded as 'liabilities' from an accounting or legal perspective.

2 *Interactions with BoT Position 3.1*

Where an intra-group liability that would be included in section 711-40 is in fact an intra-group asset of the leaving entity that was present at a prior joining time such that it receives recognition under BoT Position 3.1, specific rules should apply. In particular, under BoT Position 3.1 it should be the 'warehoused' tax cost setting amount used for section 711-40 purposes. However, if the CTA/MCA proposal in relation to Position 3.1 was adopted such that this tax cost setting amount was progressively recognised by the acquired group, then it would be unnecessary to again recognise an amount in respect of this intra-group asset under section 711-40. [Obviously, further consideration would have to be given as to how to deal with more difficult situations that could arise if there was a change in the nature of the relevant intra-group asset between the earlier joining time and the subsequent leaving event.]

B: INTRA-GROUP ASSETS

BoT POSITION 3.3

The Board considers that additional integrity provisions are required to address inappropriate outcomes that arise from the use of intra group transactions to create value shifts.

SUBMISSION

Conceptually, the CTA/MCA concur with this proposal, given that it appears to be applying the general value shifting provisions of Division 723 in a consolidation context. The CTA/MCA would be able to consult with the BoT secretariat to discuss the scope and application of this measure, as there is a concern that without some carefully considered limitations this measure could impose significant compliance costs on corporate groups by in effect instituting a form of an intra-group transfer pricing mechanism/requirement.

C: EXTENDING THE SER TO SHAREHOLDERS

BoT POSITION 3.4

The Board considers that the single entity rule (together with other parts of the consolidation provisions) should be extended to third parties who are:

(a) shareholders of the head company of a consolidated group; or

(b) liquidators appointed to the head company of a consolidated group.

Consideration should also be given to extending the single entity rule (together with other parts of the consolidation provisions) so that it applies to the dealings of a related third party with a consolidated group.

SUBMISSION

The CTA/MCA recognise that, particularly in relation to SMEs and other Division 7 'private companies', in a number of circumstances it will be appropriate to extend the single entity rule (SER) to third parties who are shareholders of a head company or a liquidator appointed to the head company. However, the CTA/MCA believe it would be inappropriate to extend the application of the SER for all purposes of the Act in relation to any shareholder of any consolidated group.

Therefore, it is recommended that the extension of the SER be limited to shareholders in Division 7 private companies and to liquidators of a company, or alternatively limiting the extension of the SER only to specific provisions of the Act (eg CGT event K6 and SME CGT concessions).

In addition, the CTA/MCA submit that it would not be appropriate to extend the SER to the application of Division 855 in relation to groups that had elected to consolidate prior to the date of any such SER announcement by the Government.

ADDITIONAL KEY POINTS

1 *The SER extension should only apply in relation to shareholder-related tax outcomes*

Any extension of the SER to parties who are shareholders should only apply to those parties in respect of tax outcomes directly associated with their status as a shareholder, and not for other purposes. Take, for example, the following situations.

(i) If a Division 16E security had been created between members of a consolidated group and was subsequently transferred to an outside party, it would be inappropriate if tax outcomes for the outside party differed depending on whether or not they happened to hold even a small number of shares in the relevant consolidated group.

(ii) Under subsection 43-120(2), some anomalies could arise in respect of lease improvements associated with an intra-group lease which is subsequently assigned to an external party that happened to also own some shares in the head company.

These issues would be compounded if this SER extension were to also apply to associates of a shareholder. For example, in such circumstances, for an investment group that held only one share in an Australian bank, this could potentially change tax outcomes for any of the member entities in the investment group in relation to other non-shareholder related transactions they have with that bank. This would clearly be inappropriate.

2 *Indirect shareholdings*

Further complications would arise if the SER were to be extended not only to direct shareholders in a company, but also indirect shareholders.

Take, for example, a shareholder that has as a minority non-controlling interest in another

entity that itself owns shares in the head company of a consolidated group. The technical and compliance issues that could otherwise arise in this context would be largely addressed by the recommendation at 1 above, whereby the extension of the SER would only apply to tax aspects directly relating to the holding of shares in a head company.

3 *Potentially significant Division 855 implications*

The 'indirect Australian real property interest' provisions of Division 855 determine whether shares held by non-residents in an Australian company or a foreign company can be subject to Australian capital gains tax (**CGT**) as 'taxable Australian property' (**TAP**) assets. In applying the various formulas in Division 855, it is necessary to determine whether the sum of the market value of underlying Australian real property assets exceeds the market value of all other assets of entities in the corporate chain (with these other assets including all inter-company interests other than inter-company shareholdings).

Therefore, in applying Division 855, extending the SER to shareholders would in many circumstances substantially alter the TAP percentage as it would exclude from the calculation all intra-consolidated group assets. As such, this would have the following implications.

(i) It would disadvantage foreign direct or indirect shareholders in Australian groups that had elected to consolidate, as compared to Australian groups that have not elected to consolidate or were ineligible to consolidate.

(ii) It would create tension and inconsistencies in outcomes, depending on what international double tax treaty applied to the non-resident, as a number of treaties would not recognise an SER approach being applied in this context (eg Article 13 of the French/Australia treaty).

(iii) Further, in the MEC group context it would create additional conceptual problems for a shareholder of an eligible tier-1 company that is not the head company of the MEC group.

Therefore, the CTA/MCA submit that it would only be appropriate to extend the SER to apply for Division 855 purposes to groups that elected to consolidate after the date of a relevant announcement. It would also be appropriate to only extend the application of the SER for Division 855 purposes after tax consolidation/international treaty interactions issues had been fully considered, as per the BoT's Position 4.12.

D: TRUSTS

BoT POSITION 4.1

The Board considers that:

(a) a trust's net income for the non-membership period be calculated by reference to the income and expenses that are reasonably attributable to the period and a reasonable proportion of such amounts that are not attributable to any particular period within the income year; and

(b) to the extent income and expenses are apportioned in calculating the trust's net income for the non-membership period, similar adjustments are appropriate when calculating the trust law income.

SUBMISSION

The CTA/MCA support the BoT's proposal in relation to the allocation of net income by reference to the income and expenses between membership and non-membership periods on a reasonable basis.

The CTA/MCA are keen to ensure that any such allocation approach is consistent with the proposed 'attributable method' set out in the October 2010 Treasury Discussion Paper entitled: Implementation of a new tax system for managed investment trusts.

ADDITIONAL KEY POINTS

1 *Allocation methodology*

The October 2010 Treasury MIT paper sets out the concept of an attribution method for allocation of taxable income to beneficiaries. Whilst these provisions are currently only contemplated to apply to MITs we consider that there is merit in adopting a similar approach for all trusts (or at least MITs) in the context of the tax consolidation provisions.

Absent adopting these principles, the trust loss rules in Schedule 2F contain methodologies for allocating income and expenses to various periods and would provide a suitable base set of rules for adaption for these purposes.

2 *Trust resettlements*

Our understanding of proposition 4.1(b) is that it would seek to deem trust law income to be allocated using the same principles of allocation for tax law income. This fundamentally differs from the approach used by Division 6.

Under Division 6, the approach to the taxation of beneficiaries is based on the proportionate approach. That is, the tax law income is determined and then allocated based upon the trust law income. The proposition appears to be that tax law is spread and trust law income is deemed to follow that same methodology. That is, tax law income is used to apportion trust law income rather than the existing inverse situation.

Whilst not clear from the BoT's discussion paper it may be that such an apportionment of trust law income is to be relevant only for tax law purposes (that is, in order to allow Division 6 to continue to operate). If this is not the case, then the tax law is seeking to determine the operation of trust deeds. Most deeds would not cope with such an intrusion and would need amendment.

Such a deeming and potential impact upon the operation of millions of trust deeds is unattractive to the CTA/MCA and it is suggested the wider taxpayer community. It is suggested that the adoption of the attribution method would alleviate the need for such a deeming of trust law income. However if the attribution method or similar is not so adopted then there would clearly need to be both income tax and duty concessions agreed between

the Federal and State/Territory governments to ensure that the required amendments to trust deeds are not taken to be resettlements. It is noted that based on the current ATO Statement of Principles there is a strong likelihood that the required amendments would, in the ATO's opinion, constitute a resettlement.

BoT POSITION 4.2

The Board considers that a beneficiary's and the trustee's share of the trust's net income should be determined by taking into account events that happen after a trust joins or leaves a consolidated group.

SUBMISSION

The CTA/MCA support the BoT's proposal that tax law income should be reflective of a beneficiary's entitlement to trust law income.

The CTA/MCA does not support a position where events, outside of the control and enjoyment of beneficiaries have the potential to impact upon their taxable income. In this regard, we consider that the only events in a non-membership period that is relevant are relevant are those that impact entitlements to trust law income.

ADDITIONAL KEY POINTS

In practice where there is a change in ownership or interests in a trust such that a trust enters or exits a tax consolidated group, one of two circumstances will exist.

The first scenario is that no present entitlement will be created in the beneficiaries ceasing to have an interest in the relevant trust. If this is the case, as the 'new'/continuing beneficiaries will be entitled to the relevant trust income, any proceeds on 'disposal' will be reflective of this fact. This will mean that the ceasing beneficiaries will be taxed (on either capital or revenue account for the value of any such income as it will be reflected in the sale proceeds) and the new or continuing beneficiaries will be taxed on the trust income to which they are entitled and may also receive a tax base for any consideration paid.

The second scenario is that present entitlement will be created for the ceasing beneficiaries. If this is the case then any disposal proceeds will be reduced to reflect this entitlement and beneficiaries will be taxed based upon their enjoyment of the trust law income.

On this basis, we consider that the allocation rules in proposal 4.1 should be sufficient to achieve the desired outcomes and that any allocation of the determined tax law income should be based either on an attribution method or by reference to present entitlement to trust law income, regardless of whether that entitlement is created before or after a joining or leaving time.

BoT POSITION 4.3

The Board considers that the group's tax liability in relation to the net income of a trust's non-membership period be included in the allocable cost amount calculation.

SUBMISSION

The CTA/MCA support the BoT's proposal as it is consistent with the fundamental principles of the allocable cost amount calculation. That is, the joining group will assume a liability in respect of the acquisition of the interests in the trust and so should be reflected in the allocable cost.

D: TRUSTS

ADDITIONAL KEY POINTS

The definition of liability in this context should be the relevant share of net income multiplied by the relevant corporate tax rate. It would not be appropriate or consistent with the treatment applied to companies to reduce this liability by virtue of any tax attributes (eg: losses of the acquiring group) that may apply to reduce this liability following the joining time.

BoT POSITION 4.4

The Board considers that a trustee, in its capacity of trustee for a trust that is a member of a consolidated group, be treated as a member of the same consolidated group as the trust.

SUBMISSION

The CTA/MCA support the BoT's proposal.

ADDITIONAL KEY POINTS

The mechanism of deeming will be important as the tax law is currently inconsistent in the treatment of trusts and trustees in their various capacities. This is particularly relevant as the proposal, as we understand it, is that the same entity (i.e. the trustee) may be a member of two or more tax consolidated groups in different capacities.

In the context of an entity in a capacity as trustee being a member of a tax consolidated group, it will also be important where there are multiple tiers of trusts which join a tax consolidated group to ensure the correct allocation of any allocable cost amount to assets which are held on behalf of the relevant unitholders.

BoT POSITION 4.5

The Board considers that all beneficiaries, including debt beneficiaries, unit holders or objects of a trust, should be subsidiary members of the consolidated group.

SUBMISSION

The CTA/MCA does not support the BoT's proposal as it is inconsistent with the treatment applied to companies and may also be contrary to the outcomes of the MIT review.

ADDITIONAL KEY POINTS

Where a trust interest is a debt interest, Division 6 will continue to apply and so there is an existing inefficiency in the operation of the provisions. This may be altered as part of the MIT review and the broader review of trusts.

However to require debt beneficiaries to be subsidiary members in order for the trust to be a member is inconsistent with the treatment afforded to companies. That is, in the company context a shareholder whose only shares are debt interests will not be a member and will therefore not be required to be a group member for the issuer to be a member of the tax consolidated group.

Such a differentiation gives rise to integrity issues and uncertainty for taxpayers. That is, if they chose a trust vs. a company will this non-inclusion vs. inclusion in the tax consolidated group be considered a Part IVA scheme?

E: OUTBOUND INTERNATIONAL ASPECTS

BoT POSITION 4.6

The Board considers that:

(a) foreign hybrids should be eligible to become members of a consolidated group; and

(b) this should be reviewed if evidence suggests that integrity risks arise as a result of this outcome.

SUBMISSION

The CTA/MCA concur with the BoT's view that foreign hybrids should be eligible to become members of a consolidated group.

F: INBOUND INTERNATIONAL ASPECTS (INCLUDING MECs)

BoT POSITION 4.7

The Board considers that all the assets of a MEC group or consolidated group (rather than the assets of the leaving entity) should be taken into account for the purpose of applying the principal asset test in Division 855.

SUBMISSION

This proposal would dramatically alter Division 855 calculations and outcomes in respect of non-residents directly or indirectly owning shares in an Australian company which is an eligible tier-1 (ET-1) member of a MEC group. Therefore, such non-residents could be substantially disadvantaged (or advantaged) depending on what MEC elections have been made in the past, and obviously these MEC elections would have been made without any thought or knowledge of this proposed new significant impact. Inequities could therefore arise from what would amount to a retrospective impact on earlier MEC elections

Therefore the CTA/MCA submit that, as a transitional measure, MEC groups be given the opportunity to elect to excise nominated ET-1s from their groups (with these ET-1s then given the option of forming separate consolidated groups or MEC groups). If it would be of assistance, the CTA/MCA would be able to further consult with the BoT secretariat regarding the details of such a transitional measure.

The CTA/MCA note that this proposal would also raise interaction issues with a number of Australian double tax agreements where the 'alienation of property' article would be inconsistent with a MEC based calculation. Therefore, this is a proposal that the CTA/MCA believe should only be implemented after the review proposed by the BoT at Position 4.12 has been completed.

F: INBOUND INTERNATIONAL ASPECTS (INCLUDING MECs)

BoT POSITION 4.8

The Board considers that, where Division 855 applies to an asset, the consolidation tax cost setting rules should not apply unless there is a change in the underlying beneficial ownership of assets.

SUBMISSION

Obviously the BoT's concern is that a non-resident can transfer an Australian non-TAP subsidiary to another of their foreign-owned Australian subsidiaries and step up to market value the tax value of underlying assets of the transferred subsidiary, even though no Australian tax would be paid on the share transfer. The following points are noted in this regard.

Firstly, the non-resident vendor of the transferred entity may have acquired the transferred entity for a significant amount, and therefore if using this original cost as the ACA step 1 amount would result in the tax value of asset being stepped up above their existing tax values, then this stepped up reset tax cost base amount should instead apply.

Secondly, what is not acknowledged in this BoT proposal is that the tax-free status of the group's shareholding in the non-TARP transferred entity is being terminated by this transfer. Given that this tax-free status is likely to be an extremely valuable tax characteristic, it would be inappropriate and inequitable if some ongoing recognition was not obtained in regard to the termination of this attribute. To balance these equity concerns underlying Position 4.7, the CTA/MCA propose that some limited recognition continue to be provided in relation to the market value of shares in the transferred Australian subsidiary as at the transfer date, as follows.

(i) If assets of the transferred subsidiary are subsequently directly disposed of, then, as per BoT Position 4.8, gains and losses should be calculated by reference to their pre-existing tax value (or their limited stepped up amount as per the previous proposal above).

(ii) However, if an entity holding such assets is subsequently disposed of by the group, then the Division 711 exit cost base of shares in that subsidiary should be calculated by reference to what otherwise would have been the tax value of the relevant assets.

A similar 'outside basis' consolidation approach currently applies to certain formerly privatised assets and therefore it should be relatively straightforward to implement (refer section 705-47 and section 711-25).

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.

F: INBOUND INTERNATIONAL ASPECTS (INCLUDING MECs)

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 (ie 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 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

[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.

F: INBOUND INTERNATIONAL ASPECTS (INCLUDING MECs)

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 prior to 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 after the BoT first raised this issue in its initial Discussion Paper issued on 9 December 2009 (at paragraph 4.69).

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.

F: INBOUND INTERNATIONAL ASPECTS (INCLUDING MECs)

1 *Introduction of a time limitation*

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 (eg 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 *Exempt minority interest divestments*

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.

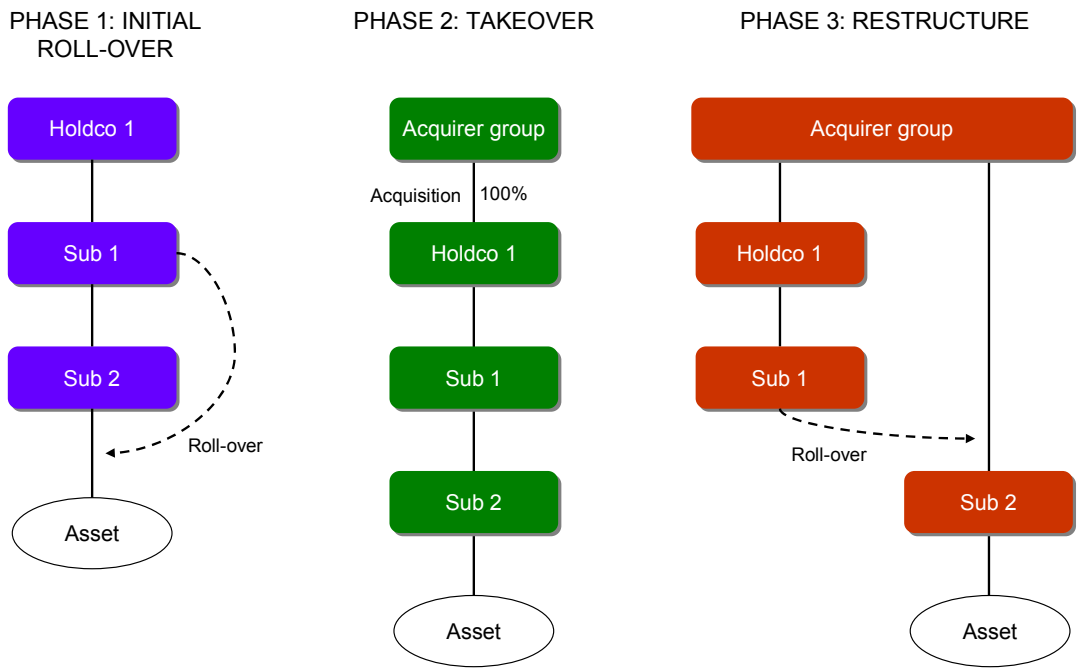
3 *Address sub-group exemption anomalies*

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.

F: INBOUND INTERNATIONAL ASPECTS (INCLUDING MECs)



BoT POSITION 4.12

The Board considers that Treasury and the ATO should undertake a review of how Australia's double tax agreements apply to a consolidated group.

SUBMISSION

The CTA/MCA concur with this proposed recommendation and would like to form part of the consultation in relation to this review.

G: DTAs AND DTLs

BoT QUESTION 4.14

The Board seeks stakeholder's comments on:

(a) Whether the inclusion of deferred tax assets and deferred tax liabilities in the tax cost setting process results in unnecessary complexity?

(b) How can the tax treatment of deferred tax assets and deferred tax liabilities be simplified?

(c) Should deferred tax assets and deferred tax liabilities be removed from the tax cost setting process?

(d) If not, in what circumstances should deferred tax assets and liabilities be recognised in the tax cost setting process?

SUBMISSION

The CTA/MCA support the BoT's proposal to give further consideration to the appropriateness of the current interaction with the consolidation regime of deferred tax liabilities (DTLs) and deferred tax assets (DTAs). The CTA/MCA concerns in relation to these issues were outlined in their submission to the BoT dated 12 March 2009 (at 4.9(a)).

Given the complexity of these issues, and the fact that several associated lengthy discussion papers have previously been prepared by both the ATO and various external bodies, the CTA/MCA believe that the most productive way of responding to the issues raised by the BoT would be to hold a special focus consultation session later this year or early next year to deal exclusively with these issues. Representatives of the CTA/MCA (including a limited number of interested members) would be more than willing to participate in this consultation meeting, with a view to mutually agreeing the most appropriate way forward in dealing with these important but difficult matters.

ADDITIONAL KEY POINTS

As background in relation to a specific consultation meeting on DTL/DTA matters, the CTA/MCA summarise below their current thoughts in relation to these issues.

(i) The fact that DTLs currently reduce the exit ACA of a leaving entity inappropriately and inequitably increases the taxable gain to the vendor group as compared to undertaking a direct asset divestment, and this outcome has no policy rationale. Therefore, it is clear that DTLs should be excluded from exit ACA calculations.

(ii) Where DTLs on entry directly reflect an additional tax liability that the acquirer group will be subjected to as compared to undertaking an asset acquisition, there is policy merit in continuing to include DTLs in entry ACA calculations.

(iii) The current iterative ACA calculations can be complex, and consideration should be given to legislative shortcuts.

H: FORMATION CONCESSIONS

BoT POSITION 5.1

The Board considers that on-going formation concessions should be available for wholly-owned corporate groups with an aggregated turnover of less than $100 million and assets of less than $300 million in an income year.

The formation concessions should be available to an eligible wholly-owned corporate group that forms a consolidated group by the end of the income year following the income year that it exceeds the threshold test. The concessions should not apply to foreign owned corporate groups that elect to form MEC groups.

If a group elects to apply the concessions, the election should apply to all subsidiary members of the group. If an election is made:

- ***the existing tax costs of assets for all subsidiary members should be retained; and***
- ***losses held by subsidiary members that are transferred to the consolidated group should be able to be utilised over three years.***

BoT POSITION 5.2

The Board considers that, as a transitional rule, the formation concessions proposed in Position 5.1 should be available to all groups which are eligible to form a consolidated group at the date of announcement of the measure for a specified period time. The concessions should not apply to foreign owned corporate groups that elect to form MEC groups.

SUBMISSION

The CTA/MCA support the implementation of 'formation' concessions for SMEs (on an ongoing basis) and for other groups (for a limited period only). This would clear the way for many groups to join the consolidation regime that may previously have been unable to do so due to prior legislative deficiencies in the regime that have been addressed by relatively recent legislative amendments or by way of legislation that will flow from the BoT's review.

Given that small business issues and concerns are outside the scope and experience of the membership of both the CTA and the MCA, it is not appropriate for this submission to specifically comment on the proposed SME threshold limits, etc. However, in relation to the specific formation concessions proposed by the BoT, as outlined below, the CTA/MCA propose some modifications which would assist in meeting the needs of relevant taxpayers without unduly complicating compliance requirements.

In addition, the CTA/MCA can see no rationale for excluding from the concessions foreign-owned corporate groups that elect to form MEC groups.

ADDITIONAL KEY POINTS

In relation to formation concessions proposed by the BoT, the following specific points are noted.

(i) As currently stated, this 'stick' choice would apply on a one-in-all-in basis (ie it would not be elective on an individual entity basis), and as such this may be disadvantageous if one or more entities had previously been acquired at a premium to the tax value of their underlying assets. This is particularly the case given that the group may only now consider consolidating as a result of such an acquisition. Without unduly complicating the concession, the compulsory 'stick' approach could possibly be relaxed in circumstances

H: FORMATION CONCESSIONS

where an entity had been acquired within, say, three years of the formation date.

(ii) For those companies that elect the concession in relation to the tax value of assets, it may be more appropriate to then make the 'three year drip' treatment of losses elective rather than mandatory, because in some circumstances the available fraction treatment of losses may not be complex to calculate or disadvantageous.

(iii) The CTA/MCA query whether the proposed asset acquisition approach (BoT Position 2.1) should apply to 'stick' entities under the proposed formation concessions. From a conceptual perspective, the asset acquisition approach is most appropriate where the tax value of assets has been reset, whereas this 'acquisition' concept is not relevant in relation to a stick entity. Further, from a compliance perspective it would certainly be more straightforward if stick entities retained their 'history' so that the tax status and outcomes in respect of assets are also not impacted.

(iv) It is unclear as to why this concession would not also be made available to foreign-owned groups that elect to form a MEC group, particularly as it would no doubt be available to foreign-owned consolidated groups.

I: ADDITIONAL ISSUES – APPENDIX E

SUBMISSION

In Appendix E the BoT identifies a number of additional issues which it believes are outside the scope of this review.

The CTA/MCA accept that this BoT process cannot realistically seek to consider and address all consolidation issues that have been identified and which are currently unresolved. However, the CTA/MCA are extremely concerned that many of these issues were identified over five years ago and have been acknowledged by both the ATO and Treasury as requiring legislative attention, but as yet nothing has been done.

Therefore, the CTA/MCA request that the BoT recommend a course of action for consideration and resolution of these longstanding issues which, it is submitted, should target Government announcements in the May 2012 Federal Budget. The CTA/MCA believe that this is a responsible and realistic proposal to once and for all deal with these concerns, as otherwise they continue to generate angst in both the corporate community and within the ATO.