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3 June 2009

Minor Amendments to Tax Laws - Consultation
Tax Design Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email minortaxamendments@treasury.gov.au

Dear Sir

Tax Laws Amendment (2009 Measures No. 4) Bill 2009 – Minor Amendments

The Taxation Institute of Australia (**Taxation Institute**) is pleased to provide comments on the exposure draft of the Tax Laws Amendment (2009 Measures No. 4) Bill 2009 that was released for public comment on 20 May 2009.

The Taxation Institute understands that the purpose of the draft legislation is to ensure the law operates as intended, by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes. The Taxation Institute considers that the draft legislation substantially achieves the intended purpose. Accordingly, subject to the two issues raised below the Taxation Institute supports the proposed legislative amendments.

However, the Taxation Institute is concerned about the proposed amendment to the foreign tax offset provisions. In addition, the Taxation Institute would like to confirm that the explanatory material will be amended to clarify the scope of the proposed amendments in relation to 'appealable objection decisions'.

Foreign tax offsets

Based on discussions with Treasury, the Taxation Institute understands that the amendments in relation to the foreign tax offset provisions (**FTOs**) are merely consequential.

However, the Taxation Institute has had some member feedback expressing concerns regarding the proposed amendments. Briefly, the concerns relate to the proposed amendment in item 2075 of the exposure draft and whether, following that amendment, an Australian entity will be eligible to claim a FTO in respect of foreign tax paid by a company in a chain of controlled foreign companies (**CFCs**) in which the Australian entity has an interest. Based on discussions with Treasury, the Taxation Institute understands that an Australian entity will be eligible to claim a FTO in such circumstances.

Accordingly, there appears to be no need for the carve out for CFCs in the amendment at item 2075 of the exposure draft. The Taxation Institute recommends the deletion of the reference to CFCs in item 2075 for the following reasons:

- the reference to CFCs will have no effect (i.e. the provision will apply in the same manner regardless of whether s 770-135(1) includes the words "*(other than a CFC)*" or not); and
- the reference to CFCs may have unintended consequences as a result of the proposed reforms of the foreign source income attribution rules.

In the alternative, the Taxation Institute suggests amending the explanatory memorandum to clarify this issue. For example, the explanatory memorandum could be amended as follows:

"Foreign income tax paid by any CFCs in a chain of CFCs will still be eligible for a foreign income tax offset in the hands of the underlying Australian entity. This is because all CFCs (in contrast to FIFs) are effectively treated as first tier CFCs as a result of how the income attribution rules work in respect of CFCs."

Appealable objection decisions

The Taxation Institute understands from discussions with Treasury that the amendments in relation to the definition of 'appealable objection decision' (refer items 2050 to 2070 of the exposure draft) are merely consequential and do not involve any change in taxpayers' rights. Further, the Taxation Institute understands that the explanatory memorandum will be amended to make this clear.

The Taxation Institute supports these amendments on the basis that there will be no change to taxpayers' rights and the explanatory memorandum will be amended to make this clear.

If you require any further information or assistance in respect of our submission, please contact the Taxation Institute's Senior Tax Counsel, Dr Michael Dirakis, on 02 8223 0011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joan Roberts', with a stylized flourish at the end.

Joan Roberts
President