Section 22

From:
Sent: Monday, 28 June 2010 10:28 AM
To:
Cc:
Subject: TIES (capital protected borrowings)

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Paragraph for inclusion in response...

You have suggested that the existing exemption for employee share scheme (ESS) interests in the capital protected borrowings rules be widened to cover additional types of ESS arrangements (including ESS arrangements where the employee acquired the interest at no discount).

By way of background, the capital protected borrowing rules are an important integrity measure to ensure that the capital protection feature of a borrowing is treated in the same way irrespective of whether it is provided explicitly (e.g., by an actual put option) or implicitly through the term of the borrowing arrangement. However, as a concession, the rules do not apply to certain types of ESS arrangements defined by reference to the employee share scheme rules in Division 83A of the *Income Tax Assessment Act 1997*.

The ESS tax concessions are designed to encourage the uptake of employee share ownership and align the interests of employee and employers. It is for reasons of tax system integrity that the ESS tax concessions (including the exemption from the capital protected borrowings rules) are intended to be limited to certain types of qualifying arrangements. Those qualifying arrangements are limited to those cases where ESS interests are issued at a discount.

As employers derive considerable benefits from ESS arrangements, it is important to limit the concessions to cases involving a discount as this ensures that Government support is provided in tandem with employers and not as a substitute for employer support. Without this limitation it would be difficult to distinguish genuine ESS arrangements from those arrangements that are merely structured to gain a tax benefit by avoiding, amongst other things, the capital protected borrowing rules.

[TIES is for tech issues - insert std description] [For these reasons, we consider the law to be operating as intended. A change to the scope of the exemption as you have suggested would involve a major policy change and so is out-of-scope of the TIES process - will leave this to you to adjust to standard description]

Finally, I note that the Government recently reformed the taxation of employee share schemes following a comprehensive consultation process. One of the issues raised during consultation was the scope of the exemption from the capital protected borrowings rules. After considering the matter, for reasons outlined above, the Government retained the scope of the existing concession.

Regards

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