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BLAKE DAWSON WALDRON

L A W Y E R S

Date 30 July 2001

Our reference
RNU

From

Telephone: 02 9258 6114
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To

Australian Taxation Office
Canberra
Facsimile: 02 6216 1300

Dear Sir

NEW BUSINESS TAX SYSTEM (DEBT AND EQUITY) BILL 2001

I thought it appropriate that I forward a summary of the issues that have been raised to date that might help in the finalisation of the above-mentioned Bill.

As I have always stated the prospect of certainty in this area is a worthwhile objective but unfortunately I do not believe the current drafting achieves the requisite level. As with much drafting in recent times it has tried to do too much and as a result does not, I believe, provide a material improvement in the tax environment for financial instruments. Notwithstanding the clear ability to now have debt type equity instruments the lack of certainty as to the treatment of equity type debt instruments is a serious disappointment.

My principal comments are as follows:

Section 22

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7. The drafting of section 25-85 is poor. This offers no certainty that dividends in form on what are debt interests will be deductible. Drafting in the negative is never a successful form of drafting particularly in a concession provision. To suppose that a dividend at a fixed rate from a company with accumulated prior year profits where the share on which the dividend is paid is an extremely short term manditorily redeemable share falls within the terms of section 25-85 is not apparent. The section appears to accept that dividends on such types of shares must already be deductible. Of course if it is already deductible and recourse is not needed to section 25-85(2) then the 150 basis point mark-up on the benchmark rate of return will not be successful to limit deductions. It would be much more certain and much clearer to simply state that dividends on a debt interest are deductible to the extent to which they are not incurred in relation to the gaining or producing of exempt income or they are returns of a private or domestic nature. If the lack of precision in the latter type of description is considered likely then work on how to cover that exclusion would be much more worthwhile than leaving an extraordinarily vague and poorly drafted provision within the Bill.

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It is important that an appropriate level of certainty is achieved and I do not believe the current Bill achieves this. Please let me know if I can expand on any point.

Yours sincerely