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**From:** s22 <s22@ato.gov.au>  
**Sent:** Wednesday, 12 October 2011 12:33 PM  
**To:** s22  
**Cc:**  
**Subject:** RE: Consolidation: Residual tax cost setting and rights to future income rules

s22

s22

2. As s22 has indicated if the law is repealed or amended to have a different effect the private ruling ceases to apply (note 2 in section 357-60, and section 357-85 of Schedule 1 of the Tax Administration Act). Without some further legislative intervention the treatment of a claim or tail will fall to be determined by reference to the application date, and the terms of, the repealed or amended law. Therefore, if the government wishes to protect claims dealt with under private rulings you will have to legislate this.

The complication in the circumstances you have outlined below for the retrospective period, as we see it, arises from the fact that we have different laws applying for different time periods. The result of this is that you will have different laws applying to the same asset for different time periods.

We agree that the paper is silent on the treatment of tails where the joining time is in the transitional period. We would probably not go so far as to say that the paper implies that the tail is to be protected in this circumstance, unless that implication is to be derived solely from that silence. The matter obviously needs to be clarified.

Whether you provide protection or not depends on a trade-off between the cost of protecting the tails versus the simplicity of having only one law apply to the asset. We also acknowledge that you can justify treating the tails of claims arising in the transitional period differently from the tails of claims arising in the retrospective period (although this is not determinative of whether you should do so or not).

Regards,  
s22

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**From:** s22  
**Sent:** Tuesday, 11 October 2011 18:16  
**To:** s22  
**Cc:**  
**Subject:** RE: Consolidation: Residual tax cost setting and rights to future income rules

s47C

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**From:** s22 @TREASURY.GOV.AU]  
**Sent:** Monday, 10 October 2011 15:22  
**To:** s22  
**Cc:** '  
**Subject:** Consolidation: Residual tax cost setting and rights to future income rules

s22

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## 2. Treatment of the tail of a claim

The external working group has raised concerns that the treatment of the tail of a claim is unclear.

The paper proposes that, where the joining time is before 12 May 2010, if a taxpayer has a ruling in relation to the claim, the ruling would apply so that the tail of the claim is deductible. For example, if the ruling relates to the operation section 716-405, that provision would effectively apply to the tail of the claim.

In contrast, where a taxpayer has a notice of assessment covering a claim, the claim is protected but the tail is not protected. The rationale is that changes to the tax law can always impact on tax outcomes arising from past transactions. However, there is some uncertainty about what this means for the tail of the claim. The complication arises because the character of the asset is determined at the joining time.

It would be useful to look at this issue based on the scenario where the joining time was before 12 May 2010 and a claim is allowed in a particular year under section 716-405 (because a notice of assessment issued). It seems to me that:

- if the claim relates to a category 1 right to future income that is WIP, the special unbilled income (in the pre-12 May 2010 or transitional periods) or WIP rule (in the prospective period) will apply to allow a deduction for the tail of the claim;
- if the claim relates to a category 1 right to future income other than WIP:
  - the special unbilled income will apply to allow a deduction for the tail of the claim in the pre-12 May 2010 or transitional period); and
  - the residual tax cost setting rule will apply to allow a deduction for the tail of the claim in the prospective period); or
- if the claim relates to a category 2 or 3 right to future income, the tail of the claim will be allocated to goodwill.

The paper does not address the issue of the treatment of the tail of a claim where the joining time is in the transitional period. The implication is that section 716-405 will continue to apply to the tail of a claim.

I would appreciate your views on this issue.

s22

Regards

s22

Manager - Company Tax Unit

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