

17 June 2013

General Manager
Corporate Tax Unit
The Treasury
Langton Crescent
PARKES ACT 2600

Dear General Manager

RE : DIVIDEND WASHING - DISCUSSION PAPER

The Financial Services Council (*FSC*) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers and financial advisory networks. The FSC has 130 members who are responsible for investing \$2 trillion on behalf of more than 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Stock Exchange and is the fourth largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Thank you for the opportunity to provide input into Treasury's consideration of rules to prevent dividend washing.

Discussion Paper Proposals

Among the proposals suggested in the Discussion Paper are two suggestions regarding amendments to Part IVA – the addition of a criterion to subsection 177EA(17) and/or a specific double franking credit integrity rule elsewhere within Part IVA.

Given:

- a) the potential uncertainty of the application of a general anti-avoidance rule,
- b) the marginal clarity that any amendment would provide (if any),
- c) the practical difficulty of self-assessing such a rule, and
- d) the cost to both taxpayers and the ATO in trying to administer such a rule,

we submit that there be no change to Part IVA and for the avoidance of doubt this includes subsection 177EA. Rather, to support the policy objective of the government's announcement, the option of a specific rule within the franking provisions should be pursued

Furthermore, Part IVA is currently the subject of extensive amendment by a Bill that is currently before Parliament. The "tightening" of the approach to the application of Part IVA should give sufficient comfort to administrators (and caution to taxpayers) regarding the thrust of the way in which Part IVA should be approached generally.

Suggested solution

As intimated above it is considered that the appropriate response to the dividend washing strategy is a specifically targeted provision rather than a general provision.

Additionally, it is strongly recommended that the existing holding period rules be left substantially unaltered. There are two reasons for this. Firstly, the holding period rules are slowly being rewritten into the ITAA 1997 and it makes no sense to change the rules substantially in this area and then have to “redo” them for the rewrite.

Secondly, the existing holding rules have resulted in complex software and regulatory controls being developed which, broadly, have worked to the satisfaction of both the ATO and industry since 1999. To alter those rules will be costly to all concerned and is highly likely to result in inadvertent errors. Such errors are particularly likely for those operating split portfolios with multiple independent asset managers.

Therefore it is recommended that a targeted solution be included within the existing rules. For example s. 160APHO could be revised by including the following:

160 APHO(5)

A taxpayer is not a qualified person in relation to a particular dividend to the extent that the relevant shares were acquired on or after the ex date in relation to that dividend and substantially identical shares were disposed of in the three day period commencing on the ex date.

160 APHO(6)

Ex date is the date when a company closes its shareholder register for the purposes of determining which shareholders are entitled to receive a particular dividend.

We suggest the amendment would apply with effect from 1 July 2013.

Such an approach would prevent future use of a strategy that the Government has indicated is egregious, would not require revision to software systems such as HiPortfolio and would not upset current understanding and practise of how the 45 day rules operate.

Paragraph 3.2 contains a suggestion that the holding period rules be modified. In particular that the LIFO rule be changed to address the ownership break. The existing LIFO rules are already challenging to administer and most custodians and portfolio managers are entirely dependent upon well established computer systems. Any change to the existing holding period rules, and in particular the LIFO presumption, cannot be made without changes to these systems.

In practice any holding period changes could only apply if the relevant software is modified. The industry is aware of at least three different systems that are used. Realistically not all three will be successfully modified in the first instance resulting in rework for both the companies involved but also the ATO in terms of the resultant amended assessments.

For these reasons we suggest that a better approach is to alter the definition of qualified person rather than the holding period rules.

If you would like to discuss any aspect of this submission further, please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely



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