16 December 2011

Ms Christine Barron
The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: cgt_restructures@treasury.gov.au

Attention: Jordan George

Dear Christine,

Submission regarding the Discussion Paper issued in November 2011 regarding - *Extending the roll-over for exchange of units in a unit trust for shares in a company*

We welcome the proposed amendments that extend the roll over provisions in Subdivision 124-H of the *Income Tax Assessment Act 1997* (the exchange of units in a unit trust for shares in a company) to provide roll-over where units in a unit trust undergoing a restructure are held as revenue assets or trading stock.

These proposed amendments will provide symmetry of tax treatment regardless of whether the units are held by the taxpayer as trading stock, a revenue asset or a capital asset. Such an approach has the benefit of increasing equity between taxpayers, reducing distortions in the tax system and simplifying compliance.

In our submission dated 26 July 2011 regarding minor amendments to the capital gains tax (CGT) law we recommended that the availability of other forms of replacement asset and same-asset roll-over relief (for example Subdivisions 124-D, 124-F, 124-M and 124-Q) be extended to revenue and trading stock assets. We again encourage the introduction of a standard provision that will give roll-over relief for assets that are held as trading stock or revenue assets where such assets are transferred as part of a transaction that qualifies for rollover relief for CGT purposes.

The advantages of having a standard provision for all forms of replacement asset and same-asset roll-over relief is that the Tax Act would be simplified, there would be greater equity between taxpayers and compliance costs would be reduced.

In formulating this particular rollover relief, and any similar future rollover relief provisions for revenue assets, care will need to be taken to either: (i) ensure that revenue assets have access to rollover relief for both 'ordinary' assessable income and capital gains tax purposes; or (ii) amend section 118-20 (the provision that is meant to prevent double taxation) so that a rollover for a revenue asset does not a generate capital gains tax liability.

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Submission on Discussion Paper
Extending the roll-over for exchange of units in a unit trust for shares in a company

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The capital gains tax provisions have a broad application and apply to most assets (including revenue assets). As a consequence, if a revenue asset is given roll over relief, consideration will still need to be given as to whether and how the capital gains tax provisions apply. If CGT rollover is not available then capital gains tax may become payable, particularly as section 118-20 will not be able to reduce the capital gain or reduced cost base by an amount that has already been included in assessable income - i.e. if rollover relief is (only) provided for section 6-5 purposes there will be no amount otherwise included in assessable income.

In short, it will be important to ensure that there is a rollover for both CGT and 'ordinary' assessable income purposes.

Should you have any queries in relation to this submission please call Susan Franks on 02 9290 5750.

Yours sincerely

Yasser El-Ansary
Tax Counsel
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in Australia