



16 August 2012

General Manager  
Business Tax Division  
The Treasury  
Langton Crescent  
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By email: [cgt\\_scripforscrip@treasury.gov.au](mailto:cgt_scripforscrip@treasury.gov.au)

Dear Sir/Madam

### **Proposal Paper July 2012 – Strengthening certain integrity provisions in the scrip for scrip roll-over**

The Institute of Chartered Accountants in Australia (the **Institute**) welcomes the opportunity to comment on the abovementioned Proposals Paper (the **Paper**) dealing with a number of proposed amendments announced in the 2012-13 Budget.

Our comments relating to the Paper are restricted to the below.

#### **Comments on stakeholder rules**

The Paper discusses possible changes to ensure that the stakeholder provisions cannot be avoided by the temporary suppression of ownership rights at the time of a takeover allowing taxpayers to defer paying CGT.

The proposed changes will recognise a notional exercise of any share acquisition rights when applying the stakeholder tests. The Institute submits that a safety net is required to deal with the circumstance where such rights are ultimately not exercised. It would be inequitable to apply the integrity rules in this circumstance as there is no actual mischief. Therefore the proposed provisions should allow groups to adjust the initial operation of these rules to take into account actual outcomes where they differ from the initially-anticipated outcomes. For example, the rules should include a mechanism to allow groups to go back and amend their positions.

For scrip takeovers that include an earnout arrangement which might lead to the acquisition of a greater number of shares, the proposal (to look at maximum shares that may be issued or a reasonable estimate thereof) for standard earnouts is inconsistent with the "look through" approach for standard earnout arrangements (i.e. consider what actually happened) under the Government's outstanding proposed earnout changes. Again, at a minimum, the proposed provisions should allow groups to take into account actual outcomes and groups should be able to amend their positions based on actual outcomes.

#### **Comments on 'downstream' acquisitions'**

The Paper recommended changes to ensure that the CGT liability cannot be reduced by the creation of certain types of intra-group debt.

It is proposed that scrip for scrip roll-over will be denied in downstream acquisitions where equity or debt is issued outside a wholly owned group as part of the takeover arrangement (see page 7). This appears to be targeted against groups that take steps to circumvent rules proposed for wholly owned groups.

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However, there is a risk that this proposal might inappropriately apply to deny scrip roll-over relief in a broader range of circumstances. We would recommend that this proposal be very tightly drafted and in addition, a tax avoidance purpose test should be included in this proposed rule.

### **Trusts and the restructure and stakeholder provisions**

The Paper proposed to amend the operation of the restructure provisions so that they apply to trusts in addition to companies.

Based on the limited information available from the Paper, we do not have any specific comment at this stage regarding the proposed amendment in respect of trusts. We look forward to any future opportunity to comment on this aspect of the proposed amendment when the exposure draft legislation and explanatory memorandum is released.

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If you would like to discuss any aspect of our comments, please contact me on 02 9290 5609.

Yours sincerely



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