

2 May 2011

Level 7, 20 Hunter Street
Sydney NSW 2000

T +61 (0)2 8236 7700
F +61 (0)2 9233 4636

www.moorestephens.com.au

The Principal Advisor
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: consolidation@treasury.gov.au

Dear Sir/Madam

Exposure Draft – TOFA and Tax Consolidation

Thank you for the opportunity to provide our views on the exposure draft reform regarding TOFA and tax consolidation. We will comment only on the reform to the treatment of rights to future income under tax consolidation.

Our view is that different taxpayers should have the same outcome if they had the same transaction on the same day. The date of issue of an amended assessment, a private ruling or written advice by the Commissioner under an annual compliance arrangement should not determine the tax treatment of a transaction. The purpose of tax assessments, private rulings and written advice is to apply legislation to a particular transaction; it should never determine which legislation applies to the benefit of one set of taxpayers and to the detriment of another set of taxpayers.

The issue outlined above is made worse by the fact that in March 2011, the Australian Taxation Office held briefings on their understanding of the treatment of rights to future income. The main point was that they did not have a view on many issues at that stage and that they would be issuing a ruling in due course. Taxpayers who took a conservative position to wait for this ruling before amending their returns (knowing that the legislation gave them until 30 June 2011) have been penalised under this approach.

This approach also ignores the considerable resources that companies have made in preparing requests for amended assessments; at the very least they should be compensated for both their time and professional costs.

Given the above, we agree with the interim rules that apply to transactions between 12 May 2010 and 30 March 2011. For other taxpayers we believe that all requests for amended assessments received before 30 June 2011 should be processed. We appreciate the financial constraints that the Government is facing and suggest they be resolved by either reducing all claims by the same percentage, capping claims at a certain amount or reducing rights to future income deductions in the future.

If you have any questions regarding the above, please contact me.

Yours faithfully



Howard Badger
Director

MOORE STEPHENS SYDNEY PTY LTD

Encl