

Tax Brief

28 April 2009

Tax consolidation amendments – 18 further pieces of the jigsaw released

Today the Assistant Treasurer released in exposure draft form proposed legislative amendments dealing with 18 tax consolidation issues which had been foreshadowed in announcements going back as far as 1 December 2005. A further 6 issues remain under review.

These proposed amendments will impact on group 'formation' calculations and corporate acquisitions and disposals by consolidated groups. Many are also currently stated as having application back to 1 July 2002, with associated amendments being made to extend the normal 4 year amendment period.

It is not possible to provide any overall succinct summary of the thrust of this package, as the measures deal with a wide range of specific issues. As such, the attached table lists each of the proposed amendments and outlines their specific scope and application.

However, what is more than clear for larger corporate groups is that in most cases previous calculations for resetting the tax value of assets on initially electing to consolidate will be impacted – in many cases with the result that additional capital losses under CGT event L6 will become available or prior assessments will have to be amended when, ultimately, these provisions are enacted. Unfortunately, in some other cases a retrospective capital gain may now arise in relation to those formation calculations, but the Government has foreshadowed that it will consider submissions that have been made in relation to the retrospective application date of certain adverse amendments.

Importantly, this package of proposed amendments can similarly impact on the tax consolidation implications of subsequent corporate acquisitions and disposals and, in limited cases, the ongoing operation of the consolidated group.

Corporate groups should now undertake a very high level review of their previous consolidation calculations to get a sense of the quantum and nature of potential impacts. Issues can then be raised with the Government in relation to these exposure draft provisions before 25 May 2009.

Greenwoods & Freehills are reviewing this exposure draft material in detail, and can assist in flagging issues that may now be relevant to particular corporate groups.

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These notes are in summary form designed to alert clients to tax developments of general interest. They are not comprehensive, they are not offered as advice and should not be used to formulate business or other fiscal decisions.

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