

CORPORATE TAXPAYERS GROUP

C/- Deloitte
Attn: Mike Shaw
P O Box 1990
WELLINGTON
Telephone 04 495-3932
Facsimile 04 472-8023

22 October 2008

AFTS Secretariat
The Treasury
Langdon Crescent
PARKES ACT 2600
AUSTRALIA

Dear Sir/Madam

AUSTRALIA'S FUTURE TAX SYSTEM REVIEW: MUTUAL RECOGNITION OF FRANKING CREDITS & IMPUTATION CREDITS IN AUSTRALIA AND NEW ZEALAND

1. Introduction

- 1.1. The New Zealand Corporate Taxpayers Group (the Group) would like to commend the Australian Government for taking the daunting step of undertaking a full review of taxes and looks forward to the outputs of the review and any corresponding impact it has on tax policy development in New Zealand
- 1.2. The purpose of this letter is to outline the views of the Group in respect of the mutual recognition of imputation credits and franking credits between New Zealand and Australian (mutual recognition). While the possibility of mutual recognition was not raised in the Architecture of Australia's Tax and Transfer System, we understand the Australian Government has asked for submissions on the issue.
- 1.3. The Group is generally supportive of mutual recognition as it will go some way to reducing the existing tax impediments to Trans-Tasman investment. Whilst there are a considerable amount of issues to be resolved before mutual recognition could be implemented, the Group believes that there is a net benefit to mutual recognition and that all efforts to enact this regime should be pursued.
- 1.4. We set out below the reasons why the Group supports mutual recognition, matters which could result in the Group not supporting mutual recognition and the Groups initial thoughts on matters which would need to be addressed once a decision is made to pursue mutual recognition.
- 1.5. The Group does not want to submit on any wider aspects of the Australian tax system.

2. Economic rationale for mutual recognition

- 2.1. The Group notes that tax policy has generally been undertaken with a tax bias for Australian and New Zealand residents to invest domestically over foreign investment. Mutual recognition would result in a bias for New Zealand and Australian investment compared with investment in other countries. This is because when an Australian taxpayer invests into New Zealand (or vice versa), the ultimate Australian (or New Zealand) investor will obtain a credit for the underlying corporate tax whereas investment in other countries will not provide this credit.
- 2.2. Mutual recognition will result in tax efficiency when New Zealanders and Australians (corporates and individuals) seek investment opportunities in each others companies. Clearly this is a major benefit to the corporates of both countries as it provides a larger market place in which to undertake investment

and to seek growth opportunities. For example, it allows Australian and New Zealand corporates to take significant shareholdings (less than 100%) in each other without effectively reducing their ability to generate credits for shareholders.

3. Why is the Group supportive of a move towards mutual recognition

- 3.1. Again, mutual recognition will create greater efficiency of investment flows within Australasia. Corporates in both countries will be able to seek the best investment opportunities considering the pre tax returns. Mutual recognition will increase cross border investment flows as it will allow both Australian and New Zealand corporates greater investment opportunities as well as allowing corporates to seek equity capital from investors on either side of the Tasman in a tax efficient manner. This should ultimately lead to more efficient markets.
- 3.2. The Group therefore believes that mutual recognition will assist supporting the sustainability of both the Australian and New Zealand tax bases. For example, currently, the Inland Revenue is concerned that New Zealand companies (with Australian parents) may be streaming profits to Australia in an effort to obtain more favourable tax outcomes for shareholders. And we assume the ATO has a similar concern in the reverse situation.
- 3.3. The Group would expect that for mutual recognition to work in practice there would need to be a greater alignment of the imputation regimes of New Zealand and Australia (for example relaxed shareholder continuity tests). The Group would also be supportive of the New Zealand tax system having some Australian features, such as a grey list for controlled foreign company investments. However, the Group has concerns in this area which are outlined below.
- 3.4. In making the above positive observations, there are other non tax issues that also need to be addressed to facilitate harmonisation as between Australia and New Zealand. For example:
 - 3.4.1. For dual listed public companies, trades undertaken on the NZX aren't taken into consideration when determining whether a company meets the liquidity requirements of the ASX 200 index. The ability for trans-Tasman companies to feature on such indices is also important as it leads to a much wider and expanded spread of institutional shareholders (who invest on the basis of such indices) and reduces or eliminates discounts on the share price of dual listed companies. A combined trans-Tasman measure of liquidity would also ensure there wasn't pressure for a listing to only be in one country, and consequently for the associated trading and analyst activity to only be in one country.

4. Why the Group would not support a move towards mutual recognition

- 4.1. The attractiveness of mutual recognition would be considerably reduced if New Zealand had to follow certain Australian tax policies. For example if mutual recognition requires New Zealand to introduce a capital gains tax regime.
- 4.2. The Group is also conscious that there will be a number of issues to resolve at both a macro and micro level. One macro issue being the appropriate taxation of Australian and New Zealand superannuation funds investing on either side of the Tasman. This issue is particularly important to resolve given the divergence of current treatments, the disincentives which would exist if treatments continued to be different, and the possible reluctance of the New Zealand government to refund imputation credits to Australian superannuation funds (and vice versa).

5. Conclusion

- 5.1. Again, the Group emphasises it is supportive of allowing the mutual recognition of imputation credits and franking credits in New Zealand and Australia. However, the Group would like to stress the need to progress this issue within a reasonable timeframe, as the Group would not like to see either

Government committing a lot of time and effort (at the expense of other policy options) in the absence of a credible commitment from the Australian government to advance this matter quickly.

- 5.2. The Group also reiterates a key issue that will need to be addressed, being the refundability of imputation credits by Australian superannuation funds.
- 5.3. The Group looks forward to the next stages of your review with interest.

For your information, the members of the Corporate Taxpayers Group are:

1. Airways Corporation of New Zealand
2. Air New Zealand Limited
3. AMP Life Limited
4. ANZ National Bank Limited
5. ASB Bank Limited
6. AXA New Zealand
7. Bank of New Zealand
8. Contact Energy Limited
9. Fisher & Paykel Healthcare Limited
10. Fletcher Building Limited
11. Fonterra Cooperative Group Limited
12. General Electric
13. The Hongkong and Shanghai Banking Corporation Limited (New Zealand branch)
14. IAG New Zealand Limited
15. Infratil Limited
16. KiwiRail Limited
17. Lion Nathan Limited
18. New Zealand Post Limited
19. New Zealand Exchange Limited
20. Opus International Consultants Limited
21. Rio Tinto Alcan (New Zealand) Limited
- .
22. Shell New Zealand Limited
23. SKYCITY Entertainment Group Limited
24. Sky Network Television Limited
25. Solid Energy New Zealand Limited
26. Telecom New Zealand Limited
27. Telstra Clear Limited
28. TOWER Limited
29. Turners and Growers Limited
30. Vector Limited
31. Vodafone New Zealand Limited
32. Westpac New Zealand Limited
33. ZESPRI International Limited

We note the views in this document are a reflection of the views of the Corporate Taxpayers Group and do not necessarily reflect the view of individual members.

Yours sincerely



John Payne

For the Corporate Taxpayers Group