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G. Peter Gasteen

October 13, 2008

AFTS Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sirs,

I am writing to lodge a submission concerning a specific matter relating to the present taxation of individual taxpayers who have invested in Australian Real Estate Investment Trusts, previously referred to as Property Trusts.

I view the present taxation practices of some such Trusts as discriminatory and disadvantageous to many individual taxpayers who have invested in such entities which include, for example, the Westfield Trust.

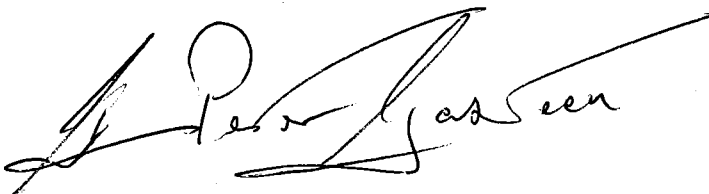
My concern is that such taxpayers, which include my wife and myself as self funded retirees, are being denied the benefit which relates to the 50% discount of capital gains tax when such capital gains are made by some Australian Real Estate Investment Trusts.

My submission concerning this matter is enclosed.

I would note that I make no particular suggestion in the submission as to how this matter should be corrected although I can visualise a number of different alternative approaches which can be taken to correct what I view as a discrimination against individual investors.

Furthermore, while I am submitting this as a matter to be considered by the Australia's Future Tax System Review I am also cognisant of the possibility that the practices referred to in my submission may, in fact, be in breach of existing provisions of the Taxation Law.

Yours sincerely,

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G. Peter Gasteen

SUBMISSION to the AUSTRALIA'S FUTURE TAX SYSTEM REVIEW

SUMMARY

It is proposed that provisions of taxation law such as any existing provisions which have enabled Australian Real Estate Investment Trusts – previously known as Property Trusts – to disadvantage eligible individual taxpayers with respect to assessment of income relating to Capital Gains Tax should be amended or redefined so that individual taxpayers are no longer disadvantaged under the law.

PREAMBLE

It is understood that Real Estate Investment Trusts are not subject to assessment of their income and the payment of income tax on that income because such income is deemed to be income of the trust unit holders and therefore assessable for taxation purposes in the hands of those unit holders.

However, it is also understood that a prime reason that such Trusts are not subject to the assessment of the income that they make is that they effectively distribute all of the income that they receive to their unit holders.

CHANGES to the LAW RELATING to the TAXATION of CAPITAL GAINS

Early in this decade, following the effective discontinuance of the previous system of indexation of the cost base of capital amounts in calculations of assessable capital gains for taxation purposes, the law relating to the taxation of capital gains was changed and provided a 50% discount of certain capital gains received by individual taxpayers who held assets for a specified holding period when calculating the assessable amount of capital gain to be included as income for taxation purposes.

No such discount was made available to most bodies incorporated as companies under the Companies Act but a discount of 33⅓% was made available to certain superannuation funds and to some life insurance companies.

ACTIONS of REAL ESTATE INVESTMENT TRUSTS

Since the introduction of this discount provision various Real Estate Investment Trusts, even though they do not have any assessable income for taxation purposes themselves, have adopted the practice of **not distributing** 50% of eligible capital gains which they have received on behalf of trust unit holders.

While it is difficult to determine the long term intentions of these trusts with respect to the amounts with-held, it appears that it is the intention of some to retain the with-held 50% in perpetuity.

In effect the action taken by some Trusts has resulted in Trusts not distributing income received to unit holders and denies eligible individual unit holders the benefit of applying a 50% discount to the amount of capital gain that has actually been distributed to them.

In practice, individual taxpayers are assessed to pay tax on the full amount of the half of the trust's capital gain which has been distributed to and received by the individual taxpayer.

One trust in particular has retained 50% of all such capital gains since the relevant change to the taxation of capital gains was introduced.

In addition, in the case of Trusts that are not taxable entities it is questionable whether they actually have a right to a 50% discount of any capital gains in the assessment of taxable income as they have no income which is assessed for taxation purposes.

One instance has been experienced where one particular Real Estate Investment Trust did not distribute a small part of such a capital gain received by the trust and, when queried about the smaller amount retained, advised that the amount involved would be distributed to unit holders when funds were available. That Trust later embarked on a unit buy-back and, when queried about the return of the with-held capital gain amount as funds now appeared to be available, advised that they could not return the amount involved as they had in effect "sold it"!

The question also arises in relation to this topic whether the relevant trusts pay out the with-held

amount of capital gain which has been included as the gross capital gain in an individual taxpayer's income tax return at such time as such individual taxpayer may decide to dispose of his or her unit-holding. It is doubted that any such reimbursement would occur and, accordingly, such taxpayers are permanently deprived from receiving the benefit of their individual 50% discount concession and will never gain access to their capital gain amounts with-held from them.

The question also arises as to whether these Trusts are acting within the provisions of the existing Taxation Law which exempts them from lodging income tax returns for assessment of taxation in their hands by with-holding significant amounts and not distributing those amounts to their unit holders.

ASSESSMENT

In view of the practices of Real Estate Investment Trusts in relation to the assessment of capital gains for income taxation purposes which, in effect, debar individual taxpayers from taking advantage of the 50% discount which is supposed to be available for them to claim on relevant capital gains that they have received, it is considered that the present taxation law should be revised to correct this discrimination which is taking place.

RECOMMENDATION

It is recommended that taxation law should be framed so that it is not able to be applied in a manner which disadvantages individual taxpayers by requiring them to declare income which they do not actually receive and thus depriving them of benefits in relation to the assessment of their tax liability as is illustrated by the practices outlined in the preceding discussion.

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G. Peter Gasteen