SUBMISSION TO THE FUTURE OF TAXATION INQUIRY

CHAIRMAN DR. KEN HENRY AUGUST 2008

Prepared by Michael Hall,

COMMENT ON THE MIS-USE OF PART IVA ANTI TAX AVOIDANCE PROVISIONS

The Australian Taxation Office is warning investors about tax minimisation and appears to be banning mitigation totally under Part IVA of the ACT which hitherto has been a citizen's right..

A current warning has been published by the ATO on "wash sales" (Tax Alert 2008/7). This appears to us as a case in point. This was published in January 2008 and filtered through the press by May 2008 and is stated to apply in 2007/08 year.

Because of this delay this is largely retrospective and unfair anyway.

The Association of Chartered Certified Accounts has compared Australia's tax system with UK; US; Canada; Singapore and Hong Kong and we are ranked highest in complexity and second lowest in fairness". Fairer tax system requires simplicity and transparency". "Main problem is the volume of laws and regulations"

This is a particular problem for long term investors confronted with Australian companies being purchased by overseas interests for cash. This is usually un-wanted as it replaces a dividend stream with a large tax liability**. Mitigation is sought and ATO needs to define acceptable "mitigation" or tax minimisation explicitly. The reading of the warning suggests that none will be allowed.**

Quote from Alert TA 2008/7 Page 3

The general ant-avoidance provisions in Part IVA of the ITAA1936 should be applied to cancel all or part of a relevant capital loss or allowable deduction from the wash sale arrangement where the taxpayer disposes of the assets with every intention of acquiring the same or substantially the same assets, or otherwise continue to benefit from the asset.

Personal Example.

My wife and I have relatively large capital gains tax obligations this year 2007/08 due to the purchase of our Rinker shares by Cemex for cash. We have been long-term shareholders in CSR and we had no desire to sell either CSR or its offshoot Rinker. The funds from the Rinker sale went to purchase Perpetual shares which in 2007 were $70 -$85 each. However, come the recent crash in the market Perpetual shares have been below $40s. It seemed a good idea to sell the earlier purchases and re-buy at the lower price to help mitigate our Rinker capital gains. We do not feel like criminals! We are self-funded retires completely independent of any government hand-outs. We had never heard of wash sales before.

Michael H all AM and Joan Hall