AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

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16 February 2012

Mr Chris Jordan
Chair
Business Tax Working Group
The Treasury
Langton Crescent
PARKES ACT 2600
Email: BTWG@treasury.gov.au

Dear Mr Jordan

Thank you for the opportunity to provide a submission to the Business Tax Working Group as it considers the tax treatment of business losses.

During the global financial crisis and in its aftermath, the Australian Chamber of Commerce and Industry (ACCI) called for the Australian taxation system to allow for the carry back of revenue losses which could be offset against previous years' taxable income as a means to provide much needed cash flow relief for business.

We note the current taxation system treats gains and losses asymmetrically, where gains are taxed as they accrue, while losses are not refunded but can generally be carried forward and used against future income, subject to continuity of ownership test (COT) and the same business test (SBT).

We consider current limitations on the use of tax losses discourage entrepreneurship and risk taking and this is more sharply felt by smaller and middle ranking businesses that have less capacity to deal with risk. More broadly restrictions on loss utilisation also limit the ability of the tax system to serve as an automatic stabiliser during an economic downturn as the tax value of deductions is not recouped by businesses until they earn future income to provide for the offsetting of losses.

The Interim Report together with the Henry Review's 'Recommendation 31' appears to limit consideration of this issue as only applying to incorporated entities. We do not support this limitation as the adoption of more flexible loss arrangements should be equally accessible to sole traders and partnerships.

This would better serve the stated policy intent which is to overcome asymmetries and distortions as they currently exist, and this occurs irrespective of the chosen business structure. ACCI further notes the relevant provisions adopted in the United Kingdom and the United States also apply to smaller unincorporated entities.

In relation to potential models for reform and the detail of appropriate integrity measures we have not formed a final view and would welcome the opportunity for further discussion.

We do have some initial interest in Combination 3 (described at 3.6.3), which is a combination of removing COT and SBT, allowing loss carry-back and the application of a loss uplift factor - although we do require more information in relation to how each of these elements may apply.

ACCI commenced its advocacy on this matter to assist the particular circumstances of small business in the aftermath of the global financial crisis. This was based on the difficulty smaller and middle ranking enterprises were having in maintaining adequate cash flow levels. Unlike larger companies they had limited or no access to retained earnings and were also finding securing credit from financial institutions much more difficult.

While we have no doubt any initiative to remove distortions in this area and improve tax loss utilisation would benefit all companies, there is an argument as in other areas of taxation to target small and medium sized businesses (both incorporated and unincorporated enterprises) but up to a significant threshold as measured by turnover.

This approach may also provide greater scope as to the type of integrity measures needed to be adopted with the objective of less prescription and greater simplicity for taxpayers.

Summary:

ACCI is supportive of the following:

- Adopting measures to allow for the carry back of revenue losses
- Changes should not be limited to incorporated businesses but also be extended to structures including sole traders and partnerships
- Further examination of the types of integrity measures required with the emphasis on limiting prescription and providing greater simplicity for taxpaying entities, and
- Considering targeting measures to small and middle ranking businesses but up to a significant threshold level.

ACCI is available to elaborate on this matter and would welcome further discussion at your convenience.

Yours sincerely

Greg Evans
Director of Economics