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The Manager
Corporate Tax Unit
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via Email: LossCarryBack@treasury.gov.au

Dear Sir/ Madam

“IMPROVING ACCESS TO COMPANY LOSSES”

RSM Bird Cameron welcomes the opportunity to provide a submission on the consultation paper “Improving Access To Company Losses – Introducing Loss Carry-Back” released on the 23 August 2012.

In general the theme of the proposed carry back of revenue losses for company or company type entities is a good initiative.

However we wish to comment in respect of the Integrity Rules contained in the draft Legislation.

We question the need for any form of integrity rule in respect of this proposal.

Broadly we question the need for any form of specific integrity rule in respect of company losses.

It is disappointing that the Government did not take the opportunity to carry out a more thorough reform of the loss integrity rules, especially in regard to the uncertainties in applying the SBT provisions.

We hope that a broader review of the specific loss integrity rules will still remain on the Government's agenda.

Our argument is as follows.

Loss integrity rules were introduced prior to the start of the Capital Gains Tax (CGT) regime. The CGT rules close the prior economic gap that existed with company losses. The vendor of a loss company will now have CGT consequences on the sale of their shares.

Further the buyer in order to access the cash profit from any income injection will ultimately either receive an unfranked dividend or return of capital, the latter being subject to the CGT provisions.

In respect of the current proposal it is unlikely that a company or indeed an investor is going to deliberately set out to make a loss.

Equally it would be unusual for companies to have franking credits and prior year tax payments in combination with no or little retained profits and hence assets.

The refund of prior year tax payments of itself will increase the retained profits of a company.

An example to illustrate would be:

Company A has retained profits of \$700,000 with a Franking account balance of \$300,000 with a prior year tax payment of \$300,000.

Company A incurs a tax and accounting loss of \$1,000,000 in the subsequent year and is able to claim back the prior year tax payment of \$300,000.

The result is Company A has no retained profit and no franking account balance.

Using the same circumstances as Company A except that Company B has no retained profits prior to the loss year, then in order to fund the losses there would need to be either further equity raised or loans obtained.

The position of Company B after the refund of the prior year tax payment is that it would have an accumulated accounting loss of \$700,000 supported by equity or loans and no franking account balance.

In short we do not believe the risk is as great as to warrant the extension of the current complex integrity rules.

Yours sincerely



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National Tax Director



ROSS WATSON
Principal – Tax Services Perth