**Submission to Stapled Structures**

From: AIMS-STM Pty Ltd (ABN 70 063 037 061)

PO Box 1495, Crows Nest NSW 1585

Telephone: (02)9901 3449

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Please find attached our response to the Australian Government’s Request for Feed Back and Comments on the Consultation Paper “Stapled Structures” March 2017.

1. The Consultation Paper appears to advocate the removal of the use of stapled securities. The prime reason for this is because they are being used to re-characterise trading income as passive investment income as derived from investments in non-trading activities.

Alternatives other than removal of staples to fix the stated major problem, namely, re-characterisation of income, are not offered nor discussed. Instead the paper asks for submissions from interested parties to offer alternatives other than removal. It does not suggest other solutions for “other more targeted measures to support investment in critical infrastructure”.

1. The Paper states that “The tax system should not distort decisions about resource allocation across sectors or between firms within sectors.

Some organisations that do not re-characterise income will be at a competitive disadvantage compared to those that do. This means that businesses are not competing on a level playing field – which has equity concerns.”

This statement is problematic as there are many factors that make a business and as long as the tax rules for businesses are equal for all competitors, then for a business that does not use the appropriate tax structure is the fault of the business not the tax rule. The Government’s job is to make sure everyone in the industry has equal access to the use of tax laws defined by the Government. If the tax law is working and achieving its objective but is being misused by some then the task should be to stop the misuse and rather than stop the desired effect.

Cleary the tax laws are having the effect they were introduced for in 1985. The paper acknowledges this:

“Australia needs to be internationally competitive to attract and retain investment”

Further, it shows figures that the stapling structure is actually achieving this:

“As at December 2016, these listed staples accounted for approximately $199 billion of Australian Stock Exchange (ASX) market capitalisation, which is approximately 10 percent of total ASX market capitalisation, up from around $149 billion two years earlier” (which represented approximately 8% of total market capitalisation as at December 2014).

1. The Paper lists countries that have staples securities which all listed securities. The Paper also shows how staples have been successful in the Australian listed market (see above). However, the Paper says the use of staples securities outside Australia is uncommon with an inference that Australia by removing the use of stapled securities would be in line with the rest of the world. The other countries’ tax rules on staples are not specifically examined to arrive at a suggestion how to modify the present Australian laws to prevent the major problem, namely how to prevent re-characterisation of income.
2. The Paper implies that compliance costs are a difficulty although no evidence is given that they are onerous. Instead it is stated “The tax system should not impose unnecessary complexity and compliance costs”.

The present tax laws on stapled securities for an investor in these instruments are mathematically calculable and have been catered for in modern investment administration systems for over a decade. Hence, it is difficult to argue that such calculations mean “The use of complicated tax structures, such as staples, also imposes costs on investors that may not fully understand the risks, fees or payments to managers”

Compliance costs are mainly associated with using a computer system that does the tax calculations. Legacy systems may be difficult to change to be compliant but that should not restrict the Government from using effective tax structures such as staples to achieve an objective. Stapled securities have been processed automatically by more modern computer systems for over a decade.

It is well known by the ATO that many of the legacy systems used by the large Australian financial institutions are not capable of calculating tax liability for stapled securities which must be done at the underlying level. It makes no difference to compliance costs to those investors currently using more modern systems. The solution to compliance costs for an investor is to use a system that can process stapled securities.

1. To remove a successful initiative and increase the Government’s tax revenue would appear to be goal of this Consultation Paper:

“As the policy options under consideration would reduce the scope to convert active business income into passive income, they should increase tax revenue and the capacity of the Government to fund infrastructure and public services.”

Increasing revenue by abolishing an initiative that has increased investment for the industry it was intended to affect but at the same time seriously discuss lowering tax rates presents a conflict of goals within the Government which creates uncertainty for an investor concerning the reliability of the Government’s tax policies.