

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

PricewaterhouseCoopers  
ABN 52 780 433 757

Darling Park Tower 2  
201 Sussex Street  
GPO BOX 2650  
SYDNEY NSW 1171  
DX 77 Sydney  
Australia  
Telephone +61 2 8266 0000  
Facsimile +61 2 8266 9999  
[www.pwc.com/au](http://www.pwc.com/au)

By email transmission:  
[consolidation@treasury.gov.au](mailto:consolidation@treasury.gov.au)

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Dear Sir

**Exposure Draft - Tax Laws Amendment (2009 Measures No. 4) Bill 2009: Consolidation**

We would like to thank you for the opportunity to make a submission with respect to the Draft Tax Laws Amendment (2009 Measures No. 4) Bill 2009: Consolidation.

We set out below our comments on the commencement date of the proposed amendment to the eligibility requirements for a provisional head company (PHC) of a Multiple Entry Consolidated Group (MEC group).

**Submission summary**

We support the proposed amendment to section 719-65(3)(d)(i) of the *Income Tax Assessment Act 1997 (ITAA 1997)*. In our view, this amendment should address the difficulty (experienced in some circumstances) that the existing section 719-65(3)(d)(i) produces in respect of eligibility requirements for a PHC of a MEC group. However, we consider that the commencement date of the proposed section 719-63(3)(d)(i) as set out in the Exposure Draft of the Tax Laws Amendment (2009 Measures No. 4) Bill (exposure draft legislation) and the explanatory material (EM) is unclear and may result in some unnecessary uncertainty for MEC groups.

It is submitted that the exposure draft legislation should be amended to align with the comments in the EM to clarify that the proposed amendment to section 719-65(3)(d)(i) will apply from 1 July 2002, in order to address the circumstances of taxpayers that have been affected by the requirements of the existing section 719-65(3)(d)(i) since the commencement of the consolidation regime on 1 July 2002.

We would also appreciate the opportunity to review the revised legislation before it is presented to Parliament to ensure that the commencement date issue is resolved.

## Commencement date

The exposure draft legislation outlines at Part 2, Item 13 the proposed application of the amendments made by Part 2:

*"The amendments made by this Part apply in relation to the creation of a MEC group from a consolidated group, or a consolidated group from a MEC group, on or after 27 October 2006."*

Prima facie, this would suggest that the amendment to section 719-65(3)(d)(i) set out at Part 2, Item 13 of the exposure draft legislation will apply on or after 27 October 2006. However, the reference of the exposure draft legislation at Part 2, Item 13 to *'the creation of a MEC group from a consolidated group, or a consolidated group from a MEC group'* makes the commencement date of proposed amendment of section 719-65(3)(d)(i) at Part 2, Item 9 unclear.

Based on the comments in the EM, we do not consider that a commencement date of 27 October 2006 for section 719-65(3)(d)(i) was the intention of Parliament.

At paragraph 1.242 the EM states:

### ***"Measures announced to apply from 1 July 2002***

*"The measures which apply from 1 July 2002 (that is, from the commencement of the consolidation regime) are the measures to:*

...

- *modify the circumstances in which a company is eligible to be appointed as the provisional head company of a MEC group".*

Further, at paragraph 1.244, the EM states:

### ***"Measures announced to apply from 27 October 2006***

*"The measure to allow consolidated groups to convert to MEC groups, and vice versa, with minimal tax consequences (other than the modification to the circumstances in which a company is eligible to be appointed as the provisional head company of a MEC group) applies to conversion events which happen on or after 27 October 2006 (that is, from the date of announcement)."(emphasis added)*

We consider that these comments in the EM indicate that it was Parliament's intention that the commencement date for the proposed amendment to section 719-65(3)(d)(i) apply from 1 July 2002, with the commencement of the consolidation regime.

As such, we consider that, consistent with the EM, the intention is that the commencement date of the proposed amendment to section 719-65(3)(d)(i) should be from 1 July 2002. It is just that it has not been picked up by the draftsmen.

**Submission**

It is submitted that the proposed legislation should be amended to align with the comments in the EM to clarify that the proposed amendment to section 719-65(3)(d)(i) will apply from 1 July 2002. This will address the circumstances of taxpayers that have been affected by the eligibility requirements of the existing section 719-65(3)(d)(i) since the commencement of the consolidation regime on 1 July 2002.

We would appreciate the opportunity to review the revised legislation before it is presented to Parliament to ensure that the current uncertainty of the commencement date of section 719-65(3)(d)(i) is resolved.

If you would like to discuss the above further, please do not hesitate to contact me on (02) 8266 9156.

Yours faithfully



Eddy Moussa  
Partner  
PricewaterhouseCoopers