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Submission on Restructure Relief

New Business Tax System (Entity Taxation) Bill 2000 Exposure Draft

KPMG Tax

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This report contains 6 pages

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1 Introduction

Subdivision 125-A of the Exposure Draft provides roll-over relief for a fixed trust that restructures as a company, and, for some companies that restructure as a fixed trust.

While such relief is welcomed, broader relief is requested.

2 Conditions for relief: 1 July 2001 limitation

Issue:

To qualify for the restructure relief, the "restructure time" must occur before 1 July 2001. Accordingly, all of the CGT assets of the transferor must have been disposed of to the transferee by that date.

As the final legislation is not yet available, this will effectively only allow companies and fixed trusts no more than six months to be able to review, consider and implement such a very complex and detailed transaction.

Suggestion:

Under the current CGT regime, there are no time limits applying to the current provisions allowing roll-over relief for companies rolling over assets. Accordingly, it is requested no time restrictions apply to the roll-over relief proposed under the Exposure Draft legislation.

3 Conditions for relief: transferor cease to exist within 6 month period

Issue:

Another requirement to qualify for the restructure relief is that the transferor must cease to exist within 6 months of the restructure time (s125-30(2) of the Exposure Draft).

While the section allows for an extension of time where allowed by the Commissioner, the Explanatory Material makes it clear that such extensions are to be limited to cases where it is beyond the control of the taxpayer (para 9.20).

For company to cease to exist it will have to be liquidated and liquidations generally take far longer than 6 months to complete. Typically, one of the longest periods that the liquidator needs to wait for during the liquidation process involves obtaining section 215 clearance from the Australian Taxation Office. Moreover, a company is deemed to be dissolved three months after the filing of returns relating to the final meeting of creditors and members. In other words, everything else needs to be done within the first three months of the proposed six month period.

Suggestion:

A more practical test would involve a requirement that the liquidation process for the relevant company be commenced within six months of the asset transfer to the relevant trust pursuant to the roll over requirements.

4 Suggested form of roll-over relief

Suggestion:

At a forum held in Canberra on 19 October 2000 convened by Treasury and the ATO, consideration was given to extending the restructure roll over relief to non-fixed trusts. KPMG broadly supports this approach. The requirements for such relief are summarised below:

- Available where a non-fixed trust changes its deed to become a fixed trust before 1 July 2001.

- Modelled on the attributes of the other entity restructuring relief outlined in the exposure draft.

- No CGT liability for members as a result of the cancellation of membership interests in the non-fixed trust and replacement with a membership interest in the fixed trust.

- Original cost base of the membership interest transfers to the new membership interest.

- Pre-CGT status of the trust's assets and of membership interest is maintained.

- Acquisition date for interests in the fixed trust is the date of resettlement.

- Restrictions on the allocation of membership interests in the fixed trust may be necessary.

- Relief for restructures involving fixed trusts and companies is conditional on there being no proportionate change in underlying ownership.