DRAFT LEGISLATION TO CHANGE THIN CAPITALISATION RULES

The Assistant Treasurer, Senator Nick Sherry, has today released for public consultation draft legislation, together with explanatory material, on the proposed changes to the thin capitalisation rules of the income tax law.

"The thin capitalisation regime is an important tax integrity measure and this legislation will fine-tune its operation," the Assistant Treasurer said.

"It's designed to ensure Australian and foreign owned multi-national entities do not allocate an excessive amount of global debt to their Australian operations and therefore inappropriately reduce Australian profits and tax."

"The rules operate to disallow a proportion of otherwise deductible expenses where the debt used to fund the Australian operations exceeds certain limits."

"But these rules need adjustment following Australia's adoption in 2005 of International Financial Reporting Standards (AIFRS) on the thin capitalisation position of authorised deposit-taking institutions (ADIs)," the Assistant Treasurer said.

Amendments made in 2008 adjusted for the impact of AIFRS on the thin capitalisation position of non-ADI entities.

These proposed changes were announced in the 2009-10 Budget and will apply to ADIs. They will clarify how treasury shares, the business insurance assets known as 'excess market value over net assets' (EMVONA), and capitalised software costs will be treated under the thin capitalisation provisions.

It is intended that the proposed changes will have effect from 1 January 2009.

"The proposed changes take into account the views expressed by stakeholders during consultations," the Assistant Treasurer said.

"I welcome further public input on the draft amendments and explanatory materials, with a view to introducing the legislation early next year."

Submissions close on Friday, 15 January, 2010.

The draft legislation and explanatory material are available at www.treasury.gov.au

CANBERRA
17 December 2009