

IMPROVEMENTS TO THE COMPANY LOSS RECOUPMENT RULES

The Assistant Treasurer, Senator the Nick Sherry, today released Exposure Draft legislation and explanatory material to improve the company loss recoupment rules in Australia.

These laws implement changes to the company loss recoupment rules that will improve the operation of the "continuity of ownership test" where a company has an unfixed share structure.

The "continuity of ownership test" broadly requires that shares carrying more than 50 per cent of all voting, dividend and capital rights be beneficially owned by the same persons at certain test times.

"The proposed amendments are beneficial as they will make it easier for companies to satisfy the continuity of ownership test, and therefore to use losses," said the Assistant Treasurer.

Companies which have shares on issue with unequal rights to dividends, capital distributions or voting power may technically fail the continuity of ownership test under the current law, even though there is no significant change in underlying beneficial ownership during the test period.

The proposed amendments will allow a company which fails the continuity of ownership test because it has shares with unequal rights to dividends, capital distributions or voting power to reapply the test by disregarding debt interests and secondary classes of shares. If the company still fails, the test can be further applied by fixing the dividend and capital rights of the principal class of shares.

Technical amendments will also be made to modify the definition of voting power and clarify the operation of the same business test for consolidated groups.

The Government values the input provided by interested parties through consultation and is seeking submissions on the Exposure Draft legislation and explanatory material.

Copies of the consultation materials are available at www.treasury.gov.au and submissions close on 2 October 2009.

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