13

ENTITY-SPECIFIC ISSUES

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Taxing co-operatives under the entity regime

Recommendation
13.1 Tax treatment of co-operatives

All co-operatives included in entity tax regime

(a) That all co-operatives be included in the entity tax regime and taxed like other entities.

Early refunds of excess imputation credits

(b) That low marginal rate members of all co-operatives be eligible to obtain early refunds of excess imputation credits via the distributing entity.

Co-operative companies that meet the criteria in Division 9 of the 1936 Act (tax co-operatives) are subject to some alternative tax rules to those applying to other co-operatives and companies generally. At present, tax co-operatives are entitled to deductions, up to their assessable income for a year, for their distributions to members in that year. Such distributions are not frankable. Further distributions are not deductible but are frankable. Those co-operatives which do not meet the criteria set out in Division 9 are taxed as ordinary companies.

In *A Platform for Consultation* (pages 507-514), the Review explained that taxing all co-operatives like companies would remove the complexities associated with Division 9 and provide for a tax outcome that is simpler, more structured and consistent with that applying to other entities (including co-operatives currently taxed wholly like companies).

The Review does not consider the differences between tax co-operatives and other co-operatives and companies to be sufficient to justify providing tax co-operatives with a specific exemption from the entity tax regime. Companies having purposes similar to those of tax co-operatives (for example, companies limited by guarantee) currently operate and are subject to the same taxation treatment as other companies. Many large co-operatives do not meet the criteria in Division 9 and are accordingly taxed as ordinary companies.

Applying the entity tax regime, with refundable imputation credits, will achieve an outcome equivalent to the current treatment of tax co-operatives and their members in terms of overall tax payable. The entity tax regime will result in distributions of taxable income not retaining their character and tax preferences not flowing through. This is consistent with the current Division 9

tax treatment of tax co-operatives and their members. The major difference will be that the initial taxing point of taxable income will move to the entity, with distributions to members attracting refundable imputation credits for the tax paid on the distribution by the co-operative.

Co-operative representatives have raised their members' concerns about diminished cash flow and increased compliance costs from changing the timing of taxation and introducing refunds of excess credits. This is not a tax issue particular to co-operatives. These concerns are similar to those of small businesses operating via a trust with members whose personal tax rate is below the company rate.

Recommendation 11.7 is that arrangements be made to enable low marginal tax rate individual investors in closely held trusts and companies and low marginal rate members of *all* co-operatives to obtain refunds of excess imputation credits via the distributing entity at the time of distribution. This recommendation will ameliorate the cash flow impact of the entity tax regime on members of co-operatives.

Recommendation 12.2 will mean that certain discounts provided by widely held entities (including by widely held co-operatives) will be treated as unfrankable distributions and disregarded by members in calculating taxable income.

In *A Platform for Consultation* (page 514), the Review explains that although it considers that the deduction for capital repayments of certain loans made by governments has limited applicability, the continuation of the deduction is a separate issue from extending a new entity tax regime to all tax co-operatives.

Multiple trusts with a common trustee

Recommendation 13.2 Multiple trusts with a common trustee

Separate taxation of multiple trusts

(a) That, if under the law of equity there is more than one trust each of which has a common trustee, each of those trusts be treated for taxation purposes as a separate trust.

Exclusion specific to particular trust

(b) That, if one of such separate trusts falls wholly within an exclusion from the entity tax system, the exclusion be applied only to that particular trust.

Trustees commonly hold different property for a number of different beneficiaries and/or purposes. Furthermore, even as part of the same trust settlement, a trustee may be required to hold a specific set of assets for the benefit of one defined group of beneficiaries, while also being required to hold other assets for a different group of beneficiaries. For example, a trustee may hold shares for the benefit of minors who are children of the settlor and a rental property for the spouse of the settlor.

These arrangements can involve formally separate trusts, or arrangements that as a matter of equity law constitute separate trusts. If such multiple trusts exist, the entity taxation rules should be separately applied to each of the trusts. In substance, this is no different from the approach adopted by the ATO under the existing law.

The exclusions from the entity tax system should be applied to each of the separate trusts that have been so identified. A trust should only be excluded from the entity tax system if either the whole purpose, or all of the assets, of the separate trust come within an exclusion from the entity system. Similarly, a trust should not be prevented from obtaining the benefits of an exclusion from the entity tax system simply because one or more other trusts with the same trustee — but with different assets subject to the trust, or with different beneficiaries, or with different terms of trust — do not come within the exclusions.

A trustee for separate trusts may join their assets in a common investment, where trust law and the terms of the trusts permit this. Such a joint investment does not preclude the continued existence of separate trusts. A solicitor's trust accounts provide a familiar illustration.

Trust distributions to minors

Recommendation

13.3 Trust distributions made to minors

That provisions substantially similar to those currently in Division 6AA of the 1936 Act apply to all entitlements of minors, whether:

(i) derived by distribution from an entity (including a trust taxed under the entity system);

(ii) derived from an 'excluded trust'; or

(iii) derived directly by the minor.

On page 487 of *A Platform for Consultation* there is a discussion on the application of Division 6AA to excluded trusts and trusts taxed under the new entity tax system. Prior to the introduction of Division 6AA, schemes existed under which children derived unearned income. Because such children usually had little or no other assessable income, these schemes resulted in a lower total tax liability on unearned income by taking advantage of the separate tax-free threshold and marginal tax rates.

Division 6AA applies to all dependent children under the age of 18 and deals both with:

- distributions of income by trusts; and
- the derivation of income directly or from owning property (for example, dividends paid to a child because the child is the legal owner of the shares, rather than a beneficiary of a trust).

The effect of the rules is that the income of dependent children is generally taxed at the top marginal rate. However, the division specifically exempts certain income, money and property from the application of the division's higher tax rates.

The current taxation treatment should be maintained by the continued application of such provisions to all trust distributions, regardless of whether the trust is taxed under the entity tax system or as an excluded trust.

The higher rates of tax under Division 6AA do not apply to the income of most of the specific trusts listed in Attachment A to Section 16 for exclusion from the entity tax system (see Recommendation 16.10). That is because Division 6AA explicitly exempts income from most of those trusts from the application of the division's higher tax rates. The only trusts on the list that would not attract explicit exemption are very unlikely to distribute to minors (for example, a trust holding property of someone who has become bankrupt under the *Bankruptcy Act 1966*).

Recommendation
13.4 Child maintenance trusts

Included in entity tax regime

(a) That a child maintenance trust be subject to the entity tax regime in the same way as other trusts, unless classed as an 'excluded trust' on the basis of the principles and associated list of exclusions in Recommendation 16.10.

Current treatment of distributions preserved

(b) That distributions from child maintenance trusts continue to be subject to substantially similar rules to those currently in Division 6AA (see also Recommendation 13.3), including the current exclusion from higher rates of tax for children's income distributed from those child maintenance trusts which satisfy strict criteria.

The Review discussed the treatment of child maintenance trusts on page 487 of *A Platform for Consultation*. In order to pay child maintenance a parent will often establish a child maintenance trust. Under the current law, Division 6AA does not apply to the income from the investment of property transferred to a minor or to a trustee for the minor, provided particular criteria are met. Child maintenance trusts will not be excluded from the entity tax regime or from the Division 6AA rules simply on the basis of being such a trust. Contrary to the principles underpinning the proposed list of excluded trusts in Recommendation 16.10, the settlor of a child maintenance trust has discretion in the use of a trust structure.

The availability of refunds for excess imputation credits and the maintenance of the current criteria for excluding trusts from Division 6AA type provisions will ensure little actual difference between the tax effect for children of the current treatment and that which will be received under the entity tax system.

Rollover relief for deceased estates and testamentary trusts

Recommendation 13.5 Deceased estates

Transfer of assets from deceased person to executor

(a) That, consistent with the current law, the transfer of assets owned by a deceased person to the executor or administrator of the deceased person's estate (the legal personal representative) not result in the realisation of a capital gain or loss for tax purposes.

Transfer of those assets from executor to natural person beneficiary

(b) That, consistent with the current law, if the legal personal representative transfers assets owned by a deceased person at the time of death to a beneficiary who is a natural person:

(i) **the transfer not result in the realisation of a capital gain or loss for tax purposes, provided the beneficiary is not the trustee of a non-testamentary trust; and**

(ii) **the tax values of those assets in the hands of the natural person beneficiary be the tax values that the assets would have had in the hands of the legal personal representative had they been disposed of to a third party, rather than transferred to the natural person beneficiary.**

Transfer of those assets from executor to entity beneficiary

(c) **That the transfer of assets by the legal personal representative to a beneficiary which is an entity not result in the realisation of a capital gain or loss for tax purposes provided that:**

(i) **all the members of the entity are individuals; or**

(ii) **the entity is a registered charitable organisation.**

The policy reflected in the existing law is that there should be no capital gains tax for direct transfers of assets between individuals where the transfer is a consequence of the death of one of the individuals. Consistent with the policy on such direct transfers, CGT gains or losses made on the transfers of a deceased person's assets to an executor or administrator of the deceased person's estate (the legal personal representative) are disregarded under the existing law. Furthermore, the transfer by a legal personal representative of an asset, previously owned by the deceased person, to a beneficiary who is a natural person (individual) as a consequence of the completion of the administration of the deceased estate would not give rise to a gain or loss for tax purposes. Recommendations 13.5(a) and (b) will endorse the current treatment. Where consistent with Attachment A to Recommendation 16.10, which specifies the terms of exclusion of deceased estates from the entity tax system, the transfer of the asset will not be treated as a distribution for tax purposes.

Recommendation 13.5(c) will ensure the same outcome for transfers by a legal personal representative to either an entity where all the members are individuals or a charitable organisation registered under the process announced in *A New Tax System*. That is consistent with the policy underlying current arrangements. It may remove capital gains rollover under the existing law where the transfers are to an entity with some members who are not individuals — although the effect of the current law contains some uncertainties in this regard. The current law precludes the proposed transfer to registered charitable organisations without realisation.

Recommendation

13.6 Transfer of assets from testamentary trusts

Treatment parallels transfer by executor

(a) That the distribution by a trust established by the will of a deceased person (a testamentary trust) of an asset owned by the deceased person be treated in the same way as a distribution by a legal personal representative under Recommendation 13.5(b), provided the asset is transferred to a beneficiary who:

(i) is a relative of the deceased person; or

(ii) is not a relative of the deceased person and the transfer occurs within:

- **two years of the date of death of the person who established the testamentary trust; or**
- **such longer period as agreed to by the Commissioner of Taxation.**

Meaning of 'relative'

(b) That 'relative' have the same meaning as 'family member' under the trust losses provisions of the 1936 Act.

A legal personal representative and a testamentary trust carry out distinct but related functions. There is a clear distinction in trust and succession law between a legal personal representative and a trustee of a testamentary trust. The legal personal representative gathers in the assets of the deceased person and pays any outstanding debts. Any remaining assets are then distributed in accordance with either the will of the deceased or the laws of intestacy. As noted, deceased estates (other than testamentary trusts) will be excluded from entity taxation provided that the administration is completed within two years (or such longer period as the Commissioner of Taxation determines) from the date of death (see Attachment A of Section 16).

The will of the deceased may require some or all of the remaining assets of the deceased to be held on trust for particular beneficiaries or purposes (that is a testamentary trust). In many cases the legal personal representative and the trustee of the testamentary trust will be the same person. Generally, a clear point in time occurs when the person ceases to be a legal personal representative in relation to particular assets and becomes a trustee of the testamentary trust in respect of that asset.

Once established, a testamentary trust is no different from any other type of trust: it holds assets for the benefit of particular persons or groups of persons. Thus, testamentary trusts should be treated for tax purposes in the same way as

other trusts. However, given the nature of testamentary trusts, and the existing policy concerning transfers between individuals of assets consequent on the death of one of the individuals, it is considered appropriate to allow assets owned by the deceased person to be transferred to a relative of the deceased person at any time without income tax consequences (in relation to either capital gains or treatment of the transfer as a distribution). Recommendation 13.6(a)(i) performs this function.

Under Recommendation 13.6(b), a relative will be:

- any parent, grandparent, brother, sister, nephew, niece, child, or child of a child, of either the deceased person or the spouse of the deceased person; or
- the spouse of the deceased person, or the spouse of anyone who is in the above list.

The discretion set out in Recommendation 13.6(a)(ii) will allow the Commissioner of Taxation to extend the period during which testamentary trusts can transfer assets to beneficiaries who are not relatives without creating a capital gain or loss for tax purposes.

One interpretation of the existing capital gains provisions dealing with the transfer of assets as a consequence of death would allow a testamentary trust to transfer such an asset at any time to any beneficiary without giving rise to the realisation of a capital gain or loss. It could therefore be argued that the recommendation is somewhat more restrictive than the existing law. Such an interpretation, however, may not correctly reflect the intended operation of the existing law. The recommended treatment clarifies the current law and strikes an appropriate balance between allowing assets to be transferred to a deceased person's relatives without capital gains consequences, and preventing undue tax deferral through transfer to beneficiaries with perpetual lives (such as companies and certain non-testamentary trusts).

Entity rules for losses and the cessation of trusts

Recommendation 13.7 Ending of a trust for tax purposes

That in respect of either

- **a trust that is treated as an entity under the entity tax regime, or**

- **a collective investment vehicle (CIV) under Recommendation 16.1,**

the ending of the trust for tax purposes be constituted by:

(i) the complete vesting of the trust; or

(ii) the distribution of all the assets of the trust by the trustee.

Under trust law, a trust can cease, and a new trust be created, without the complete vesting of the existing trust or the distribution of all the assets of the trust by the trustee. (Complete vesting, or winding up, of a trust may not occur on the distribution of all assets for trust law purposes because all rights to future income or property may not be discharged.) The cessation of the old and the creation of a new trust in these circumstances can have tax consequences under the existing system. For example, current and prior year losses and bad debt write-offs of the old trust cannot be carried over to the new trust and there is a CGT event in respect of the assets of the old trust.

An existing trust may cease and a new trust may be created as a result of changes to a trust deed, changes to the substance or nature of a beneficiary's interest in the trust or changes to the operation of a trust. Such changes can give rise to the resettlement of a trust for some legal purposes. However, neither trust law nor taxation law is clear about exactly what changes to a trust deed constitute the creation of a new trust.

The recommendation will ensure that for taxation purposes clear rules exist for determining whether a trust has ceased to exist. Situations which for some legal purposes would result in the cessation of an existing trust and the creation of a new trust will be ignored for tax purposes, unless there were a complete vesting of the trust or the distribution of all the assets of the trust. Consequently, the recommendation provides the means of dealing with the trust resettlement issues discussed in *A Platform for Consultation* (pages 490-493).

To define circumstances, other than the full vesting or complete distribution of assets of the trust, that represent the ending of a trust would be difficult. Alternatives to these two circumstances would not provide certainty for taxpayers while at the same time applying fairly in all cases.

Recommendation 13.8 Continuity of ownership test and same business test

Tests to apply to entities with fixed interests

(a) That the continuity of ownership test and the same business test apply to all companies, limited partnerships and fixed trusts (either being trusts subject to entity taxation or trusts that are collective investment vehicles).

Loss of tax benefits upon failure of tests

(b) That the failure to satisfy these tests result in the loss of certain tax benefits, such as the pre-CGT status of an entity's assets, losses sustained before the loss of continuity (whether in an earlier or the current year) and bad debt write-offs.

The continuity of ownership test requires that the same individuals have fixed entitlements, directly or indirectly, to more than 50 per cent of the income or capital of the trust. Under the current law, the continuity of ownership test that applies to fixed trusts must be met in order to deduct current and prior year losses and bad debt write-offs.

Under the new entity tax regime, the continuity of ownership test (or the same business test) will apply consistently to all companies, limited partnerships, and fixed trusts that are subject to the entity system. A fixed trust is a trust where all the income and capital of the trust are the subject of fixed entitlements. The tests will also apply to collective investment vehicles (for which there are particular rules).

Recommendation 6.10(a) and (b) proposes changes to both the continuity of ownership test and the same business test.

Recommendation
13.9 Loss and bad debt tests for non-fixed trusts

Bad debt write-off and current and prior year loss tests preserved

(a) That non-fixed trusts continue to be subject to existing current and prior year loss tests and bad debt write-off tests.

Loss of tax benefits on failure of tests

(b) That the failure to satisfy these tests result in the loss of certain tax benefits, such as the pre-CGT status of trust assets, current and prior year losses and bad debt write-offs.

A non-fixed trust is any trust that is not a fixed trust. A non-fixed trust can be wholly a discretionary trust or can be a hybrid trust having both fixed entitlements and discretionary elements.

Generally, a non-fixed trust is unable to recoup prior and current year losses and bad debt write-offs, unless the pattern of distributions test and the control test in the trust loss provisions are satisfied. These tests look at how income and capital have been distributed in previous years and examine whether there has been a change in the control of the trust. The non-fixed trust tests are necessary because the continuity of ownership test that applies to companies,

limited partnerships and fixed trusts cannot generally be satisfied by non-fixed trusts because there are no ongoing interests in some or all of the income or capital of the trust.

Rollover and stamp duty relief for entity restructuring

Recommendation
13.10 Ongoing relief for rollovers into entities

That a transfer of an asset, or the transfer of an entire business, from an individual or a partnership or joint venture of individuals to an entity taxed like a company have no taxation consequences provided:

(i) the person or persons who have an interest in the asset or business before the transfer have the same proportional interests in the entity which holds the asset or conducts the business after the transfer; and

(ii) the tax value of the asset immediately after the transfer is completed is the same as the tax value immediately prior to the transfer.

Transitional tax arrangements were announced in *A New Tax System* for fixed and discretionary trusts, given the different taxation of trusts, resulting from the introduction of the new entity tax regime. These transitional arrangements, adjusted to accommodate the recommended changes to capital gains taxation, are discussed under Recommendations 12.5 and 12.6.

Rollovers into an entity taxed like a company

Rollover relief is currently available to entities restructuring in a variety of circumstances. The conditions to be satisfied for roll over relief to be available differ depending upon the type of rollover transaction being undertaken. Allowing individuals, partnerships or joint ventures to rollover into an entity taxed like a company, where there is no change in economic ownership as a result of the restructuring, will allow some of the current rollover relief provisions to be rationalised. A simplified and consistent set of eligibility conditions will be introduced for such rollover relief. Where an asset is rolled over in these circumstances, the asset will carry its tax value over to the new entity.

CGT rollover relief is currently not available for trading stock because it is currently not subject to CGT. The lack of CGT rollover relief for trading stock has generally not been a problem in practice. Such rollover relief will be allowed under the Review's recommendation. Providing such relief for trading stock will help to promote a more encompassing and consistent rollover relief regime for individuals, partnerships or joint ventures rolling over into entities taxed like companies.

Applying rollover relief consistently on the principle of no change in economic ownership will add to the neutrality of the tax system, allowing commercial decisions on which structure to use in a business to be made without undue effects from taxation consequences.

Allowing rollovers in circumstances where the proportional interests in the asset or business are changed would effectively allow taxpayers to dispose of part of their interest in an asset or business without triggering a taxation liability that should be expected in such circumstances.

Under the recommended approach, rollover relief will not be available if the entity which holds the asset or business after the transfer has discretion as to which member of the entity is entitled to the income or capital of the entity. In that situation the proportional interests before the transfer cannot be said to be the same as those after the transfer. For this reason, transfers to non-fixed trusts will be precluded from receiving rollover relief.

Rollovers out of an entity taxed like a company

Allowing rollover relief for the transfer of an asset, or the transfer of an entire business, of an entity to an individual, partnership or joint venture of individuals would allow amounts treated as untaxed income at the entity level to flow out tax-free to shareholders or beneficiaries. Ongoing rollover relief is not considered appropriate in these cases.

A rollover from a discretionary trust to an individual, partnership or joint venture cannot preserve continuity of ownership, as discretionary objects do not have proportionate interests in assets before such a transfer. The transitional rules for treating capital gains on existing assets in trusts and the proposed rules for return of capital by discretionary trusts mean that a discretionary trust will be able in practice to distribute its transitional assets under the new system without triggering tax liability on unrealised gains. The transitional assets will be available for reinvestment as contributed capital. As there is no immediate adverse consequence of transition to the new system, special rollovers for discretionary trusts to encourage restructuring before transition to the new system are unnecessary.

Rollover from entity to entity

Entity-to-entity rollover relief is also currently available. In future, the general principle will be that the relief currently provided by entity-to-entity rollover will only be available under the consolidation regime (Section 15). Once in a consolidated regime, assets may be moved freely between entities — with all intra-group transactions, including asset transfers, ignored for tax purposes.

Recommendation

13.11 Transitional rollover for restructuring into different entity form

Rollover from a fixed trust to a company

(a) That the direct transfer of all the assets, or the direct transfer of an entire business, from a fixed trust to a company have no taxation consequences — provided that:

- **(i) the person or persons who have an interest in the assets or business before the transfer retain the same proportional interests in the entity which holds the assets or conducts the business after the transfer;**
- **(ii) the tax values of the assets immediately after the transfer is completed are the same as their respective tax values immediately prior to the transfer;**
- **(iii) the entity which transfers the assets or business ceases to exist once the transfer is complete;**
- **(iv) at the date of transfer, all of the assets are transferred to the new entity; and**
- **(v) the transfer occurs between the date of announcement and 1 July 2001.**

Rollover from a company to a prospective CIV

(b) That the direct transfer of all the assets, or the direct transfer of an entire business, from a company to a unit trust that will be taxed under the CIV regime have no tax consequences — provided that:

- **(i) the rules in paragraphs (a)(i) — (a)(v) are met (recognising that members of a company will hold shares rather than interests in the company's assets);**
- **(ii) if the transfer occurs before the commencement of the CIV regime, the new unit trust elects to be taxed as a trading trust (under Division 6C of the 1936 Act) between the date of**

transfer of the assets to the unit trust and the commencement of the CIV regime;

(iii) any surplus in the entity's franking account is only used to frank a distribution within two months of the entity becoming a CIV; and

(iv) where a distribution is made under the CIV regime of tax-preferred income earned before the transfer — that distribution be taxed as an unfranked dividend.

Given the new regimes for the taxation of trusts — the entity tax regime taxing most trusts as company and the CIV regime providing flow-through tax treatment for qualifying trusts — the Review believes it appropriate to provide relief from taxation for a limited period to facilitate restructuring between different entity forms.

With the rationale for rollover relief being the incentives to alter structures created as a consequence of the new regimes, relief will only be available for a transitional period. Any entities restructuring outside this timeframe will not receive special rollover relief.

Restructuring from fixed trust to company

Such transitional relief should be limited to those entities where real economic ownership of the asset remains unchanged. While this reasoning is justification for facilitating restructuring from fixed trusts to companies — as proposed in Recommendation 13.11(a) — it is sufficient to preclude non-fixed trusts from receiving this type of transitional rollover relief.

In practice, discretionary trusts will not require specific rollover relief. The transitional rules giving them concessionally calculated contributed capital in relation to capital gains realised on existing assets, and the rules for return of capital by such trusts, will permit discretionary trusts to allocate and distribute their transitional assets under the new system for reinvestment in a company. For many discretionary trusts, the addition of new beneficiaries is authorised by their terms. In those cases, discretionary trusts will be able to add a company as a beneficiary and distribute transitional assets to it, protected by the transitional rules. No further facilitation is required.

Restructuring from company to a CIV

Because of the creation of flow-through treatment for CIVs, as a special category of fixed trust not to be taxed under the entity regime, transitional rollover relief will also be provided where existing companies wish to restructure as trusts qualifying as CIVs. In the absence of this relief, the

conversion would entail liquidation of the company which would trigger capital gains and possibly other tax consequences.

To ensure that the operation of the entity regime is not undermined by entities transferring from the entity regime to the CIV regime, certain restrictions will be necessary. In the period before the CIV regime commences, the taxation treatment of a unit trust restructured from a company in order to be taxed prospectively under the CIV regime needs to be specified. Applying the existing trading trust provisions is a simple way to tax the new trust in the interim without undermining the company tax regime.

The other conditions in Recommendation 13.11(b) on the conversion of a company to a unit trust as a preliminary to being taxed under the CIV regime are to ensure that income earned and not distributed before the entity becomes a CIV receives the same treatment under the CIV regime had the entity continued as a company.

CIVs will not have a franking account. A time limit is also necessary (two months is recommended) on the use of the former franking account of a company converting to a CIV. In relation to tax-preferred income in the company prior to conversion, rules will be considered for ensuring that unrealised gains that exist at the time of conversion to a CIV are taxed as unfranked dividends when those gains are realised and distributed to CIV members.

Recommendation
13.12 Stamp duty

That the Commonwealth, State and Territory Governments agree a mechanism to remove tax obstacles to entity restructuring.

A range of State taxes may apply to businesses restructuring, including stamp duties on transfers of marketable securities and conveyances of real property. At the November 1998 Special Premiers' Conference, the Heads of Government concluded an Agreement on Principles foreshadowing the abolition of certain stamp duties from 1 July 2001. Since then an agreement between the Government and the Australian Democrats has been concluded which has resulted in the rescheduling/deferral of the abolition of certain State stamp duties.

Under that agreement, the States and Territories are to defer the abolition of stamp duties on business conveyances; leases; mortgages, debentures, bonds and other loan securities; credit arrangements, instalment purchase arrangements and rental arrangements; and on cheques, bills of exchange and promissory notes.

From 1 July 2001, relevant State stamp duties most likely to be triggered by a restructure resulting from the new entity tax system are stamp duties on business conveyances of real property and marketable securities. It is the intention of State and Territory governments that these stamp duties be abolished. The timing of their repeal is yet to be determined.

The taxation treatment by the States and Territories of entities restructuring as a result of the new entity tax system is an issue that should be resolved by the Commonwealth, State and Territory Governments so as to remove tax obstacles to restructuring. Until there is an exemption from stamp duty on reconstructions permitted under the provisions recommended by the Review, an unnecessary obstacle to the encouragement of a more dynamic economy will remain.