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13<sup>th</sup> April, 1999

The Secretary  
Review of Business Taxation  
Department of Treasury  
Parkes Place  
CANBERRA ACT 2600

Dear Sir,

On behalf of the Victoria Division of the above association, I wish to make a submission to this Review of Business Taxation. After the matter had been raised with the Department of the Treasurer, I was advised to make this submission.

As required, two copies are included as well as an electronic copy.

Yours sincerely

F.G.Rogan  
Hon. Secretary

# **COMPULSORY TAKEOVERS AND CAPITAL GAINS TAX**

## **A Submission to the Review of Business Taxation**

This submission seeks a re-consideration of the law in respect to the imposition of Capital Gains Tax on shareholders in the case to a compulsory takeover among companies listed in the Stock Exchange.

The writer as well as many other small shareholders had to meet substantial Capital Gains Tax in the recent takeover of the Bank of Melbourne by Westpac Bank. Interestingly, Westpac trades in Victoria under the name of Bank of Melbourne since the takeover. All its advertising is geared in the same direction.

The arguments for a review of the law include:

1. In recent years, members of the community have been encouraged to purchase shares in companies which have become public. Good examples were Bank of Melbourne and GIO. People, seeking shares in the former, generally received about 300 in the first allocation about eight years ago and, through re-investment of dividends and taking the opportunity to 'top-up' occasionally offered, could have built their holding to around 1000 shares. Many investors, of course, did not build on the original parcel. In the more recent case of GIO, the takeover was not sufficient to make it compulsory, GIO advising shareholders not to support the takeover, a completely opposite position from that taken by Bank of Melbourne. A similar case occurred in February, 1999, when the Colonial Group acquired the Australian operations of Prudential including Prudential Fund Managers Limited, the manager
2. While technically, every shareholder has a vote in takeover bids, such a decision is based on the large shareholders. The small shareholder really has an ineffective vote if the large shareholders decide one way or the other.
3. The shareholder who voluntarily sells his/her shares does so in the understanding that he/she could be subject to Capital Gains Tax [or loss] in the transaction in the same way as occurs when a shareholder sells shares on the market. The writer is not objecting to such.
4. In a takeover bid, the shareholder has the option of selling or holding the shares. In the latter case, any gains or losses are 'paper' ones or should be until one voluntarily sells the shares. In the case of the Bank of Melbourne takeover, shares were exchanged for Westpac shares, one for one, with a

small cash residue paid to the shareholder of less than \$1 per share. The shares were judged to have been technically 'sold' and a consequent Capital Gains Tax imposed.

5. My contention is that such a transfer from one company to the other should not be seen as a selling/purchasing transaction because the shareholder virtually makes no decision. Any cash settlement should be dealt with as a normal item of income.
6. Apparently, a different view is taken by the Taxation Department in respect to 'buy back' schemes, viz. the recent Commonwealth Bank Offer. As I understand the facts, a shareholder who purchased shares at \$10.45 [the price at which shares were bought under the instalment plan] and elected to sell up to 15% of the share holding back to the Bank will receive \$9 for each share. This represents a Capital loss of \$1.45 per share. In addition, the shareholder will receive a franked dividend of \$14.08 per share [adjustable] At the time of offer, the shares were selling at over \$23 per share. The shareholder has a real choice, not being penalised if he/she decided not to sell. Furthermore, a Capital loss results if the shares are sold. This anomaly surely points out the injustice shareholders experience in a successful takeover bid.
7. Many small shareholders purchase shares as a source of income and do not involve themselves in speculative share buying. This applies particularly to self-funded retirees.
8. The writer suggests that in compulsory takeovers, shares transferred into the new company should have a value set by the Taxation Department [this happened in the Bank of Melbourne case] but that no capital gains or losses are assessed until such time as the shareholder decided to sell. The normal rules applying to Capital Gains can then be applied. Any cash settlements would be subject to normal taxation requirements.

In this submission, there is no attempt to subvert paying legitimate taxes but to protect the financial interests of shareholders, who through no positive decision of theirs, may find themselves paying Capital Gains Tax when they have received no tangible financial benefit.