Institute of Chartered Accountants Australia

19 May 2014

The Board of Taxation
C/- The Treasury
Langton Crescent
CANBERRA ACT 2600

By email: taxboard@treasury.gov.au

Dear Sir / Madam

Post-implementation review of Division 7A second discussion paper

The Institute of Chartered Accountants Australia (the **Institute**) welcomes the opportunity to provide a submission on the second discussion paper for the Board of Taxation (the Board)'s post-implementation review of Division 7A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936).

About the Institute

The Institute represents accounting and business professionals in Australia and around the globe. Members strive to uphold financial integrity through a commitment to ethics and acting in the public interest.

We focus on educating candidates through the Chartered Accountants Program and engage in advocacy and thought leadership underpinned by our members' knowledge and experience. We influence a range of policy areas impacting the Australian economy and domestic and international capital markets.

A watershed member vote in 2013 set the course for the Institute to amalgamate with the New Zealand Institute of Chartered Accountants, subject to obtaining formal government approvals and effecting amendments to constituent documents. The proposed new institute – Chartered Accountants Australia and New Zealand – is expected to have more than 90,000 members in total with over 17,000 candidates, giving us greater scale and influence on the world stage.

Our submission

The Institute has set out its submission in the form of general comments and specific comments rather than answering the questions in the discussion paper. We have not attempted to cover all questions in the discussion paper in our comments. Instead we have focused on our priority topics which are mainly covered in our specific comments. Our submission is attached as Appendix A.

Given the comments in our submission are high level in nature, we would like to invite the Board of Taxation to meet with the Institute to workshop various issues raised in the submission if it assists.

If you would like to discuss any aspect of our submission please contact me on (02) 9290 5609.

Yours sincerely

Michael Croker
Head of Tax Policy
Institute of Chartered Accountants Australia

Customer Service Centre
1300 137 322

NSW
33 Erskine Street
Sydney NSW 2000

GPO Box 9985
Sydney NSW 2001

Phone 61 2 9290 1344
Fax 61 2 9262 1512

ACT
L10, 60 Marcus Clarke Street
Canberra ACT 2601

GPO Box 9985
Canberra ACT 2601

Phone 61 2 6122 6100
Fax 61 2 6122 6122

Qld
L32, 345 Queen Street,
Brisbane Qld 4000

GPO Box 9985
Brisbane Qld 4001

Phone 61 7 3233 6500
Fax 61 7 3233 6555

SA / NT
L29, 91 King William Street
Adelaide SA 5000

GPO Box 9985
Adelaide SA 5001

Phone 61 8 8113 5500
Fax 61 8 8231 1982

Vic / Tas
L3, 600 Bourke Street
Melbourne Vic 3000

GPO Box 9985
Melbourne Vic 3001

Phone 61 3 9641 7400
Fax 61 3 9670 3143

WA
L11, 2 Mill Street
Perth WA 6000

GPO Box 9985
Perth WA 6848

Phone 61 8 9420 0400
Fax 61 8 9321 5141

Appendix A

GENERAL COMMENTS

1. The Institute broadly supports the four policy goals proposed by the Board to set the conceptual framework to reform Division 7A. However, we note that eventually some of the policy goals will need to be prioritised over the other policy goals if the Board is to reach a landing point on the final reform model for Division 7A. The Institute's priority in reforming Division 7A is simplicity.

2. From a policy perspective, we believe that the question of whether to tax business accumulations at a 'company tax' rate, irrespective of the structure chosen should be considered as part of a wider tax reform process. However, given the timeframe from the beginning of the wider tax reform process to implementation of any recommendations arising from the process could take many years, the Institute is of the view that progress towards the implementation of the 'tick the box' proposal, complying loan regime and the self-corrective exception should not be held up by the wider reform process.

3. The Division 7A Adjustment Model should be referred to in dealing with any remaining Division 7A issues which have not been dealt with by the final reform elements that the Board has recommended to simplify Division 7A. The Board has provided an extensive list of Division 7A issues in its discussion paper and Treasury should examine the remaining issues after the finalisation of the priority reform elements recommended by the Board.

SPECIFIC COMMENTS

Temporary and permanent transfers of value model

As a high level concept, the Institute agrees with the Board's categorisation of the ways that profits or gains may be accessed between.

- Temporary transfers of value – loans of cash, use of assets
- Permanent transfers of value – payments, loans forgiven, assets transferred.

And that to achieve the Division 7A objective we also agree that:

- permanent transfers of value representing a company's profits or gains must be taxed appropriately; and
- temporary transfers of value must be repaid or paid for, or they will be considered permanent transfers.

However, based on our members' feedback, our members have not experienced complexity around the classification of arrangements like debt forgiveness, payment, loans (except for unpaid present entitlements (UPEs)). Therefore, we recommend retaining the current regime of classifying arrangements subject to Division 7A rather than developing new concepts like temporary transfers of value and permanent transfers of value as it would give rise to new issues in relation to defining these concepts legislatively and would not promote simplicity.

Nevertheless, valuation of the use of assets has been an ongoing issue under the current Division 7A rules and we support the Board's suggestion of a 'safe harbour' usage fee for assets over an appropriate time period and reflecting the payment of cost and interest, akin to a finance lease.

Deemed dividends – general rules

The Institute agrees with the Board's general rules under paragraphs 4.77 and 4.78 for when deemed dividends under Division 7A should arise.

Regarding when should a deemed dividend under Division 7A be frankable, as a general principle, a private company should be able to pay a frankable dividend to a shareholder of a company whether the dividend is an actual dividend or a Division 7A deemed dividend. However, the Board will need to work through the practical issue of timing in franking a deemed dividend. Franking a deemed dividend retrospectively would not be straight forward as you would need to deconstruct the franking account balance to determine the available franking credits at the time the deemed dividend arose.

Statutory Interest Model

We understand the Board's concern with the Statutory Interest Model and the behavioural effect on taxpayers which would encourage the accumulation of passive income thereby failing the fourth principle of the Board's proposed policy framework for Division 7A. However, the Institute believes the Board should not completely dismiss the Statutory Interest Model because the simplification benefits would go a long way towards simplifying Division 7A as a whole (i.e. it satisfies the third principle of the Board's proposed policy framework).

Nonetheless, as the Board has proposed a new option, the 'tick the box' option, we understand that there may be difficulty getting the Statutory Interest Model and the 'tick the box' option to operate together coherently. Therefore, while the 'tick the box' option is being pursued, the Institute accepts that the Statutory Interest Model is not necessarily needed. Given the relatively common use of trusts by small businesses and the use of funds representing UPEs to corporate beneficiaries as working capital, we support the Board's 'tick the box' option which will remove impediments to retaining working capital for carrying on a business in a trust and not advantage private use of business income over business reinvestment.

If, however, the 'tick the box' option is no longer a valid reform proposal for Division 7A, we recommend that the Statutory Interest Model be revisited.

New complying loan rules

The Institute is of the view that the new complying loan rules would simplify compliance if enacted prescribing the terms and conditions outlined in the discussion paper. However, we have two concerns with those terms and conditions:

1. The statutory rate of interest being at a higher than commercial rate for loans for small businesses; and
2. The removal of the 25 year option for secured loans.

These two concerns are discussed in further detail below:

1. The Institute is of the view that an entity should be able to borrow from its related business entity on commercial terms, equivalent to borrowing from a financial institution or third party. We understand the Board's rationale (other than revenue cost) behind setting the interest rate at a higher rate than normal commercial business lending because at the end of the day, the interest being paid on the loan is not going to a third party. We believe that multiple generations working in a family business should not have to pay higher interest rates on loans from the family business company/trust than interest rates on commercial business loans from a third party financial institution.

2. As with the above item, as long term secured loans are available from financial institutions, equally, an entity should be able to obtain a 25 year secured loan from its related business entity. In addition, there will be existing Division 7A complying 25 year secured loans on foot and these loans should continue to be Division 7A complying loans until they are discharged (in the event that the Board's new complying loan rules are adopted).

Alternatively, the Institute recommends that the original term loans, i.e. the 7 year unsecured loan and 25 year secured loan at the Division 7A Benchmark interest rate, be retained as the options for a complying loan for Division 7A purposes, with the 10 year loan at the Board's proposed interest rate an additional option for a complying loan for taxpayers that have cash flow difficulties and need the longer 10 year loan term.

Unpaid present entitlements

In conjunction with the 'tick the box' proposals, we are of the view that there would be greater simplification and certainty if there was a legislative amendment to clarify that all UPEs are loans for Division 7A and refer to our submission dated 28 February 2013 on the first discussion paper for the Board's review into Division 7A which is attached as Appendix B. In our submission, we proposed some features in relation to treating UPEs as loans.

One of the features was the timing of the loan. We suggested that a UPE arising during or at the end of an income year would become a loan for Division 7A purposes at the end of the following income year to the extent it remains unpaid.

This is because often when trust income is appointed to a corporate beneficiary as at 30 June, the actual amount that is available to be appointed to the corporate beneficiary is not determined until after the trust's financial accounts for that year end have been completed. Therefore, it would be difficult to treat the UPE as a loan at 30 June in the year of the relevant distribution if the amount subject to the loan has not been determined.

'Tick the box' limited exception

The Institute is of the view that the 'tick the box' option will remove a lot of the complexity around retaining working capital for the carrying on of a business in a trust. To keep the design of the exception simple, it is probably best if the exception to the operation of Division 7A is limited to Division 7A loans (including UPEs).

There are various ways that the exception could be designed. For example, ticking the box could:

- have the effect of giving the trust corporate features for Division 7A purposes in respect of loans; or
- mean that the trust will no longer be eligible for the CGT discount and loans/UPEs between a private company and a trust will be excluded from Division 7A.

The Institute would be happy to work with the Board to explore the various ways that the 'tick the box' option could be designed and workshop through the potential impacts of the various designs.

Transitional rules

The suggested approach in the discussion paper is that: existing loans to trusts/UPEs prior to the election will continue under the existing rules until they are paid out. Accordingly existing CGT assets held by the trusts prior to the election will have access to the CGT discount. The Institute supports this approach as we are of the view that any arrangements and legal documentation that have been entered into to comply with Division 7A prior to the trust 'ticking the box' should continue to be treated as complying with Division 7A under the new regime. Taxpayers who have existing arrangements on foot to be compliant under the current Division 7A regime should not have to restructure to be able to be compliant under the 'tick the box' option.

Nevertheless, in the interests of simplicity, we recommend that taxpayers be given an alternative option to 'tick the box' which allows all loans (existing and new) to be excluded from Division 7A and any CGT assets owned by the trust (existing and new) be ineligible for the CGT discount. This allows taxpayers to apply the new 'tick the box' regime without having to quarantine loans and CGT assets acquired before the date the trust ticked the box.

Consequential rules

Where a loan from a private company to a trust is excluded from Division 7A under the 'tick the box' option, the Board will need to consider whether any guarantee attached to the loan will also be covered by the 'tick the box' exception or be caught by Division 7A.

Issues for consideration include:

- Under the proposed new ‘transfer of value’ model does the entry into the guarantee involve a ‘transfer of value’?
- If there is any value transferred by the guarantee, e.g. the value of the benefit from the guarantee is the reduction of interest rate, is that really inappropriately accessing corporate profits?
- What is the timing of the ‘transfer of value’ – when the guarantee agreement is entered into or when the guarantee is exercised?

Again, the Institute would be happy to work with the Board to explore these issues.

Self-corrective exception

As mentioned in our 22 February 2013 submission on the first discussion paper, one of our priority issues was the need for the Commissioner’s discretion under section 109RB to be amended to incorporate a self-assessment element in the appropriate circumstances. The current discretion is burdensome for the Commissioner to administer and the application too uncertain to encourage compliance with the intent of the law when problems are identified after the lodgement of the relevant returns. Therefore the Institute is strongly supportive of the Board’s proposal for a self-correction exception.

Given the difficulty experienced with the interpretation of ‘honest mistake’ and ‘inadvertent omission’, we recommend that the nature of any eligibility requirements for the exception do not rely on the interpretation of these terms. Furthermore, a common situation experienced by our members which requires the application of the Commissioner’s discretion under section 109RB is the situation where a tax agent has a new client who has Division 7A problems not picked up by the client’s former tax agent. In this situation, it was difficult for the taxpayer to fit within the ‘honest mistake’ and ‘inadvertent omission’ requirements as interpreted by the ATO in TR 2010/8 *Income tax: application of subsection 109RB(1) of the Income Tax Assessment Act 1936.*

We suggest that the eligibility for the exception be the actual implementation of the corrective action itself. If there is any integrity concerns around the use of this exception, the existing administrative penalty regime applicable to statements made to the Commissioner under Division 284 of Schedule 1 to the Taxation *Administration Act 1953* already provides the Commissioner the ability to administer varying penalty amounts to discourage taxpayers intentionally disregarding Division 7A at the relevant time and then later utilising the self-corrective exception to become Division 7A compliant at a later more convenient date.

In addition, the legislation should not be overly prescriptive as to the appropriate record-keeping and evidentiary requirements that must be met to qualify for the exception. It should be sufficient that the exception is applicable as long as there is evidence retained by the taxpayer or their tax advisor from which it can be objectively determined that all the relevant actions and payments have been made to date so that the taxpayer is compliant with Division 7A.

Institute of
Chartered Accountants
Australia

28 February 2013

The Board of Taxation
c/ The Treasury
Langton Crescent
CANBERRA ACT 2600

By email: taxboard@treasury.gov.au

Dear Sir / Madam,

Post-implementation review of Division 7A discussion paper – Unpaid present entitlements

The Institute of Chartered Accountants in Australia (the Institute) is pleased to lodge a further submission on the discussion paper entitled *Post-Implementation Review of Division 7A of Part III of the Income Tax Assessment Act 1936* (the Paper). This submission sets out the Institute's views on the preferred Division 7A treatment in relation to unpaid present entitlements (UPEs) from a trust to a corporate beneficiary and follows on from our submission lodged on 22 February 2013 on the Division 7A reform models in the Paper. The Institute has prepared a separate submission on UPEs because we recognise the issue of whether a UPE is a loan for Division 7A purposes is a difficult and controversial issue for our members. Accordingly, the Institute wanted more time to consult with members in respect of the appropriate Division 7A treatment of UPEs.

The Institute's main focus in relation to the post-implementation review of Division 7A is the need for a significant simplification of the current structure of Division 7A.

The Institute is currently examining Australia's level of complexity in its tax system and has sponsored a three-year, multi-university tax research project, *Assessing and addressing tax system complexity in Australia.* The first report released as part of this project, *A comparative analysis of tax compliance costs and the role of special concessions and regimes for small businesses in Australia, Canada, South Africa and the United Kingdom*[1] reveals that on average, it costs Australian small businesses US$34,209 per year to comply with its tax obligations. The report also reveals that in Australia the compliance costs expressed in relation to A$1,000 turnover show a clearly regressive pattern over the range of different size of businesses. Put simply, this means the smaller the business, the higher the tax compliance costs relative to turnover.

Given the preliminary results of this research, the Institute believes that focusing on simplifying the Division 7A treatment of UPEs would yield efficiency benefits resulting from reduced tax compliance costs.

Uncertainty and complexity around unpaid present entitlements

Prior to the legislative and administrative developments in 2009 and 2010 concerning the treatment of unpaid present entitlements (UPEs) from a trust to a corporate beneficiary, our members found that complying with Subdivision EA, the main provisions dealing with UPEs, was complex but manageable. However, with the introduction of Subdivision EB and the development of the Australian Taxation Office

[1] The report, *A comparative analysis of tax compliance costs and the role of special concessions and regimes for small businesses in Australia, Canada, South Africa and the United Kingdom* (Hasseldine et. al, 2012), is authored by tax academics from across the globe. The Australian part of the research was conducted by Professor Chris Evans (The University of New South Wales) and Dr Philip Lignier (University of Tasmania).

Customer Service Centre
1300 137 322

NSW
33 Erskine Street
Sydney NSW 2000

GPO Box 9985
Sydney NSW 2001

Phone 61 2 9290 1344
Fax 61 2 9262 1512

ACT
L10, 60 Marcus Clarke Street
Canberra ACT 2601

GPO Box 9985
Canberra ACT 2601

Phone 61 2 6122 6100
Fax 61 2 6122 6122

Qld
L32, 345 Queen Street,
Brisbane Qld 4000

GPO Box 9985
Brisbane Qld 4001

Phone 61 7 3233 6500
Fax 61 7 3233 6555

SA / NT
L29, 91 King William Street
Adelaide SA 5000

GPO Box 9985
Adelaide SA 5001

Phone 61 8 8113 5500
Fax 61 8 8231 1982

Vic / Tas
L3, 600 Bourke Street
Melbourne Vic 3000

GPO Box 9985
Melbourne Vic 3001

Phone 61 3 9641 7400
Fax 61 3 9670 3143

WA
L11, 2 Mill Street
Perth WA 6000

GPO Box 9985
Perth WA 6848

Phone 61 8 9420 0400
Fax 61 8 9321 5141

(ATO)'s views in TR 2010/3 *Income Tax: Division 7A: trust entitlements,* the application of Subdivisions E, EA and EB to family group structures with UPEs from a trust to a corporate beneficiary, has become incredibly complex and uncertain for taxpayers and their advisors.

The difference in views between the ATO and the tax practitioner community on whether a UPE is a loan under section 109D of the ITAA 1936 has resulted in uncertainty. As a result, our members have informed us, taxpayers and advisors currently either take the risk of challenging the ATO's view in TR 2010/3 through the courts or take the commercial risk of accepting the ATO's technical position and put procedures in place that may turn out to be unnecessary if the ATO's view is later found to be incorrect.

Moreover, the ATO's view in TR 2010/3 has resulted in Subdivisions EA and EB becoming less relevant in relation to dealing with UPEs. Subdivisions EA and EB only come into play when a UPE is not treated as a loan under TR 2010/3. The ATO has set out its administrative guidance on when a UPE would not be treated as a Division 7A loan in PS LA 2010/4 *Division 7A: trust entitlements*.

Although PS LA 2010/4 has been helpful in providing some certainty for taxpayers and their advisors where ATO compliance activity is concerned, the interaction of TR 2010/3 and PS LA 2010/4 with Subdivisions EA and EB has exacerbated the uncertainty and added a further layer of complexity to Division 7A.

On page 53 of the Paper (Question 4.3), the Board seeks stakeholder comment on whether Subdivisions EA and EB could be more appropriately replaced with another rule and refers, as an example, to either a rule treating a private company's UPE as a loan or a rule that excludes all UPEs from being loans but increases the scope of Subdivisions EA and EB to other forms of benefits for shareholders or associates.

In light of the complexity involved in relation to UPEs, the Institute believes that to achieve simplicity and certainty, UPEs should be treated as loans under Division 7A by way of legislative amendment. By treating UPEs as loans under Division 7A, Subdivisions EA and EB could be removed from Division 7A thereby removing some of the most complex provisions in Division 7A.

This conclusion does not mean that the Institute supports the ATO's view in TR 2010/3 but in the interest of simplicity and certainty for taxpayers and advisors, we believe this is the best way forward in achieving these goals in respect of UPEs.

We recognise our view on the preferred Division 7A treatment of UPEs is controversial as it is in line with the ATO's technical position on UPEs. Furthermore, in the past, we have made numerous submissions to the ATO and Government that, technically, UPEs are not loans for Division 7A purposes. That said, attempting to turn back time to achieve the situation as it was prior to the ATO's change in view on UPEs, is not likely to be achievable from a policy perspective.

Also, we do not know at this time, the outcome of Treasury's consultation on its reform on taxing trust income. The practice of trustees using private company UPEs to retain working capital is a function of the different tax rates between companies and trusts. Accordingly, the Institute's view on its preferred treatment of UPEs for Division 7A is subject to change depending on the outcome of Treasury's consultation on trusts.

What is inappropriately accessing the profits of private companies in the context of UPEs?

As mentioned above, the use of private company UPEs is a function of the differential tax rates between companies and trusts.

Whether allowing a trust to retain profits taxed at the lower corporate tax rate should be considered as 'inappropriately accessing the profits of a private company' is not an easy question to answer. This question needs to be considered in light of the Australian tax system as a whole. We have made some observations below in this regard.

As noted in the Paper, 'Australia has a progressive system of taxing personal income. The current features of the income tax system, including those found in company tax system and the trust tax system, seek to support this progressivity'.

In supporting the progressivity of the personal income tax system, we understand that, historically, the integrity concern with the taxation of private companies was the accumulation of excessive profits in the private company. Because of the difference in the maximum individual tax rate and the corporate tax rate, accumulation of profits in the private company was seen as effectively a deferral of tax by the shareholders. Nevertheless, there was a policy concession acknowledging that businesses needed to retain funds for working capital purposes.

We understand that Division 7A seeks to support progressive taxation, as well as acknowledging the working capital policy concession, by ensuring that private company profits *that are enjoyed* by shareholders (and their associates) are included in their assessable income and taxed at their personal marginal rates of tax.

Division 7A seemed to support progressive taxation well when businesses were mainly conducted through private companies. However, the business environment has evolved over the years and the use of trusts in the business context has become increasingly common for asset protection purposes and succession planning.

Due to the difference in tax rates for trusts and companies, it could be argued that Division 7A's support of progressive taxation is weaker if trusts are effectively allowed to retain profits subject to the lower 30 per cent corporate tax rate, without having to pay any top up tax. Nevertheless, given the prevalence of the use of trusts in the modern business environment, it could be argued that in view of the working capital policy concession, trusts which conduct businesses as should be allowed to retain profits at the corporate tax rate. It is the Institute's view that the underlying policy issue is with the appropriateness of the tax rates applicable to trusts.

Where trusts are used for private purposes, the policy of applying the highest marginal individual tax rate to the profits retained by the trustee seems appropriate in supporting Australia's progressive system of taxing personal income. However, where a trust is used for conducting business and is deriving business income, the profits retained by the trust are not personal income and thus, it seems there is no necessity to applying the highest marginal individual tax rate to those profits. Of course where a trust has mixed purposes, there is no simple answer.

The Institute acknowledges that the appropriateness of the tax rate for trusts is a matter for Treasury and its reform for taxing trust income. However, we encourage the Board to liaise with Treasury in relation to this issue.

Another development which may affect the tax treatment of trusts is the Senate Committee, Parliamentary Joint Committee on Corporations and Financial Services, inquiry into family business in Australia (the Senate Committee inquiry). One of the terms of reference for the inquiry is the role of family trusts in facilitating family business. The committee is due to release its report on this inquiry on 12 March 2013. The Institute recommends that the Board takes the Senate Committee inquiry into account in liaising with Treasury and reaching its deliberations on UPEs.

If there is a legislative amendment to treat UPEs as loans

If Division 7A is to be amended to treat a UPE from a trust to a corporate beneficiary under a family group structure[2] as a loan for Division 7A purposes, the Institute recommends that certain features should be included to:

- minimise the impact of change in the practices of taxpayers and their advisors in dealing with UPEs where they have been complying with the ATO's administration of UPEs; and
- recognise that the funds representing the UPEs are inherently, when stripping away the 'cloaks and mirrors', not 'financial accommodation' from the private company.

We propose the following features be incorporated in the new rules dealing with UPEs:

- *Timing of the loan* - A UPE arising during or at the end of an income year would become a loan for Division 7A purposes at the end of the following income year to the extent it remains unpaid. Using the end of the following income year is simpler and provides greater clarity than the trust tax return lodgment day (i.e. 15th day of the 11th month following the year end) which is used in PS LA 2010/4. We note that there is only a month and half difference between the dates.
- *When to take action to avoid deemed dividend treatment* - Where a UPE has become a Division 7A loan at the end of an income year, the corporate beneficiary and trust would have until the lodgment day of the company's income tax return for that income year to either pay out the UPE or put it under Division 7A compliant loan terms.
- *Division 7A compliant loan terms*:
    - Division 7A compliant loan terms could be along the lines of what has been proposed under the statutory interest model. That is, an interest rate on the UPE loan would be required but no progressive loan repayments. The interest only loan concept is also similar to the options available to avoid deemed dividend treatment under PS LA 2010/4.
    - To keep things simple, while the current structure of Division 7A is still applicable, we suggest the benchmark interest rate under section 109N be the minimum interest rate required for the UPE loan to be Division 7A compliant.
- *Timing of deemed dividend* - If the UPE loan is not put on Division 7A compliant loan terms by the lodgment day of the company's income tax return for the income year the UPE becomes a loan, then the company is treated as having paid a dividend to the trustee at the end of that income year.

Transitional treatment

Our members have informed us that the ATO's view on UPEs has caused cash flow and working capital pressure for many small businesses. Given the significant impact on small businesses, if UPEs are treated as loans for Division 7A purposes, we submit that flexibility be given during the transitional period in allowing taxpayers to transition into the new treatment.

To avoid too much change for taxpayers and their advisors, UPEs which arose pre-16 December 2009 should be grandfathered from the new rules. For UPEs arising during the period 16 December 2009 and before the enactment of the new rules, taxpayers could be given the option to elect into the new rules or continue complying with the ATO's administrative practice under TR 2010/3 and PS LA 2010/4.

[2] Note that the reference to a family group structure is a reference to a group of related entities including or comprising a private company and a trust, where the same entities or persons have the practical ability to, or capacity to, control the group.

If you have any queries regarding the content of this submission, please do not hesitate to contact me on 02 9290 5609 or Karen Liew 02 9290 5750.

Yours sincerely

Paul Stacey
Tax Counsel
The Institute of Chartered Accountants in Australia