

20 April 2011

The Board of Taxation
Via email to taxboard@treasury.gov.au

Submission to Board of Taxation Review of Rights to Future Income and Residual Tax Cost Setting Rules

This is a submission from Cummings Flavel McCormack.

Cummings Flavel McCormack

Cummings Flavel McCormack is a Chartered Accounting firm based in Melbourne. Our clients predominately consist of small and medium sized businesses (SME).

We welcome the opportunity to contribute to the consultation process and help improve the efficiency of the Australian Taxation system.

Submission

In our view, the retrospective amendments of the tax consolidation regime in June 2010 (as part of *Tax Laws Amendment (2010 Measures No.1) Act 2010*) were based on sound policy objectives. The revised tax treatment for 'rights to future income' is appropriate in circumstances that are consistent with the original policy intent and the examples in the Explanatory Memorandum.

We understand that the Board of Taxation is concerned that the measures will have substantially greater revenue impact than anticipated. We submit that a significant part of this revenue impact may be attributable to:

- (a) An apparent misunderstanding of the scope of the provisions by some advisors and active marketing of the opportunity to revisit tax consolidation calculations. In some cases, it appears that advisors have sought to re-characterise goodwill as contractual rights to future income;



- (b) Lack of guidance or a timely public ruling from the Australian Taxation Office regarding the interpretation of these provisions. This is particularly important given the sums involved and retrospective nature of the amendments. Presumably the ATO were involved in the original consultation and had ample time to identify the risks and formulate a view.

If you have any queries in relation to this submission, please contact me on 03 9252 0800 or via email at dkent@cfmc.com.au.

Yours faithfully
Cummings Flavel McCormack Pty Ltd

A handwritten signature in black ink, appearing to read 'David Kent', is written over a horizontal line.

David Kent
Director