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MELBOURNE  
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Dear Teresa

## POST-IMPLEMENTATION REVIEW OF DIVISION 7A OF PART III OF THE INCOME TAX ASSESSMENT ACT 1936

I refer to my submission in relation to the Board of Taxation's first Discussion Paper on the above subject issued in December 2012. After having considered the second Discussion Paper issued in March 2014, I can only reiterate that my views in relation to Division 7A as communicated in my letter to Mr Curt Rendall, Chair of the Division 7A Working Group, on 10 August 2012, have not changed.

I am not forwarding a detailed submission in relation to the Board of Taxation's second Discussion Paper because I generally agree with the submission of the Law Council of Australia which, I understand, is being forwarded to the Board of Taxation today. In particular, I strongly support the Law Council's position that the only appropriate alternative model to replace the present one is the statutory interest model.

There is one matter which I would like to specifically comment on. The Board of Taxation, in the second Discussion Paper, seeks comments on "whether, and in what circumstances, deemed dividends should be frankable". The Board of Taxation conveys its concern that the ability to frank dividends may "remove an important disincentive on private companies that might seek to make disguised transfers of value to associates".

I would like to express both my surprise and concern that the Board of Taxation still finds it necessary to explore this issue further. As I pointed out in my submission on the first Discussion Paper: "Imposing a penalty is one thing. Imposing double tax is another thing altogether and simply cannot be justified". I further stated that even if deemed dividends under Division 7A were capable of being franked:

"There would be additional primary tax on the differential between tax at the corporate rate and tax at the taxpayer's marginal rate, interest on the additional tax at a rate in excess of the commercial rate, potential penalties of either 25% or

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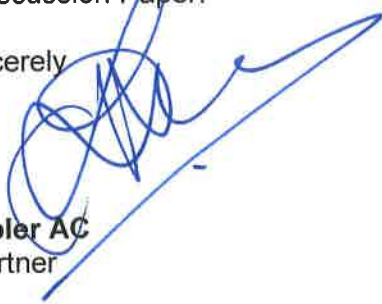
50% of any additional primary tax, depending on whether the taxpayer has acted with reasonable care, adopted a reasonably arguable position or has been reckless, and, finally, the prospect of further penalties should it transpire, in a particular case, that Part IVA of the Income Tax Assessment Act 1936 is applicable".

As I concluded in my submission on the Board of Taxation's first Discussion Paper:

To suggest that these potential consequences would not amount to an "effective deterrence" is simply wrong. Indeed, there are countless other potential tax mischiefs which could occur as a result of taxpayer misbehaviour where the only effective deterrents are as outlined above".

Please accept this letter as a submission to the Board of Taxation on the second Discussion Paper.

Yours sincerely



**Mark Leibler AC**  
Senior Partner