

**Business  
Coalition for  
Tax  
Reform**

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24 November 2006

The Hon Peter Costello  
Treasurer's Office  
Room MG47  
Parliament House  
CANBERRA ACT 2600

Dear Mr Costello,

**Submission - Tax Laws Amendment (2006 Measures No. 4) Bill 2006**

The Business Coalition for Tax Reform welcomes the proposed changes to the capital gains tax ("CGT") measures for foreign residents contained in Schedule 4 of Tax Laws Amendment (2006 Measures No. 4) Bill 2006 ("the Bill"). The purpose of this letter is to convey BCTR's strong support for these measures and recommend their immediate passage through Parliament.

The BCTR is a forum for bringing together the views of the business community on tax reform issues. BCTR members share the common objectives of creating and implementing a better tax system that enhances both international and domestic business competitiveness and fairness, and which assists in creating a business climate conducive to investment, growth, job creation and private saving. A list of BCTR members is provided in Attachment A.

The BCTR is of the view that these proposed measures are a necessary part of the Government's continuing reform to the Australian international tax regime. These measures enhance Australia's international competitiveness by improving Australia's status as an attractive place for business investment, and align Australia with international cross border taxation practice, including those of the OECD countries.

In particular, these measures promote Australia as a desirable location for regional headquarters and remove a major barrier for entities, such as overseas superannuation or pension funds, to invest in Australia. Such entities are increasingly looking to invest across borders, and may be tax exempt or concessionally taxed in their country of residence. Therefore, imposing Australian CGT on such entities would be an unnecessary cost of investment for them and may deter them from investing in Australia.

Concerns have been raised recently that the measures proposed in the Bill provide an unfair advantage to non-residents who, should the Bill be passed, would broadly not pay Australian CGT on the disposal of Australian assets other than direct or indirect interests in Australian real property. This should, generally, not be the case as such non-residents should be subject to CGT in their country of residence. However, where a non-resident, such as an overseas pension fund, is able to benefit from a concession in their country of residence, then there may be a perceived advantage.

Firstly, to deny such an advantage may result in turning away such foreign investment.

Secondly, it is submitted that it would be undesirable for Australia to effectively deny such a concession by imposing Australian tax, in order to simply achieve parity between all taxpayers. The Australian CGT regime also contains concessions such as the 50% discount available to individual who hold an asset for more than 12 months. Presumably, it would be equally as undesirable for the benefit of such a concession to be denied to an Australian resident by a similar action of an overseas revenue authority.

Thirdly, the non-residents in questions may already be exempt from Australian CGT under a relevant double tax treaty because such a gain may be on revenue account, for example, because they are trading in shares. It seems curious that a non-resident trader should be able to escape Australian tax, whereas a long-term non-resident investor would suffer Australian CGT if these measures are not passed. It should also be noted that there is an argument that under some treaties, Australia does not have the requisite taxing right to tax either type of investor in any event.

Lastly, there is anecdotal evidence that many non-residents are using a foreign holding company structure to avoid this CGT. Whilst the proposed measures reduce the instances where Australian CGT would be payable by non-residents, they do tighten the rules in relation to holding of Australian real property through such foreign holding structures.

For the reasons stated above, the BCTR is of the view that the Bill should be passed without further delay. Any further setbacks to the passage of this Bill will only create more uncertainty and deter non-residents from investing in Australia.

If you have any queries in respect of the above or the BCTR in general please contact me on (03) 9634 9901.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Stanhope', written in a cursive style.

John Stanhope  
Chairman

## **Attachment A**

### **BUSINESS COALITION FOR TAX REFORM MEMBERS**

Australian Financial Markets Association  
Australian Institute of Company Directors  
Business Council of Australia  
Corporate Tax Association of Australia  
CPA Australia  
Council of Small Business Organisations of Australia  
Institute of Chartered Accountants in Australia  
Insurance Council of Australia  
Investment and Financial Services Association Ltd  
Minerals Council of Australia  
Property Council of Australia  
Real Estate Institute of Australia