www.pwc.com/us/its

Asia Pacific Tax Newsalert

A Washington National Tax Services (WNTS) Publication

AUSTRALIA

December 1, 2011

Government releases long awaited details on the "wind back" of the 2010 tax consolidation changes

On November 25, 2011, the Australian Government announced significant changes to the way the tax consolidation rules work for Australian company groups. The latest measures operate to wind back the "rights to future income" ("RTFI") and "residual asset tax cost setting" rules introduced by the same Government only 18 months ago.

The changes may impact US companies with Australian subsidiary companies that have elected to apply the tax consolidation rules, particularly those groups that have acquired or merged with other companies since July 1, 2002.

Retroactive measures

Many of the changes operate on a retroactive basis. The retroactive elements are not limited to unwinding the 2010 changes, but also to undo law which has been in place since 2002.

Companies should carefully consider the impact of these changes. Some claims will be protected, e.g., where an Australian group has lodged a claim and received a refund before March 30, 2011, or received an Australian Tax Office ("ATO") ruling. However, most companies will not be so lucky.

Adverse impact

Many companies relied on the previous law and recognized the benefits in their accounts, in results announcements, in making investment decisions, or in paying dividends.

These changes will adversely affect many of these companies; some will need to adjust their accounts accordingly.

Significant Complexity

The latest amendments involve a complex matrix of different rules and permutations depending on when a transaction took place or when a ruling or assessment was issued.

Determining the precise impact of these changes for a particular corporation may require considerable care and analysis.

Different rules for different periods

The measures contain three sets of rules covering joining times in the following periods:

i. July 1, 2002 to May 12, 2010 – the rules will broadly reinstate the "old" (pre-2010) rules (with new exclusions for customer relationship assets and know-how, insurance contracts, mine site improvements, and RTFI contracts) while providing a specific deduction for accrued income.

ii. May 13, 2010 to March 30, 2011 – the rules will broadly protect companies that entered into transactions during this period and therefore relied on the law in place at the time. In particular, deductions will be available over the lesser of 10 years or the life of a contract for the cost allocated to RTFI contracts (with new exclusions for customer relationship assets and know-how, renewal options, future contracts and contracts that may be cancelled by the other party without penalty).

iii. Post March 30 – a much narrower set of rules apply on a prospective basis chiefly aimed at aligning the outcomes of a share purchase and a direct business asset purchase.

Protection for claims subject to ruling, assessment or amended assessment

Additional layers of protection are also provided for companies whose relevant claims were covered by a private ruling, assessment or amended assessment issued before March 30, 2011.

Where covered by a private ruling, claims (including all future "tail" deductions) will be fully protected.

A pre-May 12, 2010 joining transaction that is covered by an assessment or amended assessment, will be mostly protected (with the exception of customer relationship assets, renewal options, future contracts and contracts which may be cancelled without penalty). However, future "tail" deductions with respect to the same asset will not be protected.

Other changes

The measures introduce a new cap on contract values where an underlying asset generates RTFI (i.e., value must be allocated first to the underlying asset, up to its unencumbered value, and only thereafter to an RTFI asset). This generally accords with accepted valuation principles.

A specific tax deduction will be provided for the reset tax cost of consumables in relation to all periods.

Many of the assets carved out of the above rules (including customer relationships, know-how, insurance contracts, and RTFI contracts) will be deemed part of the general goodwill of the group. On this basis there will not be a capital gains tax loss on expiration of the relevant asset. Instead realization will only occur when the relevant goodwill is sold or otherwise leaves the group.

Amendments/interest/penalties

The Commissioner must make any amendments required under the revised rules within the normal four-year amendment period. Taxpayers are broadly given until the later of the normal amendment period or two years after these measures receive Royal assent.

The ATO will not impose any interest or penalties on underpayment adjustments up to March 30, 2011. In addition, the ATO will not pay interest on overpayment adjustments up to May 12, 2010.

For more information, please do not hesitate to contact:

Your international tax service team in the U.S.

Sean Keegan	*+ 646 471 8085*	*s.keegan@us.pwc.com*

Your tax service team in Australia

Wayne Plummer	*+61 2 8266 7939*	*wayne.plummer@au.pwc.com*
Chris Morris	*+61 2 8266 3040*	*chris.j.morris@au.pwc.com*
Derek Ivers	*+61 2 8266 8451*	*derek.ivers@au.pwc.com*
Paul Abbey	*+61 3 8603 6733*	*paul.abbey@au.pwc.com*
Jason Karametos	*+61 3 8603 6233*	*jason.karametos@au.pwc.com*