Law Council OF AUSTRALIA

Business Law Section

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Dear Mr Derlacz

Targeted amendments to the Division 7A integrity rules

The Taxation Committee of the Business Law Section of the Law Council of Australia is pleased to provide our comments on the *Targeted amendments to the Division 7A integrity rules* Consultation Paper, October 2018 (**Consultation Paper**).

This submission will not deal with all, but only some aspects, of the legislative changes proposed in the Consultation Paper.

Unless stated otherwise, all legislative references are to the *Income Tax Assessment Act 1936*.

1 Executive Summary

1.1 The submission set out in more detail below can be summarised as follows:

- Existing pre-1997 loans and secured 25 year loans should be grandfathered.
- The concept of the distributable surplus should be maintained.
- Subject to our comments, we agree with the proposals in the Consultation Paper in relation to UPEs that arise on or after 1 July 2019 and UPEs that have arisen on or after 16 December 2009 and on or before 30 June 2019.
- UPEs that arose prior to 16 December 2009 should be grandfathered.
- We agree with the introduction of a self-correcting mechanism, although we make some observations in relation to the proposal.
- The normal review periods provided for in s 170 should be retained for Division 7A purposes.

- Section 109M should be maintained in its current form.
- Section 109T should not be amended in the manner proposed.
- The Board's business income election proposal should be included in the legislative proposals.

2 Single 10 year loan model - grandfathering of pre-1997 loans and existing 25 year loans

2.1 Subject to our comments below, we broadly have no issue in principle with the proposed single 10 year loan model. A 10 year loan model was recommended by the Board of Taxation (the **Board**), in combination with a number of other measures, in its report provided to Government in November 2014 (**2014 Board Report**).[1]

2.2 We have, however, significant reservations regarding the implementation approach proposed in the Consultation Paper that will effectively draw pre-1997 loans and existing 25 year secured loan arrangements into 10 year Division 7A arrangements.

2.3 The Consultation Paper proposes "transitional rules" under which existing:

(a) pre-1997 loans will have to be paid out or put on 10 year complying Division 7A terms by the lodgement day of the 2020-21 company tax return in order not to have the face value of the loan being treated as a dividend; and

(b) 25 year secured loans[2] will require a 'conversion' to a 10 year loan with effect from the 2020-21 income year.

2.4 With respect, these are not so much transitional rules as effectively a proposal to enact a retrospective tax regime on existing arrangements. In our submission, this proposal should not proceed; pre-1997 loans should remain,[3] and 25 year loans should be, grandfathered for, at least, the reasons that follow.

2.5 Consistent with the rule of law[4] and as a matter of general policy, tax measures should apply prospectively. In Treasury's 2004 *Report on Aspects of Income Tax Self Assessment* (**AITSA Report**),[5] it was observed:

> *While ideally, tax measures imposing new obligations should apply prospectively, retrospective start dates may be appropriate where a measure:*

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[1] Board of Taxation, *Post Implementation Review of Division 7A of Part III of the Income Tax Assessment Act 1936,* November 2014*.*
[2] Loans that meet the requirements of s 109(3)(a).
[3] We note that the Board recommended in the 2014 Board Report that pre-1997 loans would be brought into the Division 7A net (Recommendation 6) but this was made in the context of the suite of other recommendations and subject to the business income election option (see 2014 Board Report, [8.30]).
[4] Justice Michelle Gordon, 'The Commonwealth's Taxing Power and its Limits – Are we there yet?' (2013) 36 *Melbourne University Law Review* 1037 at 1061, citing Chief Justice Murray Gleeson, 'Courts and the Rule of Law' (Speech delivered at the Rule of Law Series, The University of Melbourne, 7 November 2001) <http://www.hcourt.gov.au/assets/publications/speeches/former-justices/gleesoncj/cj_ruleoflaw.htm>.
[5] Treasury, *Report on Aspects of Income Tax Self Assessment*, August 2004.

- *corrects an 'unintended consequence' of a provision and the Tax Office or taxpayers have applied the law as intended*

- *addresses a tax avoidance issue*

- *might otherwise lead to a significant behavioural change that would create undesirable consequences, for example bringing forward or delaying the acquisition or disposal of assets.*[6]

2.6 In our submission, none of the exceptions to what can be accepted as the general rule have application to the proposed changes to Division 7A. That is to say, not grandfathering pre-1997 loans and secured 25 year loans will not lead to "undesirable consequences", will not undermine the Division 7A integrity rules and, in particular, there are no "unintended consequences" to correct.

2.7 Grandfathered pre-1997 loans[7] and secured 25 year loan arrangements have been an unexceptional, and unchanged, feature of Division 7A since its inception. It was sound then, and remains so. We can see no reason in policy, or practice, why existing contractual arrangements should be disturbed (assuming they can be, see below) to align them with the single 10 year loan model. Indeed, no sound policy rationale is offered in the Consultation Paper other than, perhaps, the overarching reason of simplicity[8] and, in relation to pre-1997 loans, of providing "*certainty for taxpayers and protect them from exposure to Division 7A if the Commissioner were to consider that there was no longer a commercial loan in existence and deemed it to be forgiven*".[9]

2.8 Much of Division 7A's rules are complex but perhaps the simplest aspect of the rules are grandfathered pre-1997 loans and, relative to other areas, secured 25 year loan arrangements. As such, we doubt the suggested rationale of achieving simplicity, and cannot accept the idea that the relevant aspects of the current rules give rise to any real uncertainty. Importantly, taxpayers may have planned their arrangements incorporating timeframes allowed by the current system and made commitments based on those arrangements. Those arrangements should be allowed to stand unaltered. Further, to suggest that uncertainty about whether Division 7A applies to old loans can be cured by making sure that it does apply is not a sound policy basis for the proposal.

2.9 In any case, the tax policy objective of simplicity and certainty must be weighed against the objective of fairness. In our submission, it is plainly unfair to subject existing contractual arrangements entered into in good faith by taxpayers, including, importantly, SME business taxpayers, to Division 7A or, in the case of 25 year loans, to a very different loan arrangement. That unfairness will be seen most clearly in taxpayers having to find available funds, including by realising (often illiquid) assets, to repay total outstanding loan balances or service 10 year loans (even accepting a brief transition period) that, in the case of pre-1997 loans

[6] Ibid. 70; see also Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (ALRC Report 129)*, December 2015, [13.94]-[13.95], [13.117]-[13.120].
[7] Except in circumstances covered by s 109D(5) (dealing with variations to the terms of a loan) or s 109F (debt forgiveness).
[8] Consultation Paper, 4.
[9] Consultation Paper, 7.

has not been required for over 20 years,[10] and in the case of secured 25 years loans has involved less onerous obligations.

2.10 The unfairness will manifest in other ways. The Consultation Paper assumes that parties to existing, legally binding loan arrangements will have the ability and means to re-negotiate, or otherwise change, those arrangements so as to result in 10 year complying loans. In our submission, that assumption is unsound. It is true that, by definition, affected borrowers will be shareholders of the private company, or "associates" of a shareholder as that term is defined in s 318. However, it is not uncommon, even within family groups, to have parties to a loan arrangement who are technically "associates" but who have acted, or will act, as arm's length parties would in relation to the terms of the loan and any security arrangements. By dint of the proposed legislative changes, these practically independent borrowers will have to negotiate refinanced terms that may be more commercially onerous than for the existing loan, or face the prospect of a deemed dividend. This outcome will have the effect of unfairly penalising those who have entered into, and maintained, borrowing arrangements in good faith, and on the understanding that they would either not be brought into the Division 7A net, or that the terms of a 25 year loan and security arrangements would not be disturbed.

2.11 As noted, the obvious unfairness is not countered by any of the three matters referred to by Treasury in the AITSA Report.

2.12 In summary, we submit that existing pre-1997 loans and secured 25 year loans be grandfathered.

3 Distributable surplus

3.1 The current policy of Division 7A, to tax disguised distributions of company profits, is clearly set out in the Explanatory Memorandum (the **EM**) that accompanied the bill that when enacted as the *Taxation Laws Amendment Act (No. 3) 1998* introduced the Division into Part III. That EM stated that Division 7A was being inserted:

> *… to ensure that all advances, loans, and other credits (unless they come within specified exclusions) by private companies to shareholders (and their associates), are treated as assessable dividends* ***to the extent that there are realised or unrealised profits*** *in the company. In addition, debts owed by shareholders (or associates) which are forgiven by private companies are treated as dividends.*

It was further stated that:

> *The purpose of the amendments is to ensure that private companies will no longer be able to make tax-free* ***distributions of profits*** *to shareholders (and their associates) in the form of payments or loans.*[11] *(emphasis added)*

3.2 To give effect to the express legislative purpose, the concept of the distributable surplus[12] was introduced into Division 7A as a proxy for a private company's realised and unrealised profits available for distribution, and is used to limit the

[10] Unless pre-1997 loans were, under the relevant contractual terms, repaid in whole or in part.
[11] Explanatory Memorandum, Taxation Laws Amendment Bill (No. 7) 1997, [9.1]-[9.2].
[12] Defined in s 109Y.

amount of the deemed dividends taken to be paid under Division 7A.[13] Inconsistently with the clearly expressed purpose for Division 7A, the Consultation Paper proposes a removal of the distributable surplus concept from Division 7A.

3.3 In our submission, the concept of the distributable surplus must be maintained.[14] If the concept of the distributable surplus was removed, it would result in a broader application of Division 7A than was originally intended, which is not justified as a matter of policy or administration.

3.4 The Consultation Paper deals briefly with distributable surplus, and appears to justify its removal on three points. First, it is asserted that capping "*the amount of the deemed dividend is considered contrary to the efficient operation of the Division 7A integrity rule*".[15] No reason is given why that is thought to be so. We can only assume that the reference to efficiency is a reference to an alignment of the operative provisions with the legislative purpose. But operation and purpose are aligned. In our submission, removing the notion of distributable surplus is contrary to the premise and policy underpinning Division 7A that only profits should be taxed.

3.5 Secondly, it is suggested that the concept of distributable surplus "*arbitrarily*" limits the amount of tax that should be paid.[16] With respect, this suggestion is entirely misconceived. The concept of distributable surplus was introduced into the statutory framework to remove arbitrariness in the application of the rules in the former s 108 and to ensure that the realised and unrealised profits in the company available for distribution are to be taxed. Nothing more or less. On this point, we respectfully agree with the Commissioner when he stated in in Taxation Determination TD 2009/5:

> *In section 109Y a statutory conception of 'distributable surplus' is introduced to replace the looser notion of 'profit' in section 44. It reflects the approach taken in Spanish Prospecting in that it is based on a comparison of the value of assets at two dates. This conception has two evident purposes, one is to bring greater certainty to the amount of the surplus and the other is to reduce scope for manipulation of that amount by taxpayers (as might be expected in a provision which is primarily an anti-avoidance provision). The broader purpose of 'profit' is retained by the use of the conception 'to prevent taxation of a return of capital', that is, of something which was not a gain to the company.*[17]

3.6 Finally, the Consultation Paper seeks to justify the removal of the concept of distributable surplus by asserting that doing so "*will also align the treatment of dividends with section 254T of the Corporations Act 2001 (Cth) which allows dividends to be paid out of both profits and capital*".[18] This is contrary to the NSW Court of Appeal's decision in *Wambo Coal Pty Ltd v Sumiseki Materials Co Ltd* (2014) 88 NSWLR 689, in which Barrett JA held (with whom Bathurst CJ and Beazley P agreed), 'It may be, however, that there remains a general law principle

[13] Sections 109C(2), 109D(1AA), 109E(2) and 109F(2).
[14] In the 2014 Board Report, the Board recommended the retention of the rules regarding the calculation of the distributable surplus (Recommendation 5).
[15] Consultation Paper, 8.
[16] Ibid.
[17] Taxation Determination TD 209/5, [18].
[18] Consultation Paper, 8.

that dividends may only be paid out of profits, given the essential nature of a dividend as a "share of profits"'.[19]

3.7 The view that s 254T does not authorise or allow a reduction of a company's share capital is taken by the Commissioner, who in Taxation Ruling TR 2012/5 states:

> *[t]he better view appears to be that like the previous section 254T of the Corporations Act, the new section 254T does not authorise any act by a company; the section merely prohibits the payment of dividends in the specified circumstances. In particular, the new section 254T does not 'otherwise authorise by law' a reduction of share capital for the purposes of section 256B and Part 2J.1 of the Corporations Act. It appears that the procedures to approve a share capital reduction in Part 2J.1 of the Corporations Act would also have to be met for a company to pay a dividend not prohibited by section 254T of the Corporations Act that was sourced from share capital.*
>
> *…*
>
> *The better view appears to be that for the purposes of the Corporations Act and company accounting,* ***dividends can only be paid from profits and not from 'amounts other than profits'.*** *The new section 254T of the Corporations Act imposes three specified additional prohibitions on the circumstances in which a dividend can be paid, as inherently a dividend can only be paid out of profits, having regard to the ordinary and legal meaning of the word dividend.*[20] (emphasis added)

3.8 In any case, the broader point is that the Division 7A rules should retain the concept of distributable surplus to ensure that only gains to a company are taxed. Removing the distributable surplus cap will lead to iniquitous results. Take the following simple example:

(a) A shareholder establishes a new company with $2 of share capital. The company borrows $1 million from a bank for the purpose of acquiring a business. The company would then have the following balance sheet:

Cash	$1,000,002
Liabilities	$1,000,000
Retained profits	$0
Share capital	$2

(b) The proposed purchase does not proceed, or is delayed and the cash is no longer needed in the company, and $1 million is loaned interest free and at call to an associate of the shareholder.

[19] At [57], see also the authorities cited there.
[20] *Taxation Ruling* TR 2012/5 'Income tax: section 254T of the Corporations Act 2001 and the assessment and franking of dividends paid from 28 June 2010', [33] and [36]. TR 2012/5 is supported by the legal opinion 'Payment and Franking of Dividends' by A H Slater QC & J O Hmelnitsky obtained by the Commissioner. There are judicial comments supporting a contrary view. In *Grant-Taylor v Babcock & Brown Ltd (In Liquidation)* [2015] FCA 149, the Federal Court held that Babcock & Brown had contravened the old s 254T profits test by paying dividends out of capital in 2005, 2006 and 2007. The Court (in obiter) noted that, "*As a result of the changes (which were made in 2010) it is now lawful to pay dividends out of capital so long as the payment does not affect the solvency of the company paying the dividend*".

(c) In this example, without a requirement that there be a distributable surplus, there will be a $1 million unfranked dividend deemed to have been received by the borrower.[21] This is clearly an absurd outcome. It is a massive tax penalty where there has been no tax mischief.

3.9 In our submission, the concept of the distributable surplus must be maintained.

4 Unpaid present entitlements

4.1 We agree in principle that UPEs should fall within the scope of Division 7A. Accordingly, and subject to our comments below in relation to the 'Amortisation Model', we agree with the proposals in the Consultation Paper in relation to:

(a) UPEs that arise on or after 1 July 2019 (or later if the date of effect of the new provisions is delayed); and

(b) UPEs that have arisen on or after 16 December 2009 and on or before 30 June 2019 (or another later date).

4.2 However, for the same reasons canvassed above in relation to pre-1997 loans and existing 25 year loans, UPEs that arose prior to 16 December 2009 should be grandfathered. We note that the Consultation Paper has no discussion on this topic but asks as Question 2(b), whether such UPEs should be subject to Division 7A. As such, the Consultation Paper has left open this inappropriate possibility, but we strongly believe they should be grandfathered.

5 Self-correction mechanism

5.1 We agree with the introduction of a self-correcting mechanism to allow taxpayers to rectify inadvertent breaches of Division 7A.

5.2 The self-correction mechanism is aimed at reducing compliance costs and freeing-up ATO resources. We are not convinced that a self-correcting mechanism will necessarily achieve that objective, as we would expect that taxpayers might still want certainty or guidance from the ATO as to whether their particular circumstances fall into the objective factors to be prescribed in the legislation. That is to say, the time and cost of asking the ATO to consider exercising the discretion in 109RB will be replaced by time and cost of seeking rulings or other guidance in relation to the criteria for self-correction.

5.3 In order to be effective:

(a) the eligibility criteria must be expressed with sufficient clarity so that an eligible/qualifying taxpayer can be readily identified. Although we agree with the proposal in the Discussion Paper that "*appropriate steps*" should be "*taken as soon as practicable (and no later than six months after identifying the error unless the Commissioner allows more time)*",[22] we do not agree with the proposed criterion that taxpayers must show that they have taken, or are taking, "*reasonable steps to identify and address any*

[21] The same result arises if share capital from shareholders was $1,000,002, rather than having debt funding. The company still has no profits when the loan is made.
[22] Consultation Paper, 11.

other breaches of Division 7A".[23] In our submission, such a requirement is likely to increase complexity of the process and compliance costs; and

(b) the legislative framework needs to make it very clear that this is a relieving provision intended to be applied generously.

5.4 Further, the steps necessary to self-correct must be set out clearly and be practical. In this regard, the Consultation Paper seems to suggest the possibility of non-statutory steps determined by the ATO: "*the concept of self-correction may include other appropriate action considered reasonable by the Commissioner based on the taxpayer's circumstances*" and those "[r]*easonable circumstances would be set out by the ATO in its public advice and guidance products*".[24] We agree with a statutory mechanism that allows the Commissioner to identify additional actions that would amount to self-correction. However, we believe it important that any such determinations made by the Commissioner be beneficial to taxpayers and bind the Commissioner.

5.5 The proposed self-correction mechanism contemplates compound interest on any necessary catch-up payments. The self-correction mechanism accepts that a breach of Division 7A has occurred through inadvertence. Why then should the taxpayer be subjected to, what is in effect, penalty interest?

6 Period of review

6.1 Treasury noted in the AITSA Report that:

> *The rules governing the amendment of income tax assessments attempt to balance two competing objectives, namely that:*
>
> - *A taxpayer should pay the correct amount of tax according to law.*
> - *Whether or not a taxpayer has paid the correct amount, eventually their tax affairs for a particular year should become final, unless they have deliberately sought to evade their responsibilities.*
>
> *The law seeks to balance these objectives by allowing the Tax Office to amend assessments to correct errors, but only within time limits set out in the law.*[25]

6.2 In our submission, having an extended period of review of 14 years is unwarranted and inappropriate, and does not, in the context of extremely complex provisions, strike the right balance between finality and detecting non-compliance with the law. The two reasons set out in the Discussion Paper in support of extending the review period are not convincing.

6.3 The first reason suggested is that "*some taxpayers attempt to manipulate their Division 7A position by claiming the period in which the Commissioner may amend the relevant tax return to account for a deemed dividend for their payment, loan or debt forgiveness has expired*".[26] In our submission, a Division 7A specific extended review period is not necessary to deal with taxpayer "*manipulation*", as

[23] Ibid.
[24] Ibid. 12.
[25] Treasury, note 5, 27.
[26] Consultation Paper, 12.

that sort of behaviour is likely to meet the description of evasion that would permit the Commissioner to form the requisite opinion under s 170 that would permit an amended assessment to be made at any time.[27]

6.4 The second reason suggested in support of the proposal is that it will be "*consistent with other areas of the law in which there are an extended period of review, including capital gains tax and loss recoupment rules*".[28] We cannot see how a relevant analogy can be drawn between the loss recoupment rules and the Division 7A rules. With respect to the CGT rules, we assume that reference is being made to items 30, 40 and 50 in the table in s 170(10AA). Broadly, each of those items allow the Commissioner to amend an assessment at any time where:

(a) the circumstances triggering a CGT event occur under a contract and after the end of the review period for the year in which the relevant CGT event is taken to occur;[29]

(b) a CGT event occurs if an agreement provides for the happening of a future event and that event does not occur;[30] and

(c) a CGT event is disregarded on the happening of a future event.[31]

6.5 The rationale underpinning the extended period of review for the CGT events referred to is that a liability depends on future events that are not known at the time a CGT event is deemed to occur. This contrasts with the circumstances under which a deemed dividend arises under Division 7A (i.e., a payment or loan is made, or a debt is forgiven). With Division 7A, the triggering of the deemed dividend cannot be affected by things happening in the future in a way analogous with the relevant CGT provisions. In our submission, it is difficult to see how the application of the Division 7A provisions can be compared with the particular rules that modify the period of review in relation to certain CGT issues.

6.6 In our submission, the normal review periods provided for in s 170 should be retained for Division 7A purposes.

7 Section 109M

[27] Section 170(1), Item 5 in the table.

[28] Consultation Paper, 12.

[29] Item 30, s 170(10AA). This refers to the CGT event timing rules in relation to eight CGT events where the time of the event is decided by there being a contract entered into. For example, if an asset is disposed of under a contract, the time of the CGT event A1 (disposal of an asset) is taken to be at the time the contract is entered into. If, under the contract, title to the asset passes after the period of review for the year in which the CGT event is taken to occur (e.g., a contract with a long settlement term), the Commissioner would not be able to amend the assessment for the earlier year to include a capital gain absent a special rule dispensing with the period of review.

[30] Item 40, s 170(10AA). This refers to CGT event B1, which occurs if use and enjoyment of an asset passes under an agreement and title will pass before the end of the agreement. The time of the event is when use and enjoyment first occurs. If, after the end of the review period for the year in which CGT event B1 occurs, title does not in fact pass, the Commissioner would not be able to amend the assessment to reverse the capital gain absent a special rule dispensing with the period of review.

[31] Item 50, s 170(10AA). This refers to CGT event D2, which occurs on the granting of an option. The time of the event is when the option is granted. However, any capital gain that arises is disregarded if the option is exercised. If the option is exercised after the end of the review period for the year in which CGT event D2 occurs, the Commissioner would not be able to amend the assessment to reverse the capital gain absent a special rule dispensing with the period of review.

7.1 In relation to s 109M, the EM stated:

> *If a private company makes a loan in the ordinary course of its business on the usual terms which it applies to arm's length loans of a similar type, that loan is not treated as a dividend.*[32]

7.2 It is to be observed that the EM made no reference to restricting s 109M to businesses that "*primarily derived income from money-lending in the ordinary course of a private company's business*" to "*third parties*".[33]

7.3 In our submission, the proposal to restrict the application of the exception in s 109M to loans made in the ordinary course of a business of lending money to third parties is not consistent with the apparent intention, as expressed in the EM. It is unnecessarily restrictive and is not warranted. We are not able to discern the mischief the proposal seeks to address, and the Consultation Paper does not identify any.

7.4 Section 109M should be maintained in its current form.

8 Section 109T

8.1 The Discussion Paper proposes an amendment to s 109T by introducing a simple 'but for' test to replace the current test in s 109T(1)(b). We do not consider that such a change is necessary or appropriate.

8.2 The Consultation Paper seeks to justify the proposal by asserting that it "*can be problematic to establish that an entity is 'interposed' within the meaning of paragraph 109T(1)(a) where the quantum or nature of the benefit provided to the taxpayer differs from the benefit provided to the interposed entity*". We cannot agree with that statement. In our submission, the current test in s 109T(1)(b) is robust enough to capture those arrangements that the provision was intended to capture.

8.3 In our submission, s 109T should not be amended.

9 Division 7A and Fringe Benefits Tax

9.1 At present, where an employer private company makes an interest free loan to an employee to participate in an employee share scheme, no FBT applies and if the employee is not already a shareholder in the employer company, Division 7A does not apply to the loan.

9.2 However, if such a loan has already been made for that purpose, and further loans are made for the same purpose, although FBT again does not apply, Division 7A does.

9.3 This has tended to cause employer companies not to issue such shares in tranches, but perhaps to issue shares all at once, which is not necessarily desirable for the objectives of the employee share scheme to be fulfilled over time.

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[32] Explanatory Memorandum, Taxation Laws Amendment Bill (No. 7) 1997, [9.51].
[33] Consultation Paper, 15.

9.4 In our submission, Division 7A should not apply to such further loans where the only shares that the employee already owns are through the employee share scheme.

10 Business income election

10.1 The loan model proposed in the Discussion Paper differs from the Amortisation Model recommended, in conjunction with other elements, by the Board in the 2014 Board Report.[34] The Amortisation Model proposed by the Board contemplated flexibility as to payments of both interest and principal, with minimum payments of interest and principal not required annually, but rather by the end of years 3, 5, 8 and 10. The Amortisation Model has garnered broad support as it represents an appropriate balancing of flexibility for borrowers in terms of cash flow management and the need to ensure, from a policy perspective, that regular payments of both interest and principal are made to the company lender. The Board's Amortisation Model is considered superior to what is currently proposed in the Discussion Paper and should be adopted consistent with the recommendations of the Board.

10.2 In the 2014 Board Report, the Board also recommended that if the Amortisation Model was adopted, trusts should be allowed to make a once-and-for-all election for loans from companies (including UPEs owing to companies) to be excluded from the operation of Division 7A (the "business income election").[35] The Discussion Paper does not refer to the business income election.

10.3 There is considerable merit in the Board's business income election proposal. In our submission, it should be included in the legislative proposals.

Thank you for the opportunity to provide this submission.

Please contact Clint Harding, Chairman of the Taxation Committee of the Business Law Section on (02) 9226 7236 or charding@abl.com.au, in the first instance should you have any queries.

Yours sincerely

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[34] Board of Taxation, note 1, [6.22].
[35] Ibid. [8.42].