Many Investors, One Voice

Finance and Expenditure Select Committee,
C/- Committee Secretariat
Parliament Building, Wellington
5 July 2017

Re: Submission by New Zealand Shareholders Association on the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Bill

Relationship of Submitter:

The New Zealand Shareholders Association (NZSA) is the only independent organisation representing New Zealand retail equity and debt investors. The Association has 6 regional branches across New Zealand, with a separate Head Office and executive function in Auckland. NZSA is regularly consulted as a "key participant" by MBIE, market regulators and a wide range of other capital market participants.

Executive Summary

NZSA has lobbied for some time to change the inequitable situation where a demerger of one company into two separate entities, without any input or removal of shareholder equity was deemed to be a "dividend" and was consequently taxed under New Zealand law.

The proposed Bill seeks to address this situation, but in our opinion requires some changes to be made by the Select Committee to achieve the expected outcomes. These primarily relate to the definition of what constitutes an Australian company (for the purpose of the Bill) and adjustments required to prevent a situation where the purpose of the Bill would be defeated because the demerger cannot be offered to a small number of shareholders.

The NZSA welcomes and supports the introduction of the proposed legislation from 1 April 2016. However, NZSA notes that while this Bill addresses the problem for certain demergers of Australian listed companies; the resolution will need to be extended to all demergers in due course.

Recommendations

Definition of an Australian company.

The Bill is not clear on whether the dividend exclusion also covers the demerger of listed stapled securities. **Clause 45** inserts proposed **ED 2B(7)** which provides a definition of an "ASX-listed Australia company" to define the scope of coverage of the demerger dividend exclusion. However, under proposed **ED 2B (7)e** the Australian company is required *.....to maintain a franking account*. This would seem to exclude stapled securities where one of the securities is an Australian unit trust. It was our understanding in discussions with officials that listed stapled securities would be included in the scope of the demerger dividend exclusion.

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New Zealand legislation deems stapled securities to be "companies" for the purposes of the tax laws and it would align both jurisdictions and simplify compliance if the demerger dividend exclusion scope was broad enough to cover ASX listed stapled securities. We submit that the exclusion be expanded to do this.

Technical Issue with Clause 45: Proposed section ED 2B (1)(c)

The requirement in proposed section ED 2B(1)(c) for the each shareholder's interest in the demerged company to be exactly the same proportion immediately after the demerger as was that shareholder's interest in the pre-demerger company before the demerger creates a practical difficulty in the situation where a small number of shares are held in jurisdictions where the demerger is not offered. For example, this may apply where there are a few US investors to whom the demerger is not offered, as the cost of producing SEC compliant securities documentation is uneconomic. In this case, those investors receive a cash payment funded from the compulsory sale on market in Australia of their shares in the demerged company. This results in it being impossible to achieve a complete "like for like" demerger in some circumstances. This seems unreasonable and contrary to the intention of the proposal, particularly as neither the company nor other shareholders have control over who buys shares.

NZSA considers that flexibility is required in the legislation to allow for these small discrepancies, or many demergers that may otherwise be intended to be covered as a policy objective may be excluded based on a technicality.

Date for Implementation

NZSA supports the proposal to introduce Subsection 1 from 1 April 2016. We accept that an earlier date, while desirable, is not administratively feasible. We support the introduction of Subsection 2 from 1 April 2017.

Legislation is a Limited Scope Fix

NZSA considers that the proposal should be treated as a short term solution only. While it reasonably answers the situation in Australia, and should certainly proceed, it does not address the position in New Zealand or the rest of the world.

The Bill provides time for officials to develop a more comprehensive, principle based demerger solution that would give certainty to New Zealand investors. We ask that in addition to its consideration of this Bill, the Select Committee also makes a recommendation to government that this work be carried out.

Summary

NZSA strongly supports the introduction of the proposed legislation relating to demergers subject to some minor amendments to clarify coverage and deal with potential minor zero sum issues.

We see this as a good step along the path toward a comprehensive solution which will create a neutral environment for New Zealand investors.

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