

## Tax Brief

29 July 2010

### **Further developments in the reform of Australia's international tax rules**

In 2006, the former Government initiated a comprehensive review of Australia's four anti-tax-deferral regimes – the controlled foreign company ('CFC') rules, the foreign investment fund ('FIF') regime, the transferor trust regime ('TTR'), and the deemed present entitlement ('DPE') rules. These regimes all address the taxation of Australian residents holding interests in offshore companies, trusts and insurance products. This Tax Brief is about the current state of play in the various parts of that larger project, including the most recent announcement – a third Treasury Consultation Paper on the design of Australia's future CFC rules.

#### **1. The FIF and DPE rules**

The position of Australian resident investors with a portfolio interest in offshore companies, trusts and insurance products was regulated principally by the FIF rules. In an earlier Tax Brief we followed the various milestones in the project to repeal and replace the FIF rules [see our Tax Brief at [http://www.gf.com.au/829\\_783.htm](http://www.gf.com.au/829_783.htm)].

One of the final steps in that project happened on 14 July when the Act to repeal the FIF rules received Royal Assent. This Act:

- repeals the FIF rules, and makes a number of consequential changes to address the transition to the new situation; and
- repeals the DPE rules.

These changes take effect for the 2010-11 income year or for CFCs (holding a FIF interest) for statutory accounting periods ending in the 2010-11 income year.

The last step in the process – the enactment of an 'anti-roll-up fund' regime – is still a long way from completion. On 28 April 2010, the Assistant Treasurer released an Exposure Draft of legislation to enact the anti-roll-up fund rule.

The regime outlined in the Exposure Draft has the look and feel of a standard Australian anti-avoidance rule, albeit with some tailoring to reflect design features in the current FIF rules. It would be triggered where a resident holds an interest in a 'foreign accumulation fund' (or foreign life insurance product) at the end of the income year and, having regard to certain matters, it is reasonable to conclude that the investment was made for the sole or dominant purpose of the resident (or another entity) obtaining a 'tax deferral benefit.' A fund would only be

a 'foreign accumulation fund' if returns on investments of the fund are subject to a low level of risk and the rule would not apply if the fund distributed substantially all of its profits within (or shortly after) the income year. Consistent with the superseded FIF rules, certain complying superannuation entities would be excluded from the regime.

Consultation on the Exposure Draft was due to conclude in May 2010, and Treasury is currently considering the various submissions it received. But given the recent announcement of the election, it seems reasonable to expect that the introduction of a formal Bill into Parliament to enact the 'anti-roll-up fund' regime is at least several months away. On the other hand, it is also plausible to suspect that the measure eventually enacted would be back-dated to July 2010 to coincide with the date of repeal of the FIF and DPE rules.

## 2. The reform of the CFC rules

The reform of the CFC rules represents a major overhaul of the most significant element of Australia's rules for taxing foreign source corporate profits. These rules regulate the position of Australian resident investors with interests in offshore companies, and in many ways express the extent of Australia's claim when and whether to tax profits earned offshore by Australian companies. Because of their wider importance, the development of the CFC reforms has been much slower and more cautious than the FIF project.

So far, the major milestones in the project to reform the CFC rules include:

- The former Government requested the Board of Taxation to review Australia's anti-tax-deferral regimes including the CFC rules, in October 2006.
- The Board issued its first Discussion Paper in May 2007 [see our Tax Brief at [http://www.gf.com.au/477\\_556.htm](http://www.gf.com.au/477_556.htm)].
- The Board issued a further Position Paper in March 2008 [see our Tax Brief at [http://www.gf.com.au/477\\_628.htm](http://www.gf.com.au/477_628.htm)].
- The Board issued five further Issues Papers in May 2008 [see our Tax Brief at [http://www.gf.com.au/477\\_649.htm](http://www.gf.com.au/477_649.htm)].
- The Board's Final Report on the CFC project (which had apparently been submitted to the Government in September 2008) was released for public scrutiny in May 2009 as part of the Budget papers. The Government announced that it had accepted 'all but one' of the Board's recommendations [see our Tax Brief at [http://www.gf.com.au/829\\_753.htm](http://www.gf.com.au/829_753.htm)].
- Later in May 2009, Treasury released a paper, *Treasury Discussion Paper – Foreign Source Income Attribution Rules*, seeking submissions on the design features of the new CFC provisions [see our Tax Brief at [http://www.gf.com.au/829\\_783.htm](http://www.gf.com.au/829_783.htm)].

# Greenwoods & Freehills

- On 5 January 2010 Treasury released a second document, *Reform of the Controlled Foreign Company Rules – Consultation Paper* (January 2010) on the design features of a new CFC regime [see our Tax Brief at [http://www.gf.com.au/829\\_863.htm](http://www.gf.com.au/829_863.htm)].
- On 16 July, 2010, Treasury released a third document, *Reform of the Controlled Foreign Company Rules – Consultation Paper* (July 2010), which sets out the current views on a number of key design features of a new CFC regime. The Paper also includes tentative and indicative drafting for a few operative provisions and definitions. The indicative drafting reflects some development of the less complete rules set out in the January Paper. The sample drafting runs to a mere 12 pages, about the same length as the definitions section in the current CFC law, so it is clear that this is still very much a work in progress. Treasury is seeking submissions on the design and drafting by 30 August 2010.

## 3. The July 2010 Consultation Paper

The July Paper shows Treasury still focused on fundamental design questions, indeed many of the same questions that were asked in both of Treasury's previous papers. The July Paper shows some firming in Treasury's thinking on some ideas, but also rather limited progress on others.

The July Paper focuses on key design issues:

- how to define the notion of 'active business income,' including special rules for certain royalties and the design of rules for the offshore subsidiaries of financial institutions;
- removing some taxpayers from the scope of the rules through a de minimis test and an exclusion for lightly taxed entities;
- how to define 'control' for the purposes of CFC rules, including situations of joint control;
- issues in calculating the attributable income of a CFC, including relief for income from transactions with other group companies; and
- how to remove double taxation where income has been attributed but not distributed to a controlling taxpayer.

### 3.1 Active v. passive income

In this context, the indicative drafting set out in the July Paper shows little movement from the January Paper. The July Paper repeats the accepted position that CFC rules ought not to target active business income earned offshore but, like the January Paper, still grapples with how best to capture that notion in statutory form.

There are really two issues here. The first is, when should the extent of the activities associated with the process of earning income that is usually considered

# Greenwoods & Freehills

passive – rent, interest, dividends and so on – be regarded as sufficient to demonstrate that this income is itself the product of an active business. Here the issue is to differentiate (say) rent received by one kind of landlord from rent received by another. There is a second issue which is conceptually different from the first: when should income that is typically regarded as passive – rent, interest, dividends and so on – be ignored because it is appropriate to view the passive income as incidental to another activity that is acknowledged to be an active business. An example of this is how to handle interest received by a manufacturer. These two issues are conflated in the text.

The July Paper raises, and then discounts, two ways of drawing the distinction. First, the Paper rejects the idea that some kinds of income are always inherently passive. Rather, it says, an ‘objective test that distinguishes between active and passive income solely by reference to its standalone classification has been shown to be inadequate and does not always produce the desired policy outcome ...’ In other words, sometimes, interest or rent or royalties should be viewed as ‘active business income,’ and so any designation of income as ‘passive’ for the purposes of these rules will only ever be tentative. Hence, the indicative legislation which accompanied the July Paper sets out a list of the usual suspects – dividends, interest, rent, annuities and capital gains – but labels them ‘prima facie passive income.’

Secondly, the Paper rejects the idea that all the income earned by an entity which ‘carries on business’ should be viewed as active income. It rejects this possibility on the basis that Australia’s jurisprudence on the meaning of ‘carrying on business’ is too generous. ‘Carrying on business’ can involve insufficiently demanding levels of activity.

The resolution in the July Paper is a two-step approach to defining the income which will be susceptible to attribution under the CFC rules. It proposes that prima facie passive income will nevertheless be immune from attribution where it ‘arises in the ordinary course of the active conduct of a trade or business by the entity.’ However, in order to deal with the inadequacies of the current law, ‘the active conduct of a trade or business by an entity’ is defined as ‘the competitive participation by the entity in industrial, commercial or financial undertakings, evidenced by human activity.’ Unlike the January Paper, there is no longer a requirement that the activity be connected with a permanent establishment.

Little of this discussion is new. Indeed, one of the few noticeable changes from the January 2010 Consultation Paper is the addition of some text attempting to give meaning to the phrase ‘competitive participation by the entity in industrial, commercial or financial undertakings’ and the addition of eight pages of examples of the difference between active and passive income.

Despite the generality of the indicative statutory test, there are a few tantalising indicators in the examples: treasury operations can be ‘active’, a captive insurance company can be engaged in active business, and rental properties will not invariably be regarded as objects of idle investment. On the other hand, excess liquidity in an offshore subsidiary is probably dangerous, foreign

# Greenwoods & Freehills

operations will probably need to have employed (or contracted) personnel (not simply directors) who are seen to be doing something, and passive income earned during the start-up and wind-down phases will require careful management. And, unhappily, Treasury appears so far not to accept the idea that the 'activeness' of a CFC should be determined by looking at the activities of the entire group – for example, Treasury has not accepted the idea that a modest amount of interest income, which happens to be the entire income earned by a CFC, should not be regarded as passive income where the corporate group earns industrial profits of (say) one hundred times that amount.

At this stage, it appears that the examples provide the best indicator of where and how the active v. passive boundary is meant to be drawn. Whether or not the border is well captured in the indicative drafting is debatable, but the continuing consultation process is presumably designed to elicit constructive suggestions for improvements to the text.

**Royalties.** There are two other passages in the July paper which bear on drawing the active v. passive distinction. First, the Paper proposes special rules for royalty income earned by a CFC. This text is new, elaborating a very brief allusion in the January Paper to special treatment for 'tainted royalty income.'

The focus of the discussion is, 'royalties in respect of intellectual property which has been transferred out of Australia to a CFC where such transfers occur in a non-arm's-length transaction.' It seems that Treasury is concerned about the fact that the cost of the R&D will have been deducted against the Australian tax base but the amount received on transfer, while defensible under transfer pricing principles, might be thought not to reflect the full value of royalty income that might accrue in the future. In short, Australia 'will not see enough of the upside.'

The July Paper proposes that, in certain cases, the royalty income of a CFC will always be attributable. This rule would apply only where:

- the intellectual property was transferred to the CFC by a related party;
- the direct or indirect transferor must be either an Australian resident or the Australian permanent establishment of a non-resident; and
- the CFC must not have substantially developed, altered or improved the intellectual property.

This represents a significant re-configuring of the current CFC rules which classify as 'tainted,' any royalty income from intellectual property wherever developed, provided the royalty was paid to the CFC by an associated entity. The identity of the payer will no longer matter; what will matter is the Australian origin of the intellectual property.

**Offshore subsidiaries of Australian financial institutions.** Secondly, the Paper acknowledges, as does current law, that the offshore subsidiaries of Australian financial institutions require special treatment. This represents an important change in Treasury's thinking. In the May 2009 Discussion Paper there

# Greenwoods & Freehills

had been a suggestion that the special treatment of the foreign subsidiaries of financial institutions might no longer be needed. The January 2010 Paper was curiously silent. But the July Paper now confirms that certain types of passive income of a CFC that is a subsidiary of an 'AFI' will not be subject to attribution.

The special treatment will only apply to the offshore subsidiary of an 'AFI,' a term which means, principally, Australian authorised deposit-taking institutions and life insurance companies. This definition reflects current law. Offshore subsidiaries which are 'controlled' by an AFI will qualify for the concessions. However, where an offshore subsidiary is jointly controlled by two or more companies and one of the 'controllers' is not an AFI, the concessions will not be available – this is a new requirement which is not reflected in the current law. The indicative legislation in the July Paper also proposes that the principal business of the offshore subsidiary must be 'banking' for the concessions to apply. This is a potentially significant change from the current CFC AFI subsidiary rules which also apply where the business of the AFI subsidiary generates income principally from the lending of money.

The income that will be immune from attribution is to be listed. The current version of that list extends to interest and discount, gains from trading in securities, derivatives and commodities, profits from certain types of asset-based financing such as REPOs, securities lending and leasing, certain types of rental income and so on. Some inclusions in the list are not specifically referred to in the current rules. However, in the July Paper, Treasury acknowledges that these measures will have to be developed in consultation with industry.

### **3.2 Removing some taxpayers from the scope of the rules**

The Paper proposes two methods for removing some resident taxpayers from being susceptible to attribution under the CFC rules. These tests operate as a buttress to the rules drawing the active v. passive distinction – only passive income is liable to be attributed, and only if the size of the passive income (and the amount of Australian tax that attributing it would trigger) is sufficiently large to be worth worrying about.

**De minimis exception.** First, a *de minimis* test is proposed which would exempt controlling shareholders from attribution (of any income) if less than 5 per cent of the total income of the CFC is passive income. The first Treasury Discussion Paper in May 2009 had implied that a *de minimis* test might not be necessary if 'the rules better target passive income' and the January Paper referred to 'a *de minimis* exception if required', but these doubts now appear to be settled – there will be *both* a more targeted definition of attributable income and a *de minimis* test (assuming that the Government endorses Treasury's approach).

There are a few important design features to this test:

- the exception is only available where the CFC prepares financial reports in accordance with the local accounting standards. The tentative legislation seems to insist that the accounts also be audited. Some

# Greenwoods & Freehills

wholly-owned CFCs may not need to prepare financial reports in accordance with the local accounting standards, or have them audited, but failure to do so will potentially render the exception unavailable;

- the calculations are based on what the financial accounts show, and in particular how they classify amounts. That is, the 'passive' income that matters for the de minimis test is defined by the classification attributed to amounts under the foreign accounting standards, not the classification of amounts as passive income under the active v. passive demarcation drawn elsewhere in the CFC rules, nor their classification if the CFC's accounts were prepared using Australian accounting standards. The logic behind this approach seems to be that a quick glance at the accounts should show whether there is sufficient passive income, without having to look behind the accounts to ascertain the character of amounts by reference to Australian tax. The logic, and some of the detail, behind this approach is already reflected in the current CFC rules.

The obvious analogue to this provision is the Active Income Test in the current CFC rules, which uses a similar 5% threshold.

**Lightly taxed entities.** A second exclusion has been created for lightly taxed entities, meaning at this stage, certain superannuation entities.

This rule was foreshadowed in the January Paper. Again, the obvious analogue is the exclusion of superannuation entities from the former FIF rules except that the proposed rule will extend further, by including superannuation entities holding their interests through onshore partnerships and trusts. It has now been accepted that the logic for exempting them from the operation of the FIF rules – there is too little Australian tax at stake to suspect that profits are being deliberately held offshore – is sufficiently compelling to justify exempting them from the CFC rules as well.

### **3.3 Defining control**

It has always been accepted that there would be a shift away from the current notion of control in the CFC test – a group of 5 fewer resident entities holding a 50% or greater interest (measured by reference to shareholding, voting and distribution entitlements), a single entity holding an interest of at least 40% (where a third party does not control) or the ability to exercise de facto control. Industry had long been seeking a more realistic notion – something akin to control being vested in a single resident entity or group of related entities. Or to put it the other way, it was not appropriate to trigger CFC rules where a group of five unrelated resident entities, each acting entirely independently, happened to own shares in the same foreign company.

This has clearly been a very contentious area and Treasury has had some difficulty deciding on an appropriate substitute test for control, and one that industry would be able to work with. In the first Treasury Discussion Paper in May 2009, the suggestion was to employ a facts and circumstances test of 'control,' perhaps using the idea of control found in the *Corporations Act* – that is,

# Greenwoods & Freehills

power to control financial and operating policies. Industry was not enthusiastic about the prospect of using just a *de facto* control notion and losing the clarity of 'bright line' tests such as measuring shareholding or rights to distributions. The January Paper changed tack, posing instead the possibility of relying on definitions found in the Australian accounting standards.

It seems from the July Paper that Treasury has come to a considered view that 'control' for the purposes of the new CFC rules will be determined by the accounting standards – AASB 127 to determine 'control,' and AASB 131 to determine 'joint control.'

The test of 'control' in AASB 127 has two steps:

- control is presumed to exist if a parent owns, directly or indirectly, more than 50% of the voting power of an entity; and
- if the parent owns 50% or less of the voting power, control can also exist if the parent has control of voting rights through some collateral agreement, if it has the power to govern the financial and operating policies of the entity, it has the power to appoint or remove the majority of the board, or power to cast the majority of votes at a meeting of the board.

The discussion of this test in the July Paper contains a few cautionary observations: control is a capacity and it does not matter whether the capacity is exercised; it is possible to control without holding a majority interest if the interests of other entities are diffuse; the definition can result in an entity being simultaneously controlled by two unrelated entities.

Where this control test is met, the attribution process is triggered for both the controlling entity and for any of its 'associates' holding an interest in the CFC.

Where a resident taxpayer does not meet this 'control' test, the Discussion Paper and the tentative legislation provide an alternative method by which the interests of several taxpayers might be aggregated, making a foreign company into a CFC. This possibility is enlivened when there is 'joint control' as defined in AASB 131, Joint Ventures. This discussion attempts to reflect the idea that CFC rules should only be triggered for unrelated resident entities if they are acting in concert with respect to their investment in a particular company.

AASB 131 defines a 'joint venture' as 'a contractual arrangement whereby two or more parties undertake an economic activity that is subject to joint control.' 'Joint control' arises where there is 'the *contractually agreed* sharing of control over an economic activity and exists only when the strategic financial and operating decisions relating to the activity require the *unanimous consent* of the parties sharing control (the venturers)' [our emphasis]. 'Control' is itself defined as 'the power to govern the financial and operating policies of an economic activity so as to obtain benefits from it.'

The July Paper emphasises the need for a contractual arrangement and says that this is what distinguishes situations of 'joint control' from situations where an investor merely has 'significant influence' in the financial and operating decisions of the foreign company. Interestingly, the Paper does not resile from the notion that 'joint control' only arises where financial and operating decisions have to be made unanimously.

### **3.4 Calculating the attributable income**

The discussion about how much income of the CFC to attribute to the Australian resident controllers is spread throughout the July document.

The amount that is potentially attributable to resident taxpayers is the CFC's passive income and tainted royalty income, calculated under Australian law on the basis that the CFC is a resident. The Paper alludes to the fact that the current set of highly elaborate modifications which are made to Australian law when applying it to a CFC will all need to be repeated in the new legislation.

At present, there is a note indicating that a further distinction will be drawn in the same manner as under current law – ie, if the CFC is resident in a comparable country (being one of the 7 listed countries) only passive income that is concessionally taxed will be attributable.

At present there is no discussion in the Paper of attributing amounts derived by a CFC because it holds interests in, or has settled, foreign trusts or partnerships. Hence, on the present text, the CFC would be taxable only on distributions from investments in foreign companies and trusts, not on amounts attributed under the expected anti roll-up fund rules or the transferor trust rules. Again, one can expect further developments here.

Importantly for these purposes, because the passive income of a CFC is defined to include amounts arising under 'debt interests' and 'equity interests,' and profits on 'financial arrangements,' the CFC will have to apply Australia's debt and equity rules and the TOFA rules in calculating the amount of passive income.

**Transactions between group companies.** The July Paper continues the idea of eliminating passive income derived from transactions involving other members of the same corporate group. There had been some debate in earlier papers whether this concession should be restricted to CFCs located in the same country or whether it might be extended to CFCs resident in different countries – ie, when CFC A in Country A receives interest on a loan made to CFC B, resident in Country B. The July Paper explicitly allows the elimination of passive income flows between CFCs in the same corporate group wherever resident.

The notion of a corporate group will apparently be drawn from the CFC definition – if a company is a CFC, it will be a member of the corporate group.

**Integrity rule.** However, the ability to ignore intra-group flows of passive income, or to ignore prima facie passive income which might otherwise be regarded as active, is made subject to the operation of an integrity rule. This is to prevent a

# Greenwoods & Freehills

flow of passive income being transformed into non-attributable income simply by being shuffled between two or more related CFC's.

The version of the integrity rule in the tentative legislation operates in two situations:

- where a resident attributable taxpayer makes a payment to its CFC and the payment is deductible against the payer's Australian assessable income – eg, paying interest to a CFC; an
- where one CFC of a resident attributable taxpayer makes a payment to another CFC and the payment reduces the attributable or assessable income of the first CFC.

The clear focus of the grouping rules is to permit transactions that move active profits between group companies in the form of passive intercompany flows not to result in attributable income in the hands of the recipient. On the other hand, the intended objective of the integrity rule is, presumably, to constrain that facility in two cases:

- where the passive income flow depletes Australia's tax base because it involves a payment that is deductible to the payer; an
- where moving the profit has the effect of switching off the attribution rules that would have been triggered if the amount flowing to the recipient CFC had remained where it was (ie, the original profit in the hands of the payer is passive income that would have been attributable).

In either case, there is the potential for the grouping rules to be used to reduce Australian tax payable.

The drafting of the rule is, at present, more than a little obscure in defining the doubtful (and permitted) transactions and the consequences that follow from undertaking them. In particular, the drafting currently refers to a 'tax benefit' without any indication of what that means. There will undoubtedly need to be careful re-drafting of the rule to ensure that it works as intended.

### ***3.5 Attributing income to resident controllers***

The July Paper contains a discussion about the mechanism for attributing the attributable income of the CFC to the resident investors. The Paper proposes two alternatives: first, retaining the current system with some modifications, or instead introducing a new option for dealing with this process.

Current law contains a detailed set of rules for allocating the income of the CFC (through offshore intermediaries if necessary) to resident investors based on their 'attribution percentage,' a notion based on finding the highest of the resident's shareholdings, voting rights, rights to dividends or capital in the CFC.

The modifications to this system would presumptively base the attribution of the CFC's income on the resident controller's rights to dividends – that is, by following

# Greenwoods & Freehills

distributions of profits on equity interests in the CFC. If this could not feasibly be done, the Paper proposes using either rights to return of capital, or instead using the percentage of the market value of the CFC that resident's direct interests represents.

The new option is referred to in the Paper as the 'subtractive method.' It is based on the underlying intuition that the new control test is narrower than the old system so that it may not be necessary to be as precise in dividing the CFC's profits between multiple residents. In other words, in reality, most CFCs are controlled exclusively by a single resident entity or, where multiple entities are affected, they actively share joint control. In such a situation, it is less important to legislate for the possibility of multiple minority interests in a CFC held by unrelated entities.

The subtractive method simply attributes all of the attributable income of a CFC to the Australian resident (or residents) with control of the CFC. In order to address minority interests, it is proposed that the resident controller would be entitled to a tax credit to the extent that current year or expected future dividends are payable to any non-controlling, non-associated Australian holders (or associated – but apparently *not* non-associated – foreign holders) of minority interests in the CFC. It seems envisaged that the resident would be entitled to a credit in the year of attribution for the tax expected to be due in current or future years when distributions will occur.

### **3.6 Dealing with double taxation**

The July Paper notes that rules will be developed to deal with the potential double taxation of attributed profits – that is, where income has been attributed from a CFC and subsequently either:

- a dividend, representing the attributed income, is paid to a shareholder and would be taxable to the recipient; or
- the attributed income has not been distributed to the controlling taxpayer, but the taxpayer sells its interest in the CFC, with the price received presumably reflecting the attributed retained profits.

Both rules exist in current law, accompanied by difficult mechanical provisions. There is a discussion in the July Paper about whether the method by which the second result is accomplished should be changed, and it is clear that some principled legislative approach is envisaged, to remove the mechanical elements of the current law.

## **4. Changes to the foreign dividend exemption**

The last topic in the July Paper deals with the exemption from Australian tax of non-portfolio dividends paid to resident companies by foreign companies. While this issue is not necessarily an issue involving the attribution of income from CFCs, reform of the current rule has been absorbed into the CFC debate and the current drafting is being re-considered in that context.

# Greenwoods & Freehills

The May 2009 Paper had proposed modifying the existing exemption for dividends paid by a foreign company to an Australian resident company by making the exemption rely more heavily on the debt/equity tests in current tax law, and in particular,

- to remove the exemption for dividends paid on shares that are debt interests; but
- to attract the exemption to distributions (eg, interest) paid on a non-share equity interest.

Debt/equity concepts were also to be used in determining the 10% threshold that must be met before the exemption is available. The July Paper has retreated from this approach. It acknowledges,

a problem ... that, due to the potentially wide range of exotic instruments that may fit the 'equity interest' definition, it may be very difficult for Australian companies to discern whether they hold a participation interest of 10 per cent or more.

The new approach proposed in the Paper adopts a two-step analysis. As a first step, the law will retain a 'test ... based on a more traditional legal form of ownership [ie] whether the receiving company has a 10 per cent or greater interest in either the paid-up capital, voting rights, returns of profit or capital, or returns upon winding up.'

Once this test has been satisfied, the exemption will then apply to returns on all equity interests held by the taxpayers. This new approach will mean that non-share equity holders will not qualify for the exemption on their returns, unless they are attributable taxpayers of the foreign company, or unless they also hold the requisite 10% legal ownership.

# Greenwoods & Freehills

For further information, please contact

## **Sydney**

Jane Michie

61 2 9225 5915

<mailto:jane.michie@gf.com.au>

James Pettigrew

61 2 9225 5979

<mailto:james.pettigrew@gf.com.au>

Andy Hirst

61 2 9225 5924

<mailto:andy.hirst@gf.com.au>

## **Melbourne**

Richard Shaddick

61 3 9288 1412

<mailto:richard.shaddick@gf.com.au>

Tim Neilson

61 3 9288 1054

<mailto:tim.neilson@gf.com.au>

These notes are in summary form designed to alert clients to tax developments of general interest. They are not comprehensive, they are not offered as advice and should not be used to formulate business or other fiscal decisions.

Liability limited by a scheme approved under Professional Standards Legislation

Greenwoods document 510094238

**Greenwoods & Freehills Pty Limited** (ABN 60 003 146 852)

[www.gf.com.au](http://www.gf.com.au)

Sydney

Melbourne

Level 39 MLC Centre Martin Place Sydney NSW 2000 Australia

Ph +61 2 9225 5955, Fax +61 2 9221 6516

101 Collins Street, Melbourne VIC 3000, Australia

Ph +61 3 9288 1881 Fax +61 3 9288 1828