Hi Treasury

Further to the email below, the Australian Custodial Services Association (ACSA) would like to make some comments in relation to the Treasury Consultation Paper on ‘Stapled Structures’.  ACSA does not have specific feedback or responses to the questions raised in the Consultation Paper, apart from some comments on the possibility of a special REIT regime as set out in question 9.  ACSA believes it is up to the industry bodies representing stapled entities and for the stapled entities themselves to address these questions and provide Treasury with their thoughts on the tax issues raised.

It is evident from the Consultation Paper that there are various integrity concerns relating to the tax outcomes for current stapled structures.  ACSA supports a proper consultation process around these outcomes with informed input from interested parties.  ACSA’s main concern with stapled structure is around the processing of distributions, corporate actions and related transactions where the custodian is holding stapled investments for clients.  For clients of ACSA members, most staples relate to listed investments.  Overall, ACSA believes a set of tax rules should be developed which allow the stapled investment to be treated as a single security for tax purposes with flow through of relevant tax components (eg, dividends, interest, other income) to reflect the constituent parts of the staple.

In practice there are various issues:

1.      A common scenario is that units in multiple trusts are stapled together –

a.      processing the overall distribution is generally ok, provided each of the trusts have the same tax year.  The assessable distribution for each trust making up the staple should be recognised at the same point of time – effectively the income distribution can be recognised and processed as a single event using the entitlement basis of recognition.

b.      But for CGT purposes in recognising cost base adjustments and maintaining separate cost bases is complex and onerous.  The information required to be able to allocate distributions and cost base adjustments amongst the separate investments making up the staple is difficult to extract from information provided by the trustee.  From a CGT perspective it is queried whether rules could permit the stapled investment to be treated as a single security with a single cost base.

2.      Where the staple is made up of different investment types (such as units, shares and debt interests), processing of distributions, corporate actions, maintaining cost bases and other things such as interest receipts (or payments) and capital calls can be particularly difficult, for the following reasons:

a.      Different income recognition rules:

                                                    i.     Dividends on shares – recognised on a cash receipt basis;

                                                   ii.     Distributions on units – recognised on an entitlement basis (although note the special arrangements the ATO permits for certain ASX listed trusts that fall into the pattern of declaring the trust distribution with an ex-date after end of the trust tax year);

                                                  iii.     Interest – for most clients of custodians, the recognition would technically be under TOFA compounding accrual rules.

b.      Different rules for calculation of realised gains and losses and maintenance of tax costing – units are subject to cost base reduction for most non-assessable amounts received.  TOFA securities are subject to balancing adjustment calculations reflecting original cost of securities, amounts assessed over life of security and disposal proceeds allocated to the securities.  As the market views the staple as a single security/investment, the split of market value at any given time amongst the constituent securities of the staple is difficult to assess.

c.      Different withholding tax rules for:

                                                    i.     Dividends

                                                   ii.     Trust distributions/fund payments

                                                  iii.     interest

To summarise, ACSA members experience practical difficulties in complying with the technical tax law requirements relevant to stapled securities – to develop systems and process solutions to meet these technical requirements could be very expensive and time consuming for investment products viewed by the market as a single economic security.  We trust that these concerns will be taken into account in developing in reform proposals for stapled securities.

*Regards*

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