CHARTERED ACCOUNTANTS™
AUSTRALIA + NEW ZEALAND

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Mr Mark Bertone
Australian Taxation Office
GPO Box 9977
Melbourne VIC 3001

By email: Mark.Bertone@ato.gov.au

Dear Mark

Draft Law Companion Ruling LCR 2018/D7

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback on the draft Law Companion Ruling 2018/D7 – Base rate entities and base rate entity passive income (LCR 2018/D7).

At the outset we commend the Australian Taxation Office (ATO) for issuing LCR 2018/D7 contemporaneously with the passage of the legislation and we encourage the ATO to continue this type of approach in the future with other important tax developments.

Detailed in this submission are numerous recommendations suggesting additional guidance for inclusion in the LCR. We are cognisant of the counter-argument that any ATO guidance cannot possibly cover all taxpayer scenarios. The ATO might also feel some of our recommendations are better suited for consideration in other ATO advice products. However, given all the surrounding confusion with the accompanying legislation and the size of the taxpayer population impacted by these changes, we encourage the ATO to err on the side of 'more rather than less' guidance and to have that guidance centrally located either in, or around, the LCR.

If the ATO concludes it must prioritise any additional guidance, then in our view the key matters are:

- what is included and excluded from the definition of royalties and rent
- the tax treatment of non-portfolio dividends flowing through trusts and partnerships
- some commentary on the aggregated turnover test impacts.

We also reiterate our earlier telephone comments that we would be willing to discuss any Compendium of Comments arising out of the draft LCR consultation process, with a view to facilitating consensus on what the final LCR should cover.

If you wish to discuss our comments please contact at first instance Karen Liew on 02 8078 5483 or me on 02 9290 5609.

Yours sincerely

Michael Croker
Tax Leader Australia
Chartered Accountants Australia and New Zealand

Comments on LCR 2018/D7

1. The LCR would benefit from covering both of the requirements of the base rate entity definition

At paragraph 6 of the LCR it is noted that the ability to be taxed at the lower corporate tax rate is dependent on both a Base Rate Entity Passive Income (BREPI) test as per paragraph 23AA(a) of the *Income Tax Rates Act 1986* (ITRA 1986) being satisfied, as well as an aggregated turnover test as per paragraph 23AA(b) of the ITRA 1986.

Apart from observing in paragraph 6 that aggregated turnover is defined by reference to ordinary income, there is no other substantive commentary on the aggregated turnover test - not even in Appendix 1 which attempts to assist the reader in pointing them to relevant ATO guidance on words or phrases used in the new law.

We acknowledge that the BREPI test is indeed the new tax development under this law and accordingly it is appropriate to focus on its meaning. Equally, however, the pre-existing aggregated turnover test has at least as many nuances/complexities and for the first time the aggregated turnover test will need to be considered by a new group of taxpayers with up to $50 million turnover. For example:

- Unlike the BREPI test, the aggregated turnover test has greater linkages with the carrying on a business requirement as per TR 2017/D7 *Income tax: when does a company carry on a business within the meaning of section 23AA of the* Income Tax Rates Act 1986*?*. The conclusions in that final ruling will be relevant for the 'annual turnover general rule' (see subsection 328-120(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)). In the past, ATO private rulings appear to have taken different positions on whether certain passive income was, or was not, ordinary income derived in the ordinary course of a business.

  Moreover, the conclusions in that final ruling will be relevant for the 'business carried on for part of an income year only' requirement (see subsection 328-120(5) of the ITAA 1997). In particular, TR 2017/D7 at paragraphs 25 and 26, might now suggest that a company could indeed be carrying on a business for a far greater period of an income year than just the period during which income was derived. Thus the part year turnover adjustment might be a much smaller adjustment than previously thought. Possibly the ATO should be taking this opportunity to avoid any misconceptions that could arise from taxpayers/tax advisors searching the Edited Private Advice in the ATO Legal database (EPA) by providing new guidance on the part year business requirement.

- In addition, at paragraph 7 of the LCR the ATO has appropriately highlighted the lack of any Commissioner's discretion that exists if either test is not satisfied. For the sake of completeness, it may be worthwhile for the LCR to further highlight the ATO's view on the operation of subsection 328-120(5) of the ITAA 1997. That is, let us assume the relevant company has either satisfied or not satisfied the BREPI test based on its actual assessable income earned in the year (albeit it only carried on a business for part of the year). If the company is now required to work out a reasonable estimate of annual turnover for the full year, does the ATO believe that any 'reasonable estimate' of the passive or active income components of this annualised calculation will have no bearing on whether the BREPI test is, or is not, satisfied?

- It may also be prudent to mention in the LCR the interactions between granting a substituted accounting period (SAP) and its interactions with the aggregated turnover test.
  - Firstly, there is the issue that in the change-over year (or the change-back year) the SAP might not even be a year of income (see PSLA 2007/21 *Substituted Accounting Periods (SAPs)* paragraph 4E). Accordingly, query what this means for interpreting subsections 328-120(1) and (5) of the ITAA 1997?
  - Secondly, the transitional income tax return in the change-over year could be for less than, or greater than, 12 months, so query what impact this has on determining annual turnover for that tax year assuming a business is always being carried (and what happens for the BREPI test).

  Given that SAP requests are not an uncommon feature of our tax system, the LCR might benefit from commenting on its ramifications in the context of qualifying for the lower tax rate.

- The distinction between ordinary income vs statutory income is important. Past ATO private rulings appear to proffer different views on this topic and additional ATO public guidance on this issue would be prudent to avoid misconceptions from any search of the EPA. For example, is a dividend that is taxable under subsection 44(1) of the ITAA 1936 statutory provision still considered ordinary income whereas other deemed dividends may not be (e.g. share buy backs)? What about Taxation of Financial Arrangement (TOFA) gains under Division 230 of the ITAA 1997? Are these TOFA assessable amounts statutory income and excluded from an annual turnover calculation and yet the interest income forming part of the TOFA gain is included as ordinary income for the purposes of the annual turnover rule, even though that interest income is not assessable income per se if TOFA applies?

- Unlike the BREPI test, the aggregate turnover test does not require the income to be assessable. The ATO could usefully highlight the ramifications of the aggregate turnover test for permanent establishments of foreign companies (with ordinary, but non-assessable income being generated in other parts of the world), as well as the consequences of this test for small Australian companies that are part of a larger group with overseas operations. Such ATO guidance does exist elsewhere but ideally the LCR should be cross-referencing to as much related guidance as possible so it can be a ‘one stop shop’ for taxpayers/tax advisors seeking ATO views on this new law.

- Aggregating the turnover of a ‘connected entity’ or an ‘affiliate’ has its own definitional challenges. Again, the ATO could usefully point to where guidance can be obtained on working out who is a connected entity or an affiliate. Indeed, our current assessment of the existing ATO guidance in this area is that the guidance could probably be expanded to clarify some of nuances of these definitions beyond connections/affiliations with individuals. Even pointing out the implications of these definitions for stub period tax returns for a subsidiary member of a tax consolidated group in the year of joining or in the year of leaving would be worthwhile.

CA ANZ recommends that:

- The ATO expands the LCR Appendix 1 commentary to explain where a reader may find more ATO guidance on the aggregated turnover test, when considering the lower company tax rate requirements
- In the body of the LCR itself, the LCR should provide a few key messages arising from the above ATO aggregated turnover test guidance and in particular its interface with the conclusions reached in TR 2017/D7, to avoid any misconceptions by taxpayers and advisors who seek further guidance on the aggregated turnover test via a search of the EPA
- The ATO determines whether existing ATO guidance on the aggregated turnover test should be updated to cover issues arising out of the consultation process for this LCR and TR 2017/D7, and if so
- The final LCR may need to flag that ATO guidance on the aggregated turnover test will be updated via a separate consultation process, highlight possible focus areas of any updated guidance and in the interim, possible ATO contact points for taxpayer and advisor queries.

2. The royalty commentary should be revisited along with guidance given in Appendix 1

In the LCR at paragraph 8, it is noted in Table 1-Types of base rate entity passive income that ‘royalties’ is a form of BREPI. Footnote 12 then suggests that section 4 of the *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Act 2018* (the Act) incorporates the definition of royalties from the ITAA 1936 Act into the ITRA 1986.

Thus the conclusion is reached in the LCR that the definition of ‘royalties’ in subsection 6(1) of the ITAA 1936 is applicable in working out what is covered by the meaning of ‘royalties’ in the BREPI definition. Later on at paragraphs 12 and 13 as well as footnotes 23 and 24, similar statements are made with the commentary that the definition of royalties in subsection 6(1) of the ITAA 1936 Act extends the ordinary meaning of royalties (e.g. the expanded definition includes rights to use industrial, commercial and scientific equipment).

CA ANZ’s concerns with LCR analysis are as follows:

- There is no section 4 of the Act so there appears to be a cross-referencing error. Following discussions with the ATO, we understand the cross-referencing should be to section 4 of the ITRA 1986, where it is noted that the ITAA 1936 is incorporated, and shall be read as one, with this Act. Thus the ATO believes the definition of royalties in ITAA 1936 is applicable.
- However, we submit that the surrounding wording of section 23AB of the ITRA 1986 suggests that a contrary intention is evident. That is, the meaning of ‘royalties’ is more likely to take on its ordinary meaning. In subsection 23AB(1) paragraphs (a),(b),(c),(e) and (f), the legislation goes out of its way to cross-reference the meaning of various words to either the

ITAA 1936 or 1997 definitions, but chooses not to do so when it uses the word 'royalties'. Accordingly, we think the better view is that 'royalties' takes on its ordinary meaning.

- Irrespective of which royalty definition the ATO finally decides upon, our member feedback is that the final ATO guidance should provide greater clarity on what type of income streams are included in the definition of royalties. The essence of this member feedback is that a number of very active businesses (e.g. software companies) may well breach the BREPI test due to the absence of an explicit legislative carve-out for royalties derived in carrying on an active business. The ATO should be publicly expressing its views in this area via examples. In this regard, TR 2014/1 *Income tax: commercial software licencing and hosted agreements: derivation of income from agreements for the right to use proprietary software and the provision of related services* already includes examples of different income streams arising from the use of software and hosted agreements as well as the provision of related services. The examples could usefully be leveraged to explain what is, and is not, BREPI royalty income.

CA ANZ recommends that:

- The royalty definition analysis in the LCR should be revisited
- Consequential amendments should be made to Appendix 1
- Irrespective of whether the ATO changes its view in line with our recommendation, or maintains its current view on the meaning of royalties, we believe it would be beneficial for a reader if the LCR could explicitly highlight in Appendix 1 some of the practical examples (embedded in the rulings already quoted as well as TR 2014/1) of what are, or are not, royalties.

3. The implications in Example 1.3 on the treatment of a non-portfolio dividend received by a company but via a trust or partnership needs to be expanded

The definition of a non-portfolio dividend means, inter alia, a dividend paid to a company where that company has a relevant voting interest amounting at least 10% of the voting power in the dividend paying company. Certain dividends are specifically excluded.

CA ANZ notes the following points:

- There is relevant historical ATO guidance associated with the limitations of the 'non-portfolio dividend' definition. When dividends are paid on shares in a company, but held via a partnership or trust, there has always been an interpretative issue as to whether such dividends cannot be considered 'non-portfolio dividends' to the corporate beneficiaries or partners.

  This issue has now resurfaced in paragraph 23AB(1)(g) of the ITRA 1986. For example, if such dividends have not been paid directly to a company, but rather to a trust or partnership, does this mean it cannot satisfy the non-portfolio dividend definition? Alternatively, if a dividend is in fact paid to a corporate trustee beneficiary or corporate partner, does this also fail to satisfy the 10% beneficial owner voting interest test requirement?

In this regard, we note the ATO's earlier guidance in TD 2008/24 *Income tax: can section 23AJ of the Income Tax Assessment Act 1936 apply to a dividend when it is paid by a company (not being a Part X Australian resident) to an Australian resident company which receives it in its capacity as a partner in a partnership?* and TD 2008/25 *Income tax: can section 23AJ of the Income Tax Assessment Act 1936 apply to a dividend paid by a company (not being a Part X Australian resident) to the trustee of a trust, even where the trustee then pays an amount attributable to the dividend to an Australian resident company beneficiary?*. These Tax Determinations dealt with the words of the old section 23AJ of the ITAA 1936 that, inter alia, depended on the definition of non-portfolio dividend for its operation (albeit with some additional qualifications). This guidance concluded that often one or both of the requirements of the non-portfolio dividend definition would fail. We also note the successors to section 23AJ of the ITAA 1936 (i.e. see sections 768-5, 768-10 and 768-15 of the ITAA 1997) have adopted different legislative drafting that appears to overcome some of the interpretative issues raised in TD 2008/24 and TD 2008/25.

- There is, however, an additional issue to consider here, namely, applying the definition within the context of these new legislative provisions. That is, some of the views expressed in TD 2008/24 and TD 2008/25 on the meaning of a non-portfolio dividend under the old section 23AJ of the ITAA 1936 looked at the purpose of the provision in replacing the earlier foreign tax credit system. Accordingly, a consideration for the LCR is whether the current legislative intent of paragraph 23AB(1)(g) of the ITRA 1986 is not to narrowly construe the scope of a non-portfolio dividend exclusion, as it might be argued the policy intent of the legislation is the achievement of broadly the same passive or active income outcomes, irrespective of whether the relevant income is derived directly or indirectly. Indeed, the commentary in the Explanatory Memorandum (EM) at 1.16 strongly implies that a non-portfolio dividend derived by a trust is not BREPI.

- However, embedded within the commentary of Example 1.3 is the conclusion that a franked dividend received by a corporate beneficiary via a trust cannot satisfy the definition of a non-portfolio dividend. Thus, it appears the ATO has formed an opinion on the scope of this definition within the context of this legislation that has significant implications for this taxpayer segment.

- Given many small corporates will previously never have dealt with the treatment of foreign dividends (and thus the non-portfolio dividend definition), the LCR should be prominently highlighting the ATO's views of this definition in the context of this legislation, particularly in light of the conflicting commentary in the EM. In addition, Appendix 1 should be highlighting where additional guidance can be sought on the definition, including the 10% voting test, when shares are held via trusts and partnerships.

  Some of the more unique features of this taxpayer segment are:
  - the fact that shareholdings held via discretionary trusts are likely to be more commonplace in this taxpayer segment
  - the fact that some shareholdings may be held directly and other shareholdings indirectly in the same entity
  - the wide variety of 'special class' shares still in existence in small family corporate groups might mean even direct holdings fail the voting test, and

- the ATO could usefully comment on whether different conclusions might be reached where, for example, the shares are held by nominees, bare trusts or in situations where there is an absolute entitlement to the underlying shares.

CA ANZ recommends that:

- The LCR should provide additional commentary on the non-portfolio dividend definition and what it means for distributions received via trusts and partnerships.
- The LCR should highlight other issues to consider with this definition, including satisfying the 10% voting test.

4. Clarity on the BREPI treatment of franking credits associated with distributions, non-portfolio dividends and non-share dividends

Paragraph 23AB(1)(b) of the ITRA 1986 notes that franking credits are BREPI but this inclusion is limited to franking credits "on such a distribution". Accordingly, it appears BREPI franking credits are limited to those distributions mentioned in the preceding provision of paragraph 23AB(1)(a) of the ITRA 1986, but logically not franking credits on a non-portfolio dividend, given that a non-portfolio dividend is carved-out of that subsection. This basic conclusion is probably noteworthy in the LCR. However, the commentary could usefully go on to explain what are the BREPI amounts when paragraph 23AB(1)(a) of the ITRA 1986 franked distributions and franked dividends from substantial shareholdings that fail the 'non-portfolio dividend' definition (see commentary in 3 above), are included in the assessable income of a trust beneficiary or partner in a partnership.

Paragraph 23AB(1)(c) of the ITRA 1986 then includes a non-share dividend as BREPI but the legislation is silent on whether any associated franking credits on such dividends are also BREPI. Presumably the tax policy might have been for such franking credits to also be BREPI but it appears paragraph 23AB(1)(b) of the ITRA 1986 does not cover this situation. ATO views on this point are noteworthy in the LCR along with some commentary on what are the BREPI amounts when paragraph 23AB(1)(c) of the ITRA 1986 non-share dividends are included in the assessable income of a trust beneficiary or partner in a partnership and those amounts are fully or partially franked.

CA ANZ recommends that

- the LCR should specifically comment on when the franking credits associated with various dividends and distributions are, or are not, BREPI.

5. Guidance on what is interest or in the nature of interest could include some common examples

The LCR commentary on what is ‘interest or payments in the nature of interest’ (see Table 1, paragraphs 9-11 and Appendix 1) would benefit from further analysis and the inclusion of a few more examples or what is, or is not, covered by this phrase.

By way of illustration:

- Is the discount earnt on bank bills and promissory notes held from issuance to their maturity a payment in the nature of interest? Does this conclusion change if the bills or notes are either acquired on market after issuance, or sold on market before maturity?

- Is the premium earnt on interest bearing traditional securities acquired at a discount to their face value and received on maturity or sale not a payment in the nature of interest? Is it also the case that any gain on sale of such securities that includes a component of accrued interest still not an amount in the nature of interest?

- What is the position with respect to returns from Cash Management Trusts (CMTs)? Does this fall outside a payment in the nature of interest but then falls within the scope of paragraph 23AB(1)(g) of the ITRA 1986? As a matter of practical compliance, is it acceptable for taxpayers to simply assume that all the assessable income of a beneficiary of a CMT is BREPI under paragraph 23AB(1)(g) of the ITRA 1986 if they wish to avoid any ‘trace through’ compliance costs?

- Given that in this taxpayer segment there is likely to be a wide variety of ‘special class’ shares, including redeemable preference shares, as well as various shareholders loans, it would be useful for the LCR to highlight the carve-out from interest income (i.e. to the extent that it is a return on an equity interest in a company). It would also be useful to give a few examples explaining the operation of the interest income definition and the carve-out as well as any possible interactions with the corporate distribution definition in paragraph 23AB (1)(a) of the ITRA 1986.

It may even be prudent to add some additional observations on the interest income exclusion for registered entities under the *Financial Sector (Collection of Data) Act 2001*, given that it appears possible some larger private companies might technically satisfy the registered entity definition.

CA ANZ recommends that

- The LCR should include a few common examples that highlight what is, and is not, interest or in the nature of interest

6. Guidance on what is, and what is not, rent could include further commentary on examples in TD 2006/78, the relevance of TR 2002/14DAC3 and the inclusion of additional practical guidance

The LCR commentary on what is rent concludes that it takes on its ordinary meaning and it is limited to consideration payable by a tenant to a landlord for the exclusive possession and use of land or premises. The reader of the LCR is then referred to examples set out in TD 2006/78 Income tax: capital gains: are there any circumstances in which the premises used in a business of providing accommodation for reward may satisfy the active asset test in section 152-35 of the Income Tax Assessment Act 1997 notwithstanding the exclusion in paragraph 152-40(4)(e) of the Income Tax Assessment Act 1997 for assets whose main use is to derive rent? which discusses the small business active income test in section 152-35 of the ITAA 1997 and the exception in paragraph 152-40(4)(e) of the ITAA 1997 for assets mainly used to derive rent. In Appendix 1 of the LCR the reader is also directed towards other guidance material in TR 2002/14DAC3 dealing with the taxation of retirement village operators.

CA ANZ notes the following:

- The rent exception provision in paragraph 152-40(4)(e) of the ITAA 1997 has:
    - a requirement that the assets are mainly used to derive rent (e.g. TD 2006/78 has a 'mixed use' example where it is concluded that the exclusion is not satisfied so the asset is an active asset). We recommend the LCR should comment on whether the conclusions in the mixed use example in TD 2006/78 can be applied in paragraph 23AB(1)(d) of the ITRA 1986 given the absence of any explicit 'main use' requirement when discussing rent in this paragraph.
    - even if an asset is mainly used to derive rent, there is a further exclusion in paragraph 152-40(4)(e) of the ITAA 1997 for any temporary use that is noted in TD 2006/78. We recommend the LCR should comment on the absence of any explicit 'temporary use' requirement in paragraph 23AB(1)(d) of the ITRA 1986.
    - Furthermore, TD 2006/78 notes that in many cases the letting of holiday apartments may not amount to the carrying on of a business for the purposes of paragraph 152-40(4)(e) of the ITAA 1997. Thus, TD 2006/78 observes it will often be unimportant as to whether the aforementioned letting constitutes a lease vs a license to occupy for the purposes of the small business active income test. We recommend the LCR should also comment that this is not the case when considering the BREPI test and the meaning of what is rent. Thus the distinction between a licence and a lease is important in paragraph 23AB(1)(d) of the ITRA 1986.

- Other examples in TD 2006/78 distinguish between:
    - the situation of granting exclusive possession of a commercial property where it is concluded this is rental income (notwithstanding active management of the lease) as against
    - other examples covering the rights to use commercial storage premises (that also embraces security services, use of office facilities; the provision of other equipment and consumables for sale and cleaning services); motel and boarding type activity; as well as holiday apartment lettings; where often the ATO view being reached is these are licenses to use, occupy or enter that do not give rise to the receipt of rent.

CA ANZ member feedback suggests that the types of property income included or excluded from the definition of rent are likely to be a recurring interpretative issue in practice. By way of further examples, questions have been raised as to whether the income from service apartments and barristers chambers, as well as agistment fees for livestock grazing on land are, or are not rent? We also surmise that whilst financial accounts and some income tax return boxes might use the terminology of 'rent' to describe certain property income, these descriptions and not going to be determinative of whether such disclosed amounts are rent for the purposes of the BREPI test.

- The additional reference to TR 2002/14DAC3 in Appendix 1 is somewhat confusing because:
    - This ruling has now been superseded in March 2018
    - The ruling is long and therefore it would be helpful to highlight to the reader what paragraphs are relevant and what principles are the ATO trying to draw out.

- CA ANZ member feedback also suggests that the correct classification of reimbursed outgoings received by a landlord should be clarified (e.g. a commercial property lease that includes both a rent component plus the requirement for the tenant to reimburse the landlord for certain outgoings). Unlike section 102MB of the ITAA 1936 such outgoings might not be automatically treated as rent.

  In summary, we recommend the final ATO guidance in the LCR should look to provide greater clarity on what is or is not rent, rather than merely cross-referencing to particular ATO guidance.

CA ANZ recommends that:

- It would be beneficial for a reader if the LCR could expand on the current commentary on what is the meaning of rent, including drawing on the examples in TD 2006/78 and commenting on where those examples are relevant or need to be distinguished

- The reference to TR 2002/14DAC3 should be updated and its relevance explained

- Additional practical guidance is included on what is, or is not, included in rental amounts.

7. The LCR would benefit from commenting on a number of compliance issues in tracing income through trusts and partnerships

CA ANZ notes the following:-

- We refer to our earlier comments about the meaning and quantification of aggregated turnover (see commentary in 1 above); the proper characterisation of dividends received via a trust or partnership for the purposes of the BREPI test (see commentary in 3 above); and the BREPI treatment of franking credits (see commentary in 4 above). Further to these comments, we would also recommend that the LCR includes an example of franked dividends that flows through a trust, where the trust has some other income and a few expenses and distributes as trust income an amount equal to trust taxable income ignoring franking credits. This trust income is then received either wholly or partially by a corporate beneficiary (which also has some other income and expenses).

The purpose of such an example is to highlight:

- what amounts are included in the annual turnover of the corporate beneficiary, being ordinary income derived by the corporate
- what amounts are included in the annual turnover of the trust (assuming it is a connected entity of the corporate beneficiary), being ordinary income derived by the trust
- what amount is excluded from the corporate beneficiary's aggregated turnover because it is an amount derived from dealings with the trust, and thus
- what is the calculation of aggregated turnover for the corporate, followed by another calculation explaining
- what amounts are included/ excluded as BREPI assessable income of the corporate (highlighting the impacts of franked dividends flowing through the trust), what is its total assessable income and whether the 80% threshold has been breached.

In our opinion there is considerable merit in the LCR having a holistic example that explains each compliance step required to be undertaken in order to qualify for the lower corporate tax rate and that seeks to draw out a number interpretative conclusions from those calculations.

- None of the current LCR examples of expense apportionment in the trust highlight what are the compliance steps to adopt when there is a current year loss generated from either a BREPI or non-BREPI income stream but there is still taxable income in the trust due to other profitable income streams. In addition, the current LCR examples do not explain the compliance steps to adopt when there are carry forward tax losses being recouped and how they may be allocated across BREPI and non- BREPI income.

- The current LCR examples on the treatment of BREPI and non-BREPI income that flows through a trust and the apportionment of expenses within a trust assume the beneficiaries have perfect knowledge about the underlying income flows and expense allocations of the trust. We recommend that the LCR discusses what might be some of the acceptable compliance short cuts from distributions received from widely held trusts and other situations where there is not the ability for one or more beneficiaries to dictate the information requirements of the trust.

CA ANZ recommends that:

- the LCR should expand its commentary to include a number of the compliance issues in tracing income through trusts and partnerships.

8. The LCR commentary on the imputation consequences of the lower corporate tax rate should be expanded

CA ANZ notes the following:-

- Member feedback has requested that the LCR include an example of what franking rate is to be applied when a company had nil total assessable income, nil BREPI assessable income and aggregated turnover below the requisite current year threshold in the prior year. It appears the corporate tax rate for imputation purposes is 27.5%, notwithstanding the relevant company has none of the hallmarks of being active in the prior year.

- The LCR could usefully comment on situations envisaged in various parts of the Tax Act where a new company (which may or may not have existed in the previous year, but in any event most likely had nil or minimal aggregated turnover in the prior year and nil assessable income in the prior year) is interposed into a corporate structure and what are the consequential imputation impacts in its first year of operation. In particular, if this new company were to become the new head company of a tax consolidated group do any of the core principles of tax consolidation such as entry history rules have any relevance in the determination of the imputation impacts in its first year of operation?

CA ANZ recommends that:

- the LCR should expand its commentary on the imputation consequences of the lower corporate tax rate.