INTERNATIONAL TAXATION ARRANGEMENTS

This is a joint submission made by the following Australian public companies

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Lend Lease Corporation Limited
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INTERNATIONAL TAXATION ARRANGEMENTS

BACKGROUND

This paper contains a joint submission by Australia's major listed outbound investing companies to the current Review of International Taxation Arrangements.

We welcome the Federal Government's initiative in commencing a review of Australia's international taxation arrangements and especially welcome the involvement of the Board of Taxation in a public consultation process. We wish to make two principal submissions in relation to the treatment of outbound international investment:

1. The existing bias ie; double taxation, in the Australian tax system against earning foreign income should be removed. This can achieved by allowing companies to pass the benefit of their foreign tax payments on to their resident shareholders in a similar manner to the operation of the dividend imputation system in relation to Australian tax payments; and

2. The accruals regime for taxation of foreign earnings should be limited to its original policy scope of taxing "passive" income in unlisted jurisdictions. This can achieved by a number of immediate but relatively simple changes to the controlled foreign company ("CFC") rules.

If outbound international investment is treated in this manner, as part of Australia's international tax regime, significant impediments would be removed. Thus it is expected that significant growth in outbound foreign investment would occur, resulting in substantial benefits to Australia's economy, such as:

- Increased economic growth and stability from returns on a diverse range of foreign investment. That is, scarce resources would be allocated across a broader geographic area with decisions based on economic returns, without bias created by tax;

- Greater integration of the Australian economy into the regional and global economy. This would stimulate increased levels of trade and enhance Australia's position as a leading economic nation in Asia Pacific; and

- Greater exposure to economies of scale, world's best practice and technology, leading to increased opportunities for Australian employees within global organisations.

It is important to encourage foreign investment by Australian corporates as increasingly, many domestic markets are becoming saturated or dominated by a handful of players, with fewer opportunities for expansion in these markets due to strict competition regulation. As a result, domestic growth opportunities are becoming limited in the areas of core competency for large companies, forcing these companies to look offshore to find satisfactory new investment opportunities. Given this trend, it is imperative that Australia's taxation system should be flexible enough to ensure that this expansion is not hindered.

Further, expansion offshore by Australian companies provides employment opportunities for the Australian workforce.

If the taxation system imposes tax at each of the foreign subsidiary, Australian public company and Australian shareholder level without regard for tax imposed at the other levels, then the result will be multiple tiers of tax. Put another way high effective tax rates apply to foreign income, materially impacting shareholder returns. This makes the tax system inequitable by imposing a heavier tax burden on some forms of investment (eg. outbound investment into foreign countries). For example;

	Foreign	Domestic
Profits	$100	$100
Foreign Tax (30%)	$30	Nil
Foreign Withholding Tax (15% of dividend)[1]	$10.50	Nil
Australian Company Tax	0	$30
Australian Shareholder Tax (48.5%)	$29	$18.50
Total Tax	$69.50	$48.50
After tax return	$30.50	$51.50
Effective tax rate	69.50%	48.50%

In terms of articulating the type of taxation system Australia should endeavour to have, we refer you to *The Review of Business Taxation* in which it was concluded that the design of business tax arrangements should aim to achieve three national objectives:

1. ***Optimising economic growth***. This involves the imposition of the smallest possible impediment to economic growth, including jobs growth, thereby reducing the resource allocation and risk-taking distortions necessarily associated with revenue raising from business taxation.

2. ***Ensuring equity***. This involves the application of equitable tax arrangements to all investments and other business activities.

3. ***Facilitating simplification***. This involves the optimum design of the business tax system – from policy to legislation to administration – to ensure maximum simplicity, certainty, stability and voluntary compliance as well as lowest system operating costs.

We have developed our submission by reference to the same three objectives.

Furthermore, we believe that the development of appropriate tax policy requires a framework that will enable Australian companies to compete and expand offshore. The tax policy must also be dynamic and proactive in order for Australian companies to remain competitive.

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[1] Withholding tax is not applicable to dividends from the UK or the US (provided the new protocol is signed)

MULTIPLE TAXATION OF FOREIGN PROFITS

The Australian tax system is reasonably effective at granting relief from tax in the following circumstances:

- A public company will normally be entitled to a credit for foreign tax paid on the profits of a foreign subsidiary (or an exemption which has a similar effect); and
- The shareholders will normally be entitled to an imputation credit for Australian tax paid on the profits of the public company.

The Australian tax system is almost completely ineffective at granting relief on previously taxed foreign profits distributed to shareholders. There is a very limited foreign dividend account system that is only of benefit to foreign shareholders in an Australian company and effective ordering rules which require a company paying dividends to distribute franking credits ahead of foreign dividend account credits. Resident shareholders in such a company cannot claim any credit for foreign tax paid on the profits of its foreign subsidiaries.

We submit that this double taxation bias in our current international taxation framework is conceptually flawed. Franking credits are valued by shareholders and implicit in the share price of an Australian public company – refer further comments below. Therefore, the existence of this bias against earning foreign income can have a negative impact upon the value of a company and hence increase its cost of capital making it more difficult to be competitive in domestic and foreign capital markets.

1. Conceptual flaws

Investors calculate the after-tax return from shares in the company and discount it to take account of the time value of money (including a premium for equity risk).

If the discounted after-tax return is greater than the trading price then the investor will be inclined to buy. If the discounted after-tax return is less than the trading price then investors holding those shares will be inclined to sell. The trading price therefore trends towards the market's expectation of the discounted after-tax return (from both profits and growth) on the shares.

The "marginal investor" is the investor who is prepared to pay the highest price for a share in a company and therefore sets its market price. The Australian Competition and Consumer Commission believes that the marginal investor is an Australian resident:[2]

> "… continued use of a version of the CAPM assumes the national equity markets are segmented rather than integrated. It

[2] Refer to page 23 of Australian Competition and Consumer Commission, *Draft Decision – Victorian Transmission Network Revenue Caps 2003-2008* (24 September 2002).

> follows that foreign investors must be completely disregarded and hence the model would recognise that investors would be able to fully utilise imputation credits."

Given the above, one would therefore expect the value of a share in a company that pays franked dividends to be higher than the value of a share in a company that pays unfranked dividends (all other things being equal).

Australian companies will find it increasingly difficult to pay franked dividends as the level of foreign income as a proportion of total income increases. The cost of equity capital for such a company will therefore increase as they expand offshore.

This is a conceptual flaw because it biases the tax system against companies that earn a significant proportion of their profits from foreign countries.

2. Commentators / Regulators

Commentators / regulators have all confirmed that they believe imputation credits have value and should be taken into account when calculating the value of a share in a company:

- **Academic commentators**. A number of academic studies have concluded that imputation credits have a value equal to at least 60% of the tax credit:[3]

  > "Our result, that distributed credits are valued at about 60% of their face value reflects a market of investors, some of whom place no value on the credits and some of whom place a high value on the credits."

  Many of these studies are based on empirical evidence (such as movements in the trading price when shares in a company go "ex-dividend").

- **Market analysts**. Analysts routinely value imputation credits at approximately 60% of the tax credit for the purposes of calculating the value of shares:[4]

  > "… after allowing for the potential impact of Ralph we remain comfortable with our 60% valuation assumption given that an introduction of a refund system should only increase the value of imputation credits going forward."

  We note that the valuation of property trusts normally results in a higher yield (ie. cost of capital from the perspective of the trust) because of the lack of imputation credits.

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[3] See page 6 of N.J. Hathaway & R.R. Officer, *The Value of Imputation Tax Credits*. See also M. Lally, *The Cost of Capital under Dividend Imputation* (June 2002) which argues that the value is actually closer to 100% of the tax credit. We attach copies of these two papers as appendices to our submission.

[4] See page 9 of J.B. Were & Son, *Quant Note* (December 1999). We attach a copy of this paper as an appendix to our submission.

- **Regulators**. The regulators of utility companies are required to set prices in the regulated markets so that the companies earn a specified rate of return on their capital. In recent years, regulators have required utility companies to value their imputation credits at approximately 50% of the tax credit for the purposes of calculating the rate of return:[5]

> The Commission has examined market evidence and accepted the advice of financial experts in determining a market risk premium of 6 per cent and a dividend imputation figure (gamma) of 0.5, although recent evidence suggests that a gamma closer to 1 may be more appropriate.

It is therefore clear that commentators and regulators take imputation credits into account for the purposes of calculating the value of a share. If imputation credits are only generated by Australian tax payments then the effect will be to increase the cost of capital for companies that earn a significant proportion of their profits from foreign countries.

3. Reaction from public companies

Public companies react to these conceptual and practical considerations in a rational manner. There is ample anecdotal evidence of the following behaviour:

- Many of Australia's public companies face very limited opportunities for growth in their domestic markets for a variety of reasons. These include the limited size of Australian business and capital markets, competition constraints, an inflexible regulatory framework and political constraints. They therefore have no option but to enter foreign markets to obtain the necessary scale to compete in domestic and foreign markets with their global peers. This creates a systemic shortage of imputation credits as the proportion of foreign profits to domestic profits increases. The imputation credit shortage results in a lower distribution ratio or the payment of unfranked dividends (both of which increase the company's cost of capital).

- Since the introduction of imputation, many companies have implemented or at least endeavoured to implement dividend streaming within the framework of the tax system as it existed at the relevant time. Notwithstanding that the taxation laws effectively prevent streaming and other arrangements that would have enabled franking credits to be traded, the fact is that companies looked to undertake such arrangements in order to increase their franking capacity. We submit that this is a clear indication that public companies value franking credits.

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5 See page 71 of Australian Competition and Consumer Commission*, Draft Decision – Victorian Transmission Network Revenue Caps 2003-2008* (24 September 2002). See also Independent Pricing and Regulatory Tribunal of New South Wales, *Discussion Paper – Weighted Average Cost of Capital* (August 2002). We attach copies of these two papers as appendices to our submission.

- Many public companies manage their distribution policies within the constraints of available imputation credits. Some companies therefore find it necessary to advance tax payments or defer a dividend payment into the following tax year so that sufficient imputation credits will be available. In addition, companies seek to maximise Australian tax payments through repatriating profits back to Australia from overseas operations.

- Further, companies are forced to consider different ways of compensating their shareholders (other than by way of the payment of dividends) as part of their overall capital management strategies.

- It is submitted that, in relation to the last 2 bullet points, changing circumstances will make it difficult for Australian companies to pursue other alternatives. These avenues presented Australian companies with the ability to partially compensate for the imputation bias.

We therefore submit that there is strong evidence to support our view that Australia's current international taxation arrangements will increase the cost of capital for public companies as their proportion of their profits from foreign countries increases.

4. Proposal

In light of this evidence, we propose the following changes to the taxation of foreign income:[6]

1. The foreign dividend account system will be converted into a tax-paid system (as was recently done with the imputation system).

2. An Australian company will be entitled to a credit in its foreign dividend account when it receives a non-portfolio dividend from a foreign company. The credit will correspond to the amount of foreign tax on the dividend and the profits from which it was paid. However, the credit will be limited to the Australian tax that would have been imposed on those profits in a domestic context (ie. $^{3}/_{7}$ of the dividend). In the case of a dividend received from a company in a broad-exemption listed country, the credit will be granted automatically at the maximum rate, (reflecting the assumption that the underlying profits have already been comparably taxed).

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6 This change partly addresses Option 3.11 in *Review of International Taxation Arrangements*. Although we have confined our submission specifically to the treatment of dividends from foreign companies and foreign branch income, we should not be taken to have rejected the application of a more broadly-based foreign income account to other kinds of foreign income. We merely note that in relation to other kinds of income it will be even more important to limit the shareholder's credit to the actual amount of foreign tax paid.

In terms of simplifying the administration of the credit, we suggest that an option could be limited to:-

i. in the case of a BELC – $^{3}/_{7}$ of the dividend.

ii. in the case of a LELC – the actual foreign tax paid but not exceeding to $^{3}/_{7}$ of the dividend. An alternative to calculating the actual foreign tax paid could be to have a safe harbour notional value of tax paid being 65% of $^{3}/_{7}$ or $^{2}/_{7}$ of the dividend.

iii. in the case of an unlisted country – the actual foreign tax paid (but, in any case, not exceeding $^{3}/_{7}$ of the dividend).

3. An Australian company will be entitled to frank a dividend from its franking account and/or foreign dividend account (at its option).

4. A non-resident shareholder that receives a dividend that is franked from the franking account or foreign dividend account will be exempt from withholding tax (as at present).

5. A resident shareholder who receives a dividend that is franked from the franking account will gross-up the dividend for the credit, calculate tax at their marginal rate and then offset the credit against their tax liability (as at present). If the credit exceeds the Australian tax on the dividend then the excess can be offset against tax on other income or refunded (also as at present).

6. A resident shareholder who receives a dividend that is franked from the foreign dividend account will gross-up the dividend for the credit, calculate tax at their marginal rate and then offset the credit against their tax liability. However, unlike dividends franked from the franking account, the foreign dividend account credit will be limited to the actual Australian tax on the dividend income and no refunds will be given for excess credits.[7]

Professor Lally suggests in his paper that imputation credits should be valued at 100% of the tax credit.[8] The inequitable treatment of foreign profits can therefore only be eliminated if companies are able to also value their foreign tax payments at 100% of the foreign tax credit. Consistent with Professor Lally's opinion, we have specified $^{3}/_{7}$ as the credit because this fraction produces parity between an imputation credit and a foreign dividend account credit.

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[7] We therefore support Option A for Recommendation 2.1 in the Treasury consultation paper entitled *Review of International Taxation Arrangements* (August 2002). However, for the reasons set out in this submission we consider that tax relief should be granted at a rate of $^{3}/_{7}$ of the dividend (rather than $^{1}/_{9}$ as suggested in the paper.

[8] See page 43 of M. Lally, *The Cost of Capital under Dividend Imputation* (June 2002). We attach a copy of this paper as an appendix to our submission.

In terms of the effect of the credit, we believe the answer can be extrapolated from the JB Were report[9] attached. There it states that from an All Ordinaries aggregate DCF valuation, the result is that 14% of the total market valuation is due to the present value of future imputation credits.

If our proposal is adopted then there will be three situations in which bias will remain:

- The foreign dividend account credit will be limited to the Australian company tax rate. Foreign tax payments will therefore not have full value if the effective foreign tax rate on the dividend income exceeds the Australian company tax rate.
- Foreign dividend account credits cannot be offset against Australian tax on other income. Foreign tax payments will therefore not have full value if the shareholder's Australian tax rate is less than the company tax rate.
- Foreign dividend account credits cannot be refunded if they exceed the Australian tax on the shareholder's income. Foreign tax payments will therefore not have full value if the shareholder's Australian tax rate is less than the company tax rate and they have no other income.

We have maintained a degree of bias in these situations to ensure that our proposal strikes an appropriate balance between the need to address the problem we have identified, and the need to protect the Australian revenue.

The result of this change will therefore be to encourage companies to repatriate foreign profits to Australia (to claim the foreign dividend account credit) and then use the dividend income to pay a higher franked dividend to their shareholders.

In many cases, the shareholders will have a marginal tax rate that is higher than the corporate tax rate at which imputation and foreign dividend account credits are granted. The repatriation and on-payment of the foreign profits will therefore actually increase the collections of Australian tax.

In terms of the cost to revenue we note that the Federal Government's forward revenue estimates already include the cost of allowing an imputation credit for up to 15% foreign tax in relation to foreign dividend income. Table 2 in Attachment O to the Treasurer's press release of 11 November 1999, indicates that this measure was expected to cost $340 million in 2002/03, $190 million in 2003/04 and $200 million in 2004/05.

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9 Refer Page 4 of J.B. Were & Son, *Quant Note* (December 1999)

Although the above proposals do not include foreign dividend streaming, dividend streaming (which we support) could operate in tandem with these proposals. If the above proposals are accepted, the cost associated with dividend streaming is greatly reduced but does provide additional flexibility in regard to enabling Australian corporate groups to distribute foreign income directly to foreign shareholders to enable them to qualify for benefits under the tax laws in their home countries eg; stapled stock arrangements. In addition to this, allowing staple stock arrangements relieves the pressure on Treasury to negotiate amendments to Australia's double tax treaties in respect of dividend withholding tax.

ACCRUALS TAXATION OF FOREIGN PROFITS

The accruals regime was originally introduced as an anti-avoidance measure to tax passive income (other than income from the conduct of an active business) that taxpayers (it was believed) were accumulating in tax havens.

However, the actual legislation went far beyond the original policy intent and covers income from the conduct of certain kinds of active business. It covers income that taxpayers are not accumulating. It also covers income from sources other than tax havens. The laws are complex, they are costly to comply with for marginal revenue collection, and they have design faults and many unintended drafting consequences which have (despite frequent representations by industry, the professions and companies) largely remained static with resultant interference in business activity and international competitiveness.

The policy and legislation was designed around a late 1980's capital importing Australia. With increasing globalisation the economic foundations for Australia and the world economy have changed and we need outbound taxation laws that are dynamic and which support and facilitate Australian business expanding rather than the outdated framework we currently have.

We acknowledge that the original policy intent of the accruals regime was an appropriate aim and propose that the regime be amended so as to return its scope to the original policy intent. Amendments to address these issues would not require a complete rewrite of the CFC provisions but rather five key amendments to the existing law;

1. Remove companies operating in BELCs <u>and all underlying investments</u> from the operation of the CFC rules (Option 3.3);
2. Develop and publish an objective criteria that Treasury would utilise when classifying countries as BELCs, LELCs and unlisted countries;
3. Redefine the scope of attributable income. In particular, confine the scope of "tainted services income" to truly passive income (Option 3.2);
4. Provide a general exemption for all foreign non-portfolio dividends received by Australian companies (Option 3.9); and
5. Provide a general exemption for the sale of all foreign non-portfolio interests in foreign companies.

Failure to implement these key amendments will require further changes to the legislation to ensure that existing problems are overcome.

We submit that the current state of the accruals regime is inconsistent with the three national objectives that the Review of Business Taxation described in its report:

1. The accruals regime **retards economic growth** by rendering outbound investment by Australian companies uncompetitive in relation to countries that have a lower tax rate or which allow different tax concessions to our own.

2. The accruals regime **creates inequity** by imposing different tax rules on CFCs that earn different kinds of income (eg. active vs. non-active income), or which carry on business in different countries (eg. broad-exemption listed countries vs. limited-exemption listed countries).

3. The accruals regime **promotes complexity** both in its overall design and in the drafting style of its various components.

Furthermore, foreign tax credit provisions which interact with the CFC laws also go beyond these objectives. For example they also allow a tax credit in respect of taxes paid in a high tax country such as Belgium (40.17%), to be offset against tax payable in respect of foreign income from low and zero rate countries.

There is ample evidence of the problems Australian companies encounter both in relation to the onerous documentation requirements of the accruals regime and the tax it imposes. One needs only to look at the outstanding issues register maintained by the National Tax Liaison Group – Foreign Source Income to appreciate the problems with the current regime.

It is clear that the CFC regime requires amendment as outlined above. There are two main reasons why we believe that the regime can be amended immediately without jeopardising tax revenue collections:

1. Our proposed changes to the taxation of dividends will encourage the repatriation of profits from foreign countries and reduce the need for an accruals regime in relation to accumulated profits. It would therefore be appropriate to simultaneously simplify and reduce the scope of the CFC regime.

2. The concerns that originally prompted the introduction of the CFC regime have also largely dissipated.

    - The introduction of the comprehensive capital gains tax system has made it more difficult for taxpayers to shift passive income into tax havens (by transferring ownership of the assets from which the income is derived).

    - The ability of taxpayers to shift sales and services income into tax havens has been largely eliminated by the transfer pricing rules. The extension and expanded use of Schedule 25A to the corporate income tax return as a means of gathering intelligence on cross-border transactions also makes it possible for the ATO to address transfer pricing on a real-time basis.

- The ability of taxpayers to make use of tax havens has been significantly reduced by the decision of the High Court in the *Spotless Case*[10] that the general anti-avoidance rules generally apply to such transactions.

- Domestic thin capitalisation rules have imposed a constraint on the funding structures adopted by Australian companies to finance their offshore investments/operations.

We consider that the need for the CFC regime will be reduced if a foreign dividend account regime is introduced to encourage Australian companies to repatriate their foreign profits to Australia. We also consider that the ATO has a number of other ways of countering the accumulation of non-active income in offshore tax havens. We therefore submit that there is a need for immediate changes to the accruals regime so as to reduce its anti-competitive effect on Australian companies.

Further to the above, we recommend;

A. The redefinition of the type of income that should be caught by the CFC accruals regime. To this end we suggest the following:-

COUNTRY	ADJUSTED TAINTED INCOME	ACTIVE INCOME	DIVIDENDS
BROAD-EXEMPTION LISTED	EXEMPT	EXEMPT	EXEMPT
LIMITED-EXEMPTION LISTED	EXEMPT UNLESS PASSIVE EDCI	EXEMPT	EXEMPT
UNLISTED	ACCRUAL	EXEMPT	EXEMPT

Note that the distinction between “adjusted tainted income” and “active income” will be impacted by the proposal described in C below.

B. In regard to the addition of countries to the BELC list, we suggest that an objective criteria be developed to distinguish between BELCs, LELCs and unlisted countries. This criteria would be used by Treasury to maintain and update the current country classification lists. The publishing of this criteria will ensure transparency in administering the process and will enable taxpayers to better assist Treasury by recommending reclassification when warranted as a consequence of changes to the tax laws of foreign countries.

The re-emphasis on truly passive income and the adoption of a broader active business test will affect these criteria.

We note that the distinction between BELCs and LELCs has been maintained, but only because of the distinction required to determine the credit applicable to the revised foreign dividend account on repatriation of a foreign dividend.

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1. [10] *F.C. of T. v. Spotless Services Limited* (996) 186 CLR 404.

C. The redefinition of the scope of "tainted services income" and the introduction of an active business test. Under the current CFC rules, income from the provision of services is considered tainted where the services are provided to associates or to Australian residents, even where the services are essentially "active" in nature or part of the conduct of an active business. This treatment creates a bias against Australian outbound investors operating in service industries. It is also an impediment to the establishment of shared services arrangements within multinational groups. These impacts are a consequence of developments in international business since the CFC rules were introduced.

We recommend that tainted services income be limited in scope to services provided by CFCs to Australian resident associates. Such a change would bring tainted services into line with the current definition of tainted sales. As noted above, the increasingly robust application of the Australian transfer pricing rules (and the Schedule 25A reporting) acts as protection for the Australian revenue.

In addition, we recommend the introduction of an exemption from CFC attribution for income from services provided by a CFC in the conduct of an active business (including where the services are to an Australian resident associate). This would target the CFC rules on truly passive, as opposed to active, income.

D. Provide a general exemption for all foreign non-portfolio dividends received by Australian companies.

Income that has either been exempted from the accruals regime, or which has been subjected to it, should be exempt from further tax when it is repatriated to Australia in the form of dividends. All non-portfolio foreign dividends should therefore be exempt from Australian tax.[11] When the Australian parent company receives the dividend it can claim foreign dividend account credits for any foreign tax on the dividend and the profits from which it was paid.

E. Provide a general exemption for the sale of all foreign non-portfolio interests in foreign companies.

We submit that the dividend exemption should be supported by an exemption from capital gains tax for capital gains from the sale of non-portfolio interests in foreign companies.[12] This would harmonise the treatment of dividend income with the treatment of capital gains resulting from the sale of a foreign company that has retained profits.[13] However, we would not propose to grant a foreign dividend account credit in respect of such capital gains (except to the

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[11] This change addresses Option 3.9 in *Review of International Taxation Arrangements*.

[12] We note in passing that we do not believe the Government should proceed with the Review of Business Taxation proposal to apply CGT to the sale by non-residents of non-resident interposed entities with underlying Australian assets (refer to Option 3.6 in *Review of International Taxation Arrangements*).

[13] This change partly addresses Option 3.10 in *Review of International Taxation Arrangements* without requiring a specific conduit taxation regime).

extent they arise from the sale in a BELC or have actually been taxed in a foreign country). This change is important to ensure that Australia remains competitive with other countries' international taxation arrangements. eg; UK and Germany.

These changes would help Australian companies to compete on an equal level with multinational companies based in a broad-exemption listed country. It would also help them to compete on an equal level with operating companies based in a listed country. They may even be able to compete on a more equal level with companies that carry on an active business in or through an unlisted country.

If there are concerns about whether particular limited-exemption listed countries have a truly comparable domestic tax regime then it would be possible to confine the deemed foreign dividend account credit to dividends from a CFC in a broad-exemption listed country. This would also prevent taxpayers from being required to track the domestic and foreign income of a CFC in a limited-exemption listed country.

Note that if an Australian company receives dividends from a limited-exemption listed country or unlisted country, and the profits have not borne tax at a rate comparable to Australia's, then the additional tax will be paid when the Australian company distributes those profits on to its shareholders. This preserves an important existing safeguard against exploitation of the accruals regime. Therefore, this merely represents a deferral of the tax and would work effectively with the shareholder tax credit option suggested in the first part of this submission (as the tax credit would only be available to the extent to which foreign tax has been paid by the CFC in the limited exemption country or the unlisted country).

Finally we submit that the same exemptions and foreign dividend account credits should also apply in relation to branches in foreign countries. This would help to ensure that the taxation treatment of a direct investment in a foreign country would be consistent with the treatment of the same investment made through a foreign subsidiary company.

Appendixes

1. *The Value of Imputation Tax Credits* - N.J. Hathaway & R.R. Officer

2. *The Cost of Capital under Dividend Imputation* (June 2002) – Professor M Lally

3. *Quant Note* (December 1999) – J B Were & Son

4. *Victorian Transmission Network Revenue Caps 2003-2008* (24 September 2002) - Australian Competition and Consumer Commission

5. *Discussion Paper – Weighted Average Cost of Capital* (August 2002) - Independent Pricing and Regulatory Tribunal of New South Wales