

Mr Douglas Niven
Senior Executive Leader
Financial Reporting and Audit
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

19 February 2016

Dear Mr Niven

Comments on Consultation Paper 248 Remaking ASIC class orders on reporting by foreign entities: [CO 98/98] and [CO 02/1432]

Deloitte is pleased to provide ASIC with our comments on ASIC Consultation Paper 248 *Remaking ASIC class orders on reporting by foreign entities: [CO 98/98] and [CO 02/1432]*.

As outlined in Consultation Paper 248, ASIC proposes to remake the following class orders as a single new instrument.

- Class order [CO 98/98] *Small proprietary companies which are controlled by a foreign company but which are not part of a large group*; and
- Class order [CO 02/1432] *Registered foreign companies – financial reporting requirements*.

Furthermore, ASIC proposes one amendment namely, the relief would not be available to an individual entity if:

- the entity has been notified by ASIC that it may not rely on the relief; and
- ASIC's notification has not been revoked or varied to allow the relief to be relied on for the relevant financial year.

Our comments are set out below. However, we would like to open our comments with some general observations.

The class orders identified for remaking, in general, provide relief from reporting requirements. Deloitte has long supported moves to facilitate a simpler regulatory system and remaking these class orders is consistent with these goals. We note the Australian Accounting Standards Board is currently undertaking a research project on the Australian financial reporting framework and we believe the progression of this project should include the involvement of government policymakers and regulators in order to create a practical, meaningful financial reporting framework that is

responsive and relevant to the needs of the various users of financial statements whilst acknowledging that one size does not fit all.

Comments

We agree with the proposal to continue the relief in class orders 98/98 and 02/1432 and the rationale provided. We have not experienced any issues with the operation of these class orders in practice. We do not agree, however, with the recommendation of remaking the class orders as a single new instrument. Our basis for this includes the following:

- The nature of the two types entities covered by the new instrument would be quite different and we do not believe that an Australian small proprietary company will necessarily consider themselves a 'foreign entity' (as the instrument is titled) and hence consider the relief provided
- Part 2 and 3 of the draft instrument both define "Company". However, the definitions are different and as a result could be confusing to users.

We agree that ASIC should in principle be able to notify an entity that it may not rely on the relief as this is consistent with s.294 of the Corporations Act. We recommend, however, that:

- the draft instrument specify a time period during which ASIC may notify an entity
- ASIC creates guidance as to when it is able to exercise this discretion (including under s.294). We are not convinced that tax issues identified by the ATO necessarily warrants ASIC to request financial reports to be prepared.

Finally, we recommend that Part 2, section (2)(e)(ii) and Part 3 section (3)(b) of the draft instrument is updated to indicate that the subsequent revocation or variation of the notice referred to must be in writing ie:

"... but has subsequently revoked or varied in writing that notice so that it does not cover the relevant financial year."

We thank you for this opportunity to comment on this Consultation Paper. Please do not hesitate to contact Anna Crawford on +61 02 9322 7177 or Melissa Sim on +61 02 9322 7934 if you would like to discuss any of our comments raised in this letter further.

Yours sincerely



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