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Dear Tahnee

Consultation Paper – Review of Professional Partnership Acquisitions – Lodgement Frequency Proposal

Thank you for providing Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia and IPA Australia (the joint accounting bodies) with the opportunity to comment on the consultation paper *Review of Professional Partnership Acquisitions – Lodgement frequency proposal (the Consultation Paper)*.

Thank you for also allowing this submission to be provided after the originally notified date.

Timing of Future Lodgements

The joint accounting bodies were concerned by the proposed changes to the timings of future lodgements, following a partnership acquisition, as detailed in consultation paper *Review of Professional Partnerships Acquisitions – Position and Consultation Paper (the Position Paper)* released by Queensland Revenue Office (QRO) in August 2022. Moving to a strict 30-day lodgement period, as foreshadowed in the Position Paper, after every partnership change (resizing) was not a viable approach.

The current Consultation Paper seeks to reflect industry concerns and proposes an annual lodgement within 30 days of financial year end for partnership resizing changes on any 'partnerships that are not a small partnership'. Such a proposal is consistent with long standing arrangements that our members have been privy to and is a welcome development. The proposal to publish this stance in a public ruling and to not charge interest if the 30-Day lodgement period is adhered to is also supported. Of great concern, however, are the comments on page 13 that:

- “non-compliance with lodgement requirements including insufficient evidence of value of dutiable property (**including goodwill**), will be a factor the Commissioner will consider in deciding whether to extend the time for lodgement for future partnership acquisitions”.
- Waiver of interest will only occur if, amongst other requirements, “The partnership has complied with lodgement requirements including the provision of suitable evidence of value (**including goodwill**).”

Valuing Goodwill

The position of QRO, as it relates to the valuation of goodwill, is significantly different from that contained in long standing settlement deeds and arrangements. It is understood that large law and

accounting firms may have adopted a variety of approaches to estimate the valuation of goodwill associated with the Queensland business. “Some partnerships have submitted that:

- their partnership agreements are structured so that goodwill is not recognised at the time a partner joins or leaves
- goodwill does not subsist in the business operated by the partnership
- goodwill is not an asset of the partnership and has no monetary value.”

The position paper then quotes Federal Commissioner of Taxation v Murry (1998) 193 CLR 605 that goodwill “is a right or privilege that is inseparable from the conduct of the business” and concludes that “The structure of a partnership or whether partners choose not to recognise goodwill, does not mean that goodwill does not exist.”

The existence of goodwill and the valuation of goodwill are separate issues.

Our members have a variety of opinions regarding the existence of goodwill in large partnerships. If it is assumed that goodwill exists, then there is a question regarding the valuation of goodwill.

The variety of scenarios that can be associated with valuation of goodwill are large and impact the valuation of goodwill. Hence the variety of approaches to valuing goodwill. Adopting a prescriptive approach to valuing goodwill is inappropriate as it ignores the actual factual circumstances. A one size fits all cannot work.

As noted in 4.1.3 of the August 2022 position paper, valuations are costly and involve a detailed analysis, such as consideration of:

- assumptions and statements made in the valuation
- historical earnings and any budgeted forecasts when determining maintainable earnings for the partnership
- notional equity partner salaries with no calibration of salaries to market or cross checks for the reasonableness of the resulting earnings
- discounts when valuing the whole partnership
- treatment of any surplus assets that are non-core assets in the partnership
- substantiation for the earnings multiple/capitalisation rate.

When adopting such an approach in relation to large partnerships, a valuer is likely to determine that the valuation of the goodwill is an immaterial amount. Requiring complex valuations for an asset such as goodwill which is likely to generate minimal revenue for QRO places an unreasonable burden on large partnerships. An alternative approach to valuing goodwill is required.

The Australian Taxation Office (ATO) faces similar issues regarding the valuation of goodwill. Rather than taking a prescriptive approach that may be inappropriate for the various structures by which goodwill is held it has taken a pragmatic approach which is outlined in [IT 2540](#) at paragraph 13 which states “

*“For large partnerships, which can have memberships numbering in the hundreds (for example, some major legal and accountancy partnerships) the situation is potentially more complex. In some cases, the potential problems are overcome because the ownership of the assets used by the partnership is vested in a service company or trust. In other cases, **it will generally be accepted,***

provided the evidence reasonably supports the conclusion, that the partners are dealing with each other at arm's length. Any consideration paid or received on the acquisition or disposal of an interest in the partnership will be used for Part IIIA purposes in determining the cost base or disposal proceeds of the interests in the partnership assets that the partnership interest represents. This will mean that if, for example, the partnership arrangement is such that no amount is payable for the acquisition or disposal of goodwill, it will be accepted for the purposes of Part IIIA that the value of the goodwill is nil."

Consideration should be given to adopting the same approach as the ATO.

Lack of administrative fairness

QRO has outlined its point of view in the April Consultation Paper and seeks to reinforce its view from the August Position Paper. Neither paper seeks consultation on this change. It is disappointing that such a fundamental and contentious change in the approach to valuations has not been subject to consultation. It is even more disappointing that QRO is seeking to make administration solutions dependent upon taxpayers adopting the flawed valuation approach that has been outlined by QRO.

What is particularly egregious is that QRO has been issuing notices under section 505 of the *Duties Act 2001*, which requires recipients to provide the Commissioner with a valuation in accordance with the criteria set out in the August Position Paper.

It is inappropriate to issue a section 505 notice and to make the Commissioner's discretions dependent upon a very contentious valuation approach. There needs to be a fulsome discussion, preferably through a formal consultation process, about the valuation techniques and methods about the valuation of goodwill for large professional associations.

The joint accounting bodies look forward to working with QRO in resolving this valuation issue.

Should you have any queries please contact Susan Franks on 0401 997 342 or

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Sincerely,



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