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By email: [taxtreatiesunitconsultation@treasury.gov.au](mailto:taxtreatiesunitconsultation@treasury.gov.au)

Dear Tony

**Submission on the proposed intergovernmental agreement between Australia and the United States of America in relation to the implementation of the U.S. Foreign Account Tax Compliance Act (FATCA)**

AMP welcomes the opportunity to comment on the advantages and disadvantages of an intergovernmental agreement (IGA) between Australia and the US based on the published US Model IGA as an alternative to individual agreements between Australian financial institutions and the US Internal Revenue Service (the IRS).

AMP strongly supports the Australian Government entering into an IGA with the United States and believes the Model 1 Reciprocal version provides the most favorable outcome.

We are of the view that an IGA best positions Australia as a preferred global business partner, allows the determination of Australian based solutions for FATCA and will significantly reduce implementation and ongoing costs.

**About AMP**

AMP is the largest superannuation provider in Australia and has assisted Australians take control of their financial futures for over 160 years. AMP provides a range of superannuation and retirement solutions which cater to all the needs of the community. AMP has a network of more than 4,100 aligned and employed financial planners providing advice to Australians to help ensure they are better able to meet their desired financial goals.

AMP is responsible for the management of over \$123 billion in assets on behalf of nearly 4 million customers. AMP Capital Investors (AMP's investment management arm) invests in a broad range of assets including: direct and listed real estate, listed and unlisted infrastructure, fixed income, equities, alternative investments, diversified funds, multi-manager funds and sustainable investments on behalf of Australian, New Zealand and international investors.

## Background

AMP has reviewed the four forms of Model IGA that have been published by the IRS, Model 1 (reciprocal and non-reciprocal), and the two forms of Model 2 – the Swiss and Japanese versions.

### The reasons why AMP supports an IGA

We support a Model 1 IGA for the following reasons:

1. It ensures that all Australian financial institutions can be compliant with FATCA's requirements using a greatly simplified implementation process. It provides a mechanism for consultation between the Australian Government/ATO and industry on domestic interpretation and implementation issues and their resolution.
2. It ensures that Australian financial institutions are not at a commercial disadvantage in relation to its trading partners across the globe whose countries have entered into an IGA.
3. It allows current information reporting protocols and procedures to be leveraged by direct reporting to the ATO as opposed to the IRS and thereby avoid duplicative reporting.
4. Additionally, and importantly, it overcomes any block to compliance caused by domestic privacy laws, obviates the need to obtain any customer's express consent to send reportable information overseas by the Financial Institution and to close that account if the consent is not forthcoming, whether intentionally or not.
5. It confirms the robustness of Australia's Anti-Money Laundering and Counter Terrorism Laws and their compliance with the Financial Action Task Force requirements by allowing reliance on our own Know Your Customer (KYC) procedures when identifying customers. In particular, it removes a proposed requirement to record the expiry date of identification documents provided at account opening and to revalidate them on expiry. Difficulties in compliance with this obligation would cause thousands of account holders to be treated as recalcitrant under FATCA's requirements.
6. It allows Australia's low risk retirement products to be removed from FATCA's reach. This will be an enormously positive step for thousands of self-managed super funds, as well as the holders of all other retirement products. It also provides a mechanism for other low risk product types to be included as exempt and for other products to be included as they are developed in the future.
7. It removes the requirement for Financial Institution agreements (FI agreements) to be entered into, administered and certified annually. AMP alone estimates that otherwise it would have to enter into hundreds of FI agreements, which would be administratively burdensome.

8. It allows customers to self-certify their US taxation status, which will cause less disruption to the account opening process (although we still have reservations over the ability to satisfy the due diligence account opening requirements for controlling persons of entities).
9. It removes the requirement to withhold on FIs that are resident in Australia, as well as foreign passthru payments, US source payments and recalcitrant accounts and will therefore smooth operations between FIs in Australia and other partner countries.
10. It provides a process whereby AMP affiliates in countries that are not party to an IGA, but who are unable to comply with FATCA due to local laws, will not cause the whole of the AMP's Expanded Affiliated Group to be treated as non-compliant.

Other advantages which appear to be delivered by the IGA, but may become part of the generally applicable regulations:

- It provides an extra six months for the commencement of certain obligations.
- It lifts the thresholds for US account due diligence.
- It allows consideration to be given to the utilization of Australian financial year reporting periods (i.e. other than purely the calendar year).

AMP also supports the stated intention in the draft IGA to develop a common model for automatic exchange of information, including the development of reporting and due diligence for FIs. Any such streamlining of reporting requirements will future-proof this aspect for all FIs, provide certainty and minimize future build costs.

#### **Potential disadvantages of an IGA**

Disadvantages of the Model 1 IGA that we would wish to draw to your attention:

- In Article 4, 1(b) AMP would be required annually to report the name of, and aggregate amount of payments made in 2015 and 2016 to each Nonparticipating Financial Institutions.


This requirement is unclear (e.g. what is meant by "payments"), but additionally to build a solution only for the years 2015 and 2016 is a huge expense for just 2 years reporting. If this requirement is in order for the US to work further on quantifying the need for pass thru withholding, we would like to explore other ways to provide this information to the US.

- At present, there are some discrepancies between the provisions of the IGA and the current draft Regulation, particularly in relation to definitions and timing. We strongly urge that these should be aligned, particularly as differing definitions and start dates will be extremely complex to manage for both internal and external trading partners.

If you would like further information in relation to this submission please do not hesitate to contact Henrietta Cruddas, AMP Legal & Compliance Advisor for the FATCA programme, at [Henrietta Cruddas@amp.com.au](mailto:Henrietta_Cruddas@amp.com.au)

AMP would be pleased to assist further in any consultative process with industry.

Yours sincerely

A handwritten signature in black ink, appearing to read "Alastair Kinloch". The signature is written in a cursive style with a horizontal line underneath.

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