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1 October 2012

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Dear Sir/Madam,

#### **INTERGOVERNMENTAL AGREEMENT TO IMPLEMENT FATCA**

I refer to the proposal for Australia to enter into an Intergovernmental Agreement (IGA) in relation to the reporting and withholding tax provisions of the United States Foreign Account Tax Compliance Act (FATCA).

The Australian Finance Conference is a finance industry body comprising 60 plus member companies. The latest AFC Membership list is attached. Our affiliated bodies include the Australian Equipment Lessors Association and the Institute for Factors and Discounters of Australia and New Zealand. Members include financial institutions such as banks, finance companies, building societies, general financiers and factoring and discounting companies. Many of our Members will be "Financial Institutions" for the purposes of FATCA and will be either directly or indirectly (via their related companies) impacted by the FATCA compliance requirements to:

- conduct due diligence and verification procedures to identify accounts held by specified US persons or US owned foreign entities;
- report annually to the Inland Revenue Service (IRS) about such US accounts; and
- withhold payments or close accounts if an account holder does not provide information or does not waive its rights to enable a financial institution to report to the IRS.

These requirements will apply directly to many of our Members, for example those who maintain "Financial Accounts" such as deposit accounts for customers. In addition, the consequences of non-compliance with the FATCA requirements (ie a 30% withholding tax) will impact on the fundraising activities of our Members who make investments and raise funds using local and international wholesale markets, either directly or via their related companies.

The FATCA requirements will be expensive to implement, with no direct benefit to our Members or their customers. The costs of FATCA compliance are likely to be passed on to both wholesale and retail customers.

The FATCA requirements exceed the requirements for customer identification and reporting which currently apply to our financier Members under Australia's Anti-Money Laundering and Counter-Terrorism Financing legislation. Compliance with the increased information gathering and reporting requirements of the FATCA will also raise significant concerns under Australia's privacy legislation. We understand that it is likely that these concerns would be somewhat alleviated if an IGA was entered into.


An IGA between Australia and the United States would provide an advantage for our Members and their related companies by allowing them to report to the Australian Tax Office instead of to the IRS, thereby providing some relief from the compliance burden of the FATCA. We therefore support Australia entering into an IGA with the US Government at the earliest opportunity, given that the FATCA is due to be implemented commencing in early 2013.

If an IGA is entered into, it is likely that legislation or regulations will need to be made to address conflicts of laws issues (for example under the Privacy Act) and to establish the framework for Australian Financial Institutions to enter into arrangements to report account information to the Australian Tax Office. Given the imminent commencement of some provisions of the FATCA, we ask that this material be made available to the financial services industry as soon as possible.

If you have any questions or would like to discuss our comments, please contact me or our Corporate Lawyer Catherine Shand on (02) 9231 5877.

Kind regards,

Yours truly,

A handwritten signature in black ink, appearing to read 'Ron Hardaker', written in a cursive style.

Ron Hardaker  
Executive Director



## AFC MEMBER COMPANIES

Advantagedge Financial Services	Nissan Financial Services
Advance Business Finance	Once Australia t/as My Buy
Alleasing	PACCAR Financial
American Express	Pepper Australia Pty Ltd
ANZ t/as Esanda	Provident Capital
ATB Financial Services	Profinance
Automotive Financial Services	RABO Equipment Finance
Bank of Melbourne	RAC Finance
Bank of Queensland	RACV Finance
BMW Australia Finance	Rentsmart
Branded Financial Services	Ricoh Finance
Capital Finance Australia	RR Australia
Caterpillar Financial Australia	Service Finance Corporation
CNH Capital	Sharp Finance
Collection House	SME Commercial Finance
Commonwealth Bank of Australia	St. George Bank
Credit Corp Group	Suncorp
De Lage Landen	Suttons Motors Finance
Dun & Bradstreet	The Leasing Centre
Experian Asia Pacific	Toyota Financial Services
FlexiGroup	Veda Advantage
GE Capital	Volkswagen Financial Services
Genworth	Volvo Finance
HP Financial Services	Westlawn Finance
HSBC Bank	Westpac
Indigenous Business Australia	Wide Bay Australia
International Acceptance	Yamaha Finance
John Deere Financial	
Kawasaki Finance	
Key Equipment Finance	
Kubota Australia Finance	
Komatsu Corporate Finance	
Leasewise Australia	
Liberty Financial	
Lombard Finance	
Macquarie Equipment Rentals	
Macquarie Leasing	
Max Recovery Australia	
ME Bank	
Mercedes-Benz Financial Services	
MetroFinance	

Professional Associate Members:

Allens Arthur Robinson  
CHP Consulting  
Clayton Utz  
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Henry Davis York  
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