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Manager
International Tax Treaties Unit
International Tax and Treaties Division
The Treasury
Langton Crescent
PARKES ACT 2600

BY EMAIL: taxtreatiesunitconsultation@treasury.gov.au

cc: Mr Daniel McAuliffe, Manager, Financial Markets Unit, Treasury

Dear Sir/Madam

Intergovernmental Agreement to implement the *Foreign Account Tax Compliance Act (FATCA)*
Ref: NWICE 1200169

Thank you for the opportunity to make a submission on the advantages of an intergovernmental agreement between Australia and the United States to implement FATCA (IGA).

Under proposed US FATCA regulations, the ASX Group would be likely to incur onerous reporting and withholding obligations applicable to "Foreign Financial Institutions". The ASX Group supports efforts by the Australian Government to minimise compliance costs for Australian stakeholders.

General comments

The ASX Group supports the Australian Government entering into an IGA, based on the published US Model IGA, as an alternative to individual agreements between Australian financial institutions and the United States Internal Revenue Service.

The ASX Group submits that the advantages of an IGA between the Australian and US governments outweigh any disadvantages, as the US Model IGA sets out a framework which:

- addresses legal barriers to compliance, such as those related to data privacy and protection;
- ensures that withholding tax will not be imposed on US source payments received by Australian financial institutions and Australian financial institutions will not be required to withhold tax on payments they make; and
- reduces to some extent the significant compliance burden imposed by FATCA on Australian financial institutions.

Specific comments on US Model IGA

While the advantages of an IGA between the Australian and US governments outweigh any disadvantages, there are a number of specific issues arising under the US Model IGA that should be resolved prior to implementation. ASX has not completed the extensive review of its existing systems and processes that will be required to identify all potential issues. However, we have set out in the Attachment to this letter some preliminary comments on important matters of detail. We would be pleased to discuss these matters with you in person.



We look forward to further engagement with Treasury as it progresses its consideration of the US Model IGA.

If you have any queries about this submission please contact Catherine Eakin, Legal Counsel on 02 9227 0472 or Nick Wiley, General Manager Legal on 02 9227 0412.

Yours sincerely

A handwritten signature in black ink that reads 'Amanda Harkness'. The signature is written in a cursive style with a large initial 'A'.

Amanda J. Harkness
Group General Counsel and Company Secretary



Attachment
Specific comments on US Model IGA

Art 4(1)(b) and (1)(e): payments to Nonparticipating Financial Institutions

As the operator of a clearing and settlement facility, Austraclear Limited (a wholly owned subsidiary of the ASX Group) facilitates payments between participants. (The Austraclear System is a feeder system to RITS.) Some of those payments may be payments of interest in respect of financial products registered in securities accounts of participants maintained in the Austraclear System. To the extent that legal title to those financial products is vested in Austraclear Limited as nominee (depository), Austraclear Limited may (on one possible interpretation) be taken to have "made [those] payments" to the recipient participants in terms of Art 4(1)(b).

Austraclear Limited reports annual investment income payments effected through its clearing and settlement facility to the Australian Taxation Office under the Annual Investment Income Reporting (AIIR) regime. ASX submits that Treasury should consider minimising the impact of the incremental reporting obligations on Australian Reporting Financial Institutions under any future IGA by appropriately accommodating those reporting requirements within the AIIR regime.

Annex 1 Parts IV and V: due diligence procedures for Preexisting Entity Accounts and New Entity Accounts

Self certification by Preexisting Entity Account holders should be generally available as a permitted means for Reporting Financial Institutions to satisfy themselves of account holders' status and, where applicable, the identity of account holders' "Controlling Persons".¹ This is the approach adopted by the US Model IGA in relation to New Entity Accounts (Annex 1(V)(C)(1)). There is no apparent reason in principle why similar should not apply to Preexisting Entity Accounts.

Self certification should also be available to Reporting Financial Institutions as a means of identifying US Source Withholdable Payments (i.e. payments of interest from sources in the US).

Austraclear Limited, as the licensed operator of a clearing and settlement facility and regulated by ASIC and the Reserve Bank, is not required under Australian law to operate an AML/CTF programme, and accordingly is unable to rely on information collected and maintained pursuant to "AML/KYC Procedures" for the purpose of identifying "Controlling Persons" as referenced in Annex 1(IV)(D)(4)(a) and (V)(C)(2). Again, self certification by account holders is an appropriate substitute in our view.

¹ The US Model IGA due diligence procedures for Preexisting Entity Accounts (Annex 1, Part IV) do not expressly permit Reporting Financial Institutions to rely on account holders' self certifications in relation to all matters relevant to holders' status (see, for example, whether a Non-U.S. Entity is a Financial Institution ((IV)(D)(2)), whether a Financial Institution is a Nonparticipating Financial Institution payments to which are subject to aggregate reporting under paragraph 1(b) of Article 4 ((IV)(D)(3)(a)) and determining whether an account held by an NFFE is a U.S. Reportable Account ((IV)(D)(4)(a))).