

8 April 2015

General Manager  
Corporate and International Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir/Madam

**RE : REFORMS TO OFFSHORE BANKING UNITS**

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than \$2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC thanks Treasury for the opportunity to comment on Exposure Draft legislation for the reform of Offshore Banking Units (OBUs).

*Portfolio management*

We welcome the removal of the 10% Australian asset rule in considering whether activity is OB portfolio investment activity (121D(6A)). This is a sensible and workable approach and we believe it will improve the regime considerably for asset management activity.

*Section 121EAA(3)*

We understand the objective of the integrity rule proposed in section 121EAA(3) to operate such that under a transaction or single scheme, if the OBU books some activity in the OBU and part in the non-OBU, then all of the activity it is taken to be non-OBU.

We understand this is intended to be targeted at asymmetric swaps. However the draft legislation could be read to apply to booking fees in both the OBU and non-OBU from the same Investment Management Agreement. This would be an unintended consequence and we suggest that the drafting is amended to make clear that the activity that is subject to the rule is limited to asymmetric swaps.

*Commencement and timing*

The amendments are flagged to apply to income years commencing on or after 1 July 2015. We request that a very minor clarification be made relation to the start date of new rules such that they apply to *all* companies from the 2015-16 year.

Therefore we request that instead of the new rules applying to 'income years commencing on or after 1 July 2015' that they instead apply to the 2015-16 income year, to cater for those early balancing companies with substituted accounting periods.

Alternatively we suggest that companies with substituted accounting periods could choose to have the rules apply for the 2015-16 year on an elect in basis.

Finally, we have had the benefit of reviewing the joint AFMA/ABA submission and support the detailed comments they have included therein.

Should you wish to discuss this submission further please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely



**CARLA HOORWEG**  
Senior Policy Manager – Investment, Global Markets & Tax