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** In cooperation with
Trench, Rossi e Watanabe
AdvogadosGeneral Manager
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The Treasury
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Dear Sir

Tax and Superannuation Laws Amendment (2015 Measures No. 5) Bill 2015: Third party reportingWe refer to the exposure draft of the *Tax and Superannuation Laws Amendment (2015 Measures No. 5) Bill 2015: Third party reporting bill (Exposure Draft)*.

We thank you for the opportunity to comment on the design of the proposed amendments and the accompanying explanatory material.

Unit trusts

We note that the trustee of a unit trust is an entity that would be brought within the proposed reporting regime set out in the Exposure Draft.

Unit trusts holding property commonly do so through sub-trusts. The larger unit trusts schemes in Australia may operate through complex structures requiring re-organisation from time to time and transfers within the group that change ownership of units of sub-trusts without any change in beneficial ownership. Such changes would not occur in the ordinary course of trading and so would need to be requested.

We respectfully recommend that changes of holding structures that do not produce any change in beneficial ownership and qualify for exemption from taxation should not be within the reporting regime.

Administrators of payment systemsWe note that the Exposure Draft contemplates that an administrator of a payment system (within the meaning of the *Payment Systems (Regulation) Act 1998*) is intended to be one of the categories of entities subject to the reporting obligations set out in the Exposure Draft. A "payment system" is relevantly defined to mean a "funds transfer system that facilitates the circulation of money, and includes any instruments and procedures that relate to the system". This is likely to include a system providing credit card services, that is, the services of an intermediary between a merchant, customer, the issuing bank and the acquiring bank to process payments for goods and services purchased by means of a credit card. The explanatory materials confirm that the administrator of a payment

system is "required to report on electronic transactions, such as those made by credit and debit cards".

The application of the proposed rules firstly requires consideration of how payment systems typically work. A payment service provider providing credit card services, typically has dealings primarily with banks and other financial institutions. Issuing banks (and other financial institutions) will issue credit cards to consumers and acquirers will typically provide infrastructure to facilitate the acceptance of payments by the merchant.

The proposed rules require the administrator to distinguish between a transaction facilitated by a payment system on behalf of a business and those on behalf of other entities such as private consumers. Where a consumer uses his or credit card to make a purchase, the seller will usually be a business. Effectively, this means that most if not all purchases made using a credit card may fall within the proposed reporting regime.

The volume of information required to be reported may be very significant. Collecting and presenting this information to the Commissioner is likely to place a significant burden on providers of credit card services. Mere intermediaries should not be put in the position of having to produce what information they have as this will place an undue administrative burden on the intermediary.

The information held by a payment services provider may also be quite limited and of little use to the Commissioner. The intermediary will usually not have the full credit card number of the purchaser nor be able to identify the purchaser (this information is held by the issuer). The information may be limited to the amount involved and the identity of the issuing bank and acquiring bank. Equally the information held by payment services providers in relation to merchants is limited, and would best be obtained from acquirers.

In summary, the full information required by the Commissioner will not be held by the administrator but by the other parties to the transaction (issuers and acquirers). It is respectfully submitted that the required information would be best sourced from these other parties as they are the holders of the required information. If not sourced from these other parties, Commissioner may at best obtain limited information from an administrator which is nevertheless voluminous and costly to collate and provide.

We respectfully recommend that a payment service provider who is a mere intermediary between banks, merchants and customers be exempted from the application of the proposed reporting rules

Please contact the writer if you require any further formation or clarification.

Yours sincerely



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