

24 June 2016

Senior Adviser,
Base Erosion and Profit Shifting Unit
Corporate and International Tax Division
The Treasury,
Langton Crescent,
Parkes ACT 2600

Dear William

RE : IMPLEMENTING A DIVERTED PROFITS TAX

The Financial Services Council (FSC) has over 115 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The industry is responsible for investing more than \$2.6 trillion on behalf of 11.5 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.

We thank you for the opportunity to comment on the proposed Diverted Profits Tax (DPT).

Scope of the DPT

In line with the law in the United Kingdom (UK), the Australian DPT legislation should contain a specific exemption for sovereign wealth funds, pension funds, and both non-CIV funds and collective investment vehicles (both as per the OECD definitions) that may otherwise fall within the ambit of the rules given the concessional or exempt treatment of these vehicles.

Such entities were not the focus of the UK law and should not be for Australian law. The same can be said for fiscally transparent managed funds where it is necessary to trace through to investors to assess whether there is an effective tax mismatch.

Life companies and Offshore Banking Units

Australia's proposed DPT should not have any application for domestic transactions (even where the effective mismatch requirement may be satisfied) as the overarching aim of this measure is to apply to certain transactions, where the requirements are met, that involve offshore related parties. In this regard, it should be made clear that transactions within different classes of life insurance companies, as well as within Offshore Banking Units (which are all domestic transactions) should not attract the operation of any DPT law.

Transfer pricing

Finally, it is submitted that where Australia's transfer pricing rules are satisfied in relation to international related party dealings, the DPT should have no further role to play.

We would be happy to discuss the justification for any of these propositions in further detail. Should you wish to discuss this submission please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carla Hoorweg', with a stylized, flowing script.

CARLA HOORWEG

Senior Policy Manager – Investment, Global Markets & Tax

