

The Manager  
Taxation of Financial Arrangements Unit  
Business Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

PricewaterhouseCoopers  
ABN 52 780 433 757

Darling Park Tower 2  
201 Sussex Street  
GPO BOX 2650  
SYDNEY NSW 1171  
DX 77 Sydney  
Australia  
Telephone +61 2 8266 5996  
Facsimile +61 2 8286 5996

17 October 2008

Dear Sir

**Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008**  
**Submission in respect of exposure draft legislation**

Thank you for the opportunity to comment on the third exposure draft of legislation for the taxation of financial arrangements, tranches 3 and 4.

We note that this is intended to be the final round of consultation before the introduction of a Bill into Parliament late this Spring, and that there is therefore limited opportunity for Treasury to deal with consultative responses other than those considered fundamental to the proper operation of the proposed law. We have reviewed the exposure draft in this context.

Whilst we do not consider that there are any fundamental matters which should cause the introduction of a Bill to be deferred, nonetheless, it is inevitable that the proposed legislation still contains various issues requiring reassessment or amendment, some of which will only emerge as taxpayers begin to implement the new law.

Accordingly, whilst, in the attachment, we have commented on a number of issues stemming from the latest changes and additions to the proposed law, the main point we wish to convey in this submission is that Treasury must remain committed to consultation and, where necessary, reassessment and revision of the law, for some considerable period beyond the introduction of a Bill into Parliament if the introduction of the new law is to proceed as well as we all would wish.

For our own part, we will continue to provide Treasury, and, as appropriate, the Australian Taxation Office, with our views on the appropriate operation of the new law, whether these be matters of drafting or interpretation.

The Manager  
17 October 2008

We would be pleased to discuss our comments further should you so wish, for which purpose kindly contact either Gavin Marjoram on 02 8266 0576 or Chris Kinsella on 02 8266 5996.

Yours faithfully



Chris Kinsella  
Partner



Gavin Marjoram  
Partner

**TAX LAWS AMENDMENT (TAXATION OF FINANCIAL ARRANGEMENTS) BILL 2008  
("TOFA")**

**COMMENTS ON THE EXPOSURE DRAFT LEGISLATION**

**1. Consolidation interactions**

**Interaction between the TOFA transitional election and the consolidation rules**

The Explanatory Memorandum should explain the intended interaction between the transitional election (item 121(2)) and the tax consolidation rules. For example, comment should be provided on the intended outcome in circumstances where an entity with pre-TOFA financial arrangements, but which has made a transitional election, joins a group which has not made a transitional election. Another example would be where an entity with pre-TOFA financial arrangements leaves a group which either did, or did not, make the transitional election.

**Interaction between the TOFA transitional election balancing adjustment amounts and the consolidation rules**

We believe that the interaction between the TOFA transitional balancing adjustment amounts and the consolidation rules as discussed at sections 12.58 and 12.59 of the Explanatory Memorandum should be reconsidered. In particular, consideration should be given to:

- Whether it is appropriate for part of the balancing adjustment to be borne by the head company of the joined group, and, in any event
- Providing greater depth of comment, such as whether Subdiv 716-A "will" apply, or the circumstances in which it will apply (the text says it "may" apply), and clarifying the outcome for balancing adjustment amounts which otherwise would have been included in the calculation of the joining entity's taxable income for years subsequent to that in which it joined the group.

**Different values for liabilities in exit / entry ACA calculations compared to Division 230**

We believe that further work is required to identify and resolve any inappropriate outcomes which may arise where different values are used for liabilities in consolidation exit / entry ACA calculations compared to Division 230 calculations.

**Financial accounts**

We acknowledge the amendments to ensure that for each of the elective timing methods, the use of audited financial reports prepared by a connected entity is permitted.



However there may be some uncertainty for taxpayers as to which set of audited financial reports should actually be used if more than one can apply. This may require some additional comment or clarification (eg by way of examples in the Explanatory Memorandum) around the meaning of the phrase “a report properly reflects your affairs” as it is used in the relevant provisions regarding the use of a financial report of a connected entity. This is particularly relevant in the case of a MEC group.

## **2. Interaction of elections and PAYG instalments**

Various TOFA elections may validly be made subsequent to the date from which, when made, they will take effect. In order to provide certainty for the amount of PAYG instalment payments for instalment periods interposed between the date an election is made and the (prior) date from which it will take effect, we recommend that the determination of PAYG instalments be required to take account only of actual elections made by the end of the relevant instalment period.

## **3. Timing of elections**

Several of the elections must be made before the end of a year of income in order that a particular tax timing method applies. However the end of a year of income is often not a date when taxpayers consider compliance – this tends to be the date by which the relevant tax return is lodged. The timing of elections is likely to impact adversely on tax agents and their clients.

We recommend that the time for making the election should be on or before the due date for lodgement of the income tax return for the income year in which the election first applies.