



Private & Confidential

Law Design Office
Treasury
Lengton Cres
PARKES ACT 2600

17 November 2020

Dear Sir/Madam

Submission - Miscellaneous amendments to Treasury portfolio laws 2020

We refer to the exposure draft legislation released for consultation on 21 October 2020 containing miscellaneous amendments to Treasury portfolio laws.

The exposure draft legislation contains a proposed amendment to the Taxation of Financial Arrangements (TOFA) hedging provisions to update the language to align with that used in the new accounting standard for financial instruments, AASB 9. The proposed amendment is to remove the word “highly” from section 230-365 of the *Income Tax Assessment Act 1997*, as this term is no longer used in the current standard.

Whilst we welcome this amendment to provide certainty to taxpayers who have made a hedging election and have transitioned to the new accounting standard, we have some concerns regarding the proposed application date of 1 January 2021. This may give rise to practical difficulties as it will not align with the start date for application of the new standard by a taxpayer where it has been, or will be adopted prior to 1 January 2021

AASB 9 mandatorily applies for reporting periods beginning on or after 1 January 2018. However, entities could choose to apply this earlier, to reporting periods beginning after 24 July 2014. With respect to hedge accounting, upon initial adoption of AASB 9, entities had a policy choice to continue to apply the hedging rules under the old standard (AASB 139) instead of applying the hedge accounting requirements of AASB 9. This policy choice is applicable until a separate 'macro hedge accounting' project is completed by IASB (which we understand is still some years away).

The proposed amendment to section 230-365 as provided in the Exposure Draft is stated to apply for the purposes of determining whether the requirement is met in relation to a hedging financial arrangement on or after 1 January 2021 (regardless of whether an entity started to have the hedging financial arrangement before, on or after that day).

The various possible application dates for AASB 9 give rise to a number of issues that we have summarised below:

1. If a taxpayer chose to adopt AASB 9 for hedging purposes from 1 January 2018 or earlier, there was a period of more than three years where the “highly effective” requirement in section 230-365 continued to apply even though this requirement was no longer referred to in the hedging requirements of the accounting standard applying to the taxpayer for accounting purposes.

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2. Section 230-365 refers to “*highly effective (within the meaning of the principles or standards referred to in paragraph 230-315(2)(a))*”. For a taxpayer that has applied AASB 9 from, for example, 1 July 2018, the standards referred to in paragraph section 230-315(2)(a) is AASB 9, which has no concept of “highly effective”. Therefore it may be impossible for the taxpayer to meet the requirements of section 230-365.

An alternative interpretation of these provisions may allow the taxpayer to look to AASB 139 for the meaning of “highly effective”, even though this standard is no longer applied by the taxpayer. In this case, the taxpayer would be required to do additional work to confirm the relevant hedging financial arrangement meets the “highly effective” criteria, which is above and beyond the current accounting requirements that would apply. This would appear to be inconsistent with the intention of these provisions.

3. If a taxpayer made a policy choice to continue to use the hedging rules in AASB 139, can Treasury confirm (perhaps by way of a comment in the Explanatory Memorandum) that the amendment will not affect such taxpayers as any arrangements that met the previous “highly effective” requirement in AASB 139 will also meet the amended requirements in section 230-365?

To resolve these issues, could the application date of the amendment to section 230-365 be aligned to when a taxpayer adopts AASB 9 for hedging purposes, rather than a fixed start date? Alternatively, could a “savings provision” be included that protects taxpayers who assumed the rule would be amended retrospectively.

We would be happy to discuss these issues with you further.

Yours faithfully

A handwritten signature in black ink, appearing to be the name "Grahame Roach", written in a cursive style.

Grahame Roach
Partner