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Tax Treaties Branch
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Expansion of Australia's Tax Treaties Network

We thank Treasury for the opportunity to provide a submission as part of consultation on the expansion of Australia's tax treaties network through negotiations for two new treaties with Brazil and Ukraine, and updates to existing treaties with the Republic of Korea, New Zealand and Sweden.

The FSC is a peak body which sets mandatory standards and develops policy for more than 100 member companies in the financial services industry. Our full members represent Australia's retail and wholesale funds management businesses, superannuation funds, investment platforms and financial advice licensees. The industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians.

Our submission recommends new and revised tax agreements ensure the benefits are equally accessible to all Australian entity types, particularly ensuring that trusts, superannuation funds and Corporate Collective Investment Vehicles (**CCIVs**) are provided with clarity and certainty on the application of treaty provisions and availability of relief.

Treatment of Corporate Collective Investment Vehicles

A key outcome in the expansion of Australia's tax treaty network and in amending agreements currently in force is to ensure that the benefits negotiated in treaties apply to CCIVs at least in parity with other investment structures such as Managed Investment Trusts.

Amendment to individual tax treaties explicitly recognising CCIV sub-fund eligibility should be undertaken as part of treaty review and in any new agreement.

Inconsistent tax treatment that disadvantages CCIVs compared to other investment structures should be resolved in order to promote its adoption and competitiveness. This can be achieved by ensuring specific recognition of CCIVs as qualifying under the provisions of tax agreements, or ensuring they meet the eligibility conditions to achieve corporation status under the relevant agreement.

An example of this approach is to provide for CCIVs to be eligible for relief in the same way that Luxembourg SICAVs and UK OEICs meet the requirements to hold corporation status under tax agreements with the Republic of Korea.

In negotiating future tax treaties and revising existing agreements, the FSC considers the provisions containing specific references to collective investment vehicles and complying superannuation funds, such as those included in the recent Australia-Switzerland Double Taxation Agreement, should be considered a benchmark for explicit recognition of these structures to provide certainty on access to treaty benefits.

General Issues

Inconsistencies between tax treaties should be resolved when the opportunity arises for a review of these agreements with Australia's global trading partners. These amendments will ensure treaties account for new legislative developments and improve the global competitiveness of Australia's funds management industry by ensuring the maximum intended benefit from bilateral tax agreements is realised.

Application to superannuation funds

The unique nature of Australia's superannuation system means that the description of a 'pension scheme' often contained in treaties does not provide sufficient certainty that the benefits of the tax treaty can be realised by superannuation funds. An explicit reference to the application of these terms should be required in all tax treaties, as is the case in many existing agreements.

Trusts

New and existing tax treaties should provide clarity that treaty benefits are available to trusts, particularly Managed Investment Trusts. Express terms mentioning the eligibility of Australian trusts to access treaty relief will ensure certainty in tax treatment when investing in partner jurisdictions.

Interest withholding tax

Exemptions from interest withholding tax from interest derived by a financial institution which is unrelated to and dealing wholly independently with the payer are not included in some existing tax treaties, such as the agreement with the Republic of Korea. This exemption should be included in treaties where it is not currently a feature. We suggest that its application is also expanded to include all entities in a financial institution group.

If you would like to discuss this submission further or require additional information, please contact me at jyoung@fsc.org.au.

Kind regards,

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