

28 September 2012

Manager
International Tax Treaties Unit
International Tax and Treaties Division
The Treasury
Langton Crescent
Canberra ACT

Email: ministerial@treasury.gov.au / taxtreatiesunitconsultation@treasury.gov.au

Attention Mr Greg Wood

Dear Mr Wood

Foreign Account Tax Compliance Act – Draft Intergovernmental Agreement

The members of the Australian Custodial Services Association (ACSA) welcome the opportunity to provide this submission to Treasury on the advantages and disadvantages of an intergovernmental agreement (IGA) between Australia and the United States in relation to the Foreign Account Tax Compliance Act (FATCA) based on the model IGA agreement - reciprocal.

About ACSA

ACSA is the peak industry body representing members of Australia's investment custodial and administration sector. Collectively, the members of ACSA hold securities and investments of approximately AUD \$1.85 trillion in value in custody and under administration. Members of ACSA include National Australia Bank Asset Servicing, JP Morgan, HSBC, State Street, RBC Investor Services, BNP Paribas, Northern Trust and Citigroup.

ACSA supports Australia entering into an IGA

ACSA believes the entry into an IGA by the Australian government would be beneficial and have several important advantages for ACSA members and other Australian financial services organisations in comparison to having individual FATCA agreements between such organisations and the Internal Revenue Service (IRS).

We have set out the main advantages below and also described some matters that should be addressed in conjunction with advancement of the IGA.

Advantages of entering into an IGA

ACSA considers there are some important advantages of Australia entering into an IGA.

These advantages include:

1. Administration and cost efficiencies for Australian financial institutions (FIs) – being able to report to our domestic tax authority rather than the US tax authority should be simpler and involve lower compliance costs as Australian FIs should be able to leverage existing reporting arrangements and data formats and would be dealing with local taxation officers on lodgement and reporting issues.

There has been several government reviews into aspects of the Australian financial services industry – for example, the Cooper review on superannuation, the Johnson Report on the role of Australia as a regional financial centre, the Board of Taxation report on reforms to managed investment trusts – that have focussed on the compliance costs passed on to the ultimate investors in Australian financial and wealth products. It is hoped that entry into the IGA will avoid the necessity of passing a substantial part of the unnecessary compliance and associated costs that had been anticipated if Australian FIs were required to have separate foreign financial institutional agreements with the IRS.

2. Eliminating the requirement for withholding on Australian FIs that comply with reporting obligations set out under the IGA.
3. Providing a workable mechanism in Annex II for the listing of entities that are exempt or deemed compliant. This will allow low risk entities such as complying superannuation funds to be listed, facilitating relief from the reporting obligations of FATCA. This will have a direct impact on compliance and associated costs referred to at 1. The wording suitable to cover complying superannuation funds in Annex II should be circulated for review by relevant stakeholders in the Australian financial services industry.
4. Providing a workable solution to privacy and confidentiality issues faced by Australian FIs in complying with FATCA reporting obligations. Without the IGA, compliance with FATCA could clash with privacy obligations and be costly and time consuming for Australian FIs to deal with. The suitability of the IGA to address such issues should be considered by Treasury in context of any privacy concerns raised by other stakeholders.
5. Allowing Australian FIs to utilise existing KYC (Know Your Customer) and AML (Anti Money Laundering) procedures currently applied for account opening and maintenance requirements.

Other issues to be addressed

ACSA believes that the following issues should be addressed in conjunction with advancement of the IGA:

- Any legislation introduced to facilitate the entry into the IGA should be released as an exposure draft for consultation prior to introduction into parliament.

- An explanatory memorandum explaining the core provisions and any potentially confusing provisions (including definitions) should be released. This memorandum should clarify any material discrepancies between the IGA and the FATCA regulations.
- A timeframe for delivery of the IGA and enabling legislation should be developed by Treasury and released publicly. There is currently considerable uncertainty regarding the application and implementation of FATCA for custodians and their clients. The planning for the procedural, systems and other changes required to implement a project of this size and risk will be of a very large scale. It is imperative that a final and detailed timeframe be released as soon as possible.
- There are potential issues associated with the requirement to report information for US account holders for a calendar year ending 31 December. The usual period for which custodians and our clients provide reporting is the tax year ending 30 June. ACSA members would like to investigate and test various scenarios to be able to consider whether the period mismatch will have any material detriment.
- Treasury should consider whether a 'consistency in application' article with an operation similar to Article 7 of the United Kingdom IGA is appropriate for Australia. The scope of such an article extending to any relaxation of requirements under the IRS FATCA regulations should also be considered.

If you would like to discuss this letter and ACSA's position on FATCA and other tax reforms please contact the Chairman of ACSA's Tax Working Group, Mick Giddings on (03) 8641 0898.

Yours sincerely



Pierre Jond
Chairman
Australian Custodial Services Association



Mick Giddings
Chairman ACSA
Tax Working Group