



28<sup>th</sup> September 2012

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The Treasury  
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PARKES ACT 2600

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Dear Mr Wood

## **Intergovernmental agreement to implement FATCA**

Thank you for the opportunity to provide comments on the Government's consultation about the feasibility of an intergovernmental agreement with the United States in relation to the implementation of the Foreign Account Tax Compliance Act (FATCA).

The Australian Financial Markets Association (AFMA) is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets and provides leadership in advancing the interests of all market participants. These markets are an integral feature of the economy and perform the vital function of facilitating the efficient use of capital and management of risk. Market participants perform a range of important roles within these markets, including financial intermediation and market making.

AFMA represents over 130 members, including Australian and international banks, leading brokers, securities companies, State Government treasury corporations, fund managers, traders in electricity and other specialised markets and industry service providers.

Many of our members are potentially directly impacted by FATCA as they may be:

- financial institutions who hold accounts or assets for the benefit of US citizens; and/or
- the Australian branch or subsidiary of a global institution that deals with US citizens; and/or

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- a financial institution that deals with other financial institutions or entities that have a connection to the United States.

We would like to make the following comments, which are high level in nature given that the formal consultation process has only recently commenced and the Government has not yet made a decision about the form of the agreement that might be entered into.

### **1. AFMA supports the Government entering into an IGA with the United States**

AFMA supports in principle the Government entering into an agreement that will help in alleviating the compliance burden on Australian entities. The potential cost and compliance burden of FATCA is still likely to be substantial even if an agreement is put in place. We note that a number of other major jurisdictions intend to enter into an IGA with the US, and that an agreement has recently been finalised with the United Kingdom. Australia should not be at a disadvantage in conducting business, compared to those other jurisdictions.

We urge the Government to press the relevant US authorities to recognise the significant relationship between the United States and Australia, and to acknowledge that Australia is a highly regulated, low risk, high tax jurisdiction and accordingly, should be afforded as many concessions as possible under an IGA.

### **2. An industry working group should be established**

We note that at this stage, the Treasury consultation process relates to the merits or otherwise of Australia entering into an IGA with the United States, and not necessarily the detail of what the IGA might contain. Looking forward, we strongly urge Treasury and the ATO to establish an industry consultation group that will be convened at regular intervals to consider the more detailed content of the IGA and in particular, the annex(es). This will also help to ensure that a broad spectrum of affected parties in the financial services sector are up to date with what is occurring. Our interactions with some of our members and some other industry associations suggests that knowledge of, and understanding of the implications of FATCA is very low in some sectors.

An industry working group can also play a very useful role in terms of implementation of new reporting and other requirements by the ATO, assuming that an IGA is put in place.

AFMA has participated in similar working groups to develop and implement other major reforms (eg. the Future of Financial Advice reforms and the introduction of competition between licensed financial markets) and have found the process to be of significant benefit to all involved.

### **3. The IGA will alleviate several of the most significant compliance burdens**

Entering into an IGA will be advantageous because it will alleviate some of the more onerous compliance burdens under FATCA – in particular:

- (a) Australian financial institutions will not be required to enter into separate agreements with the US Internal Revenue Service;
- (b) Australian financial institutions will not be subject to the withholding provisions; and
- (c) The recalcitrant account requirements will not apply.

#### **4. Cost recovery should be minimised**

We understand that consideration is being given to an appropriate level of cost recovery by the ATO for the implementation of reporting arrangements and transfer of information to the IRS. It is important to acknowledge that FATCA is not an Australian Government regulatory initiative, and that Australian financial institutions did not seek, and do not desire to be subject to this kind of regulation by foreign Government taxation authorities. However, it is accepted that the legislation is in place.

We urge the Government not to see the IGA as an opportunity to recover substantial amounts of cost from industry. Accordingly, further consideration of the form of the agreement to be entered into should be premised on minimal changes being required to existing reporting interfaces between financial institutions and the ATO. Similarly, existing transfer of information arrangements between the ATO and the IRS should be leveraged as much as possible to minimise the extent of changes needed, and any costs associated with that.

#### **5. Issues on which further clarity is needed going forward**

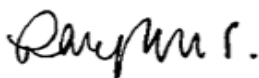
There will likely be a range of issues that will require clarification as the process of entering into an IGA develops. At this stage, we note the following issues that have been raised by our members:

- (a) For a country that enters into an IGA, how will US source payments made by a financial institution as principal in that country treated under FATCA ? Furthermore, there is a question as to whether the result will differ if the institution is an entity or a branch of a US entity or otherwise. We have been advised that there is some uncertainty about this under the United States/United Kingdom IGA.
- (b) It is not clear what the IRS' expectations are in practice about the pursuit of non-compliance by the ATO, and what the extent of this will be. In particular, it is not clear how paragraph (2) of Article 5 of the model IGA will work – ie. how will the ATO be able to apply its “domestic law (including applicable penalties)” to address non-compliance. AFMA has not conducted any examination of the ATO's powers under the ITAA and other relevant legislation in this regard.

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Please contact me on 02 9776 7997 or [tlyons@afma.com.au](mailto:tlyons@afma.com.au) if you have any queries about this submission.

Yours sincerely



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