

13 February 2015

Ms Tania Koit  
Tax Counsel Network  
Australian Taxation Office  
52 Goulburn Street  
SYDNEY NSW 2000

Dear Tania

**RE: LOOK-THROUGH TREATMENT FOR INSTALMENT WARRANTS & INSTALMENT RECEIPT**

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than \$2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC has had the benefit of reviewing AFMA's submission on the exposure draft legislation and we support their recommendations and in particular the requirement to remove sections 235-830 (2) and (3). Please refer to Appendix A for more information in this regard.

Our strong preference is for a 'principles based' approach to the law, rather than an approach that is focused specifically on instalment warrants. There are a wide array of products with similar underpinnings to instalment warrants currently on the market that were looking to rely on this law to provide certainty to customers in relation to absolute entitlement (i.e. look through treatment). A principles based approach would provide greater certainty as new products are developed and brought to market. Allowing greater scope for product innovation in leveraged products would assist customers in increasing their wealth.

We are cognisant however of the timeframe and constraints the Australian Tax Office (ATO) faces in the current consultation process and the mandate from the Government to implement the law in line with the announcements in 2007 and 2010 which does not extend beyond Division 247 type assets. Therefore, should a principles based approach not be adopted at this point in time, we submit that administrative guidance from the ATO should be provided in relation to absolute entitlement with regard to trust property and nominee type arrangements. An example may include finalising TR 2004/D25 with industry input.

Should you wish to discuss this submission further please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely



**CARLA HOORWEG**  
Senior Policy Manager – Investment, Global Markets & Tax

## Appendix A

### **Limited Recourse Requirement**

We recommend the removal of sections 235-830(2) & (3) which requires an instalment warrant to be limited recourse for the following reasons:

- Due to changes in capital requirements set by APRA, limited recourse products are now more expensive to offer to customers. As a result, these types of products are now offered as full recourse in a non-superannuation environment and limited recourse for superannuation funds. An example is a capital protected product under division 247 that is full recourse with a put option.
- The policy underpinning the 2007 and 2010 announcements extended beyond limited recourse products, as all Division 247 assets were in scope.
- The limited recourse requirement for superannuation funds is addressed in the SIS Act.