21 October 2015

General Manager
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: taxlawdesign@treasury.gov.au

Attention: Jessica Mohr/Phil Bignell

Dear Jessica, Phil,

GST Treatment of Cross-Border Transactions

The Australian Financial Markets Association (AFMA) represents the interests of over 130 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets. In particular, our membership comprises institutions that may include entities that provide services to Australian consumers from outside Australia.

We write in relation to the Exposure Draft and draft Explanatory Memorandum on the GST Treatment of Cross-Border Transactions. Our comments below should be read in light of our submission, dated 7 July 2015, to the previous Exposure Draft, as it pertains to the GST treatment of services provided from offshore.

Inadequate consultation period

Our primary concern with the Exposure Draft is the inadequate consultation period, particularly in relation to Schedule 2 of the Exposure Draft, dealing with the GST treatment of cross-border transactions between businesses. In this light, we note that the Exposure Draft was released for public consultation on 7 October 2015 and, in the words of the accompanying consultation paper, the "Government had not previously consulted on the GST cross border transactions 'connected with Australia' rules measure."

This area of the GST architecture is complex. Indeed, AFMA provided a very detailed submission to the Treasury Discussion Paper in 2011 regarding the application of GST to

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cross-border transactions, seeking clarity on the extent to which non-residents making supplies to Australian business are brought into the GST net, and advocating alignment to the GST definition of "enterprise carried on in Australia" to the "permanent establishment" definition in both Australia's domestic law and network of Double Taxation Treaties. In addition, AFMA advocated strongly that the measure remain on the Government's legislative agenda as an announced but unenacted measure in 2013.

Given our understanding of the alternate,ib approach adopted in the Exposure Draft to narrow the definition of "carrying on an enterprise in the indirect tax zone" in the Exposure Draft, a two week consultation period is entirely inappropriate. This is especially the case given the period of time that this measure has been part of the reform agenda.

Accordingly, while we in principle support the policy intent of the measures, we reserve the right to make additional comments, and request additional legislative change, in the event that the legislation gives rise to unintended consequences or outcomes which are detrimental to AFMA members. We further reserve the right to engage with the Australian Taxation Office to ensure that the administration of the proposed measures is consistent with our understanding of the policy intent.

Amendments to application of GST to digital products and services

We have noted the changes from the previous iteration of the Exposure Draft to those in the current version, as summarised in the accompanying consultation paper.

We support the changes in terms of identification of an Australian consumer from "all reasonable steps" to "reasonable steps" and the acknowledgement that such reasonable steps may be based on a supplier's ordinary business systems. This is particularly important in the context of the AFMA members who may have limited ability to obtain additional information regarding their customers beyond the initial on-boarding phase. We anticipate further engagement with the ATO to clarify the ambit of "reasonable steps" for the business conducted by our members.

We also welcome the proposed regulation to place foreign suppliers of financial supplies to be able to obtain "input taxed" treatment for such supplies through carrying on a banking business in a foreign country.

Yours sincerely,

Rob Colquhoun
Director, Policy