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Sent by email to: [BEPS@treasury.gov.au](mailto:BEPS@treasury.gov.au)

22 December 2016

Dear Sirs,

### **AIMA comments on proposed tax law amendment: Diverted Profits Tax**

The Alternative Investment Management Association (AIMA)<sup>1</sup> welcomes the opportunity to provide comments on the exposure draft legislation of the Diverted Profits Tax (DPT).

We appreciate the Australian Government's commitment to tackle aggressive tax planning by multinational entities (MNEs) operating in Australia through artificial diversion of their profits. While we consider that the BEPS outcomes would effectively deal with at least some of these perceived abuses, we appreciate that at this stage there is little appetite to consider changing such policy measures.

We have concerns about a number of aspects of the proposed DPT legislation, including the subjective nature of the tests and the additional complexity in assessing potential tax liabilities. However, we recognise that the intended targets of the DPT are large multinational businesses which seek to use abusive methods to divert taxable profits away from Australia, in response to which the Australian Government is entitled to consider legislation such as the DPT to be justified. Nevertheless, if enacted in the form of the draft legislation, the DPT would be likely to apply much more widely, including potentially to arrangements which are not contrived and do not constitute abusive or aggressive tax avoidance.<sup>2</sup>

We believe that the Australian Government should be reluctant to adopt a DPT which is not comparable in its effect to other versions of the tax, in particular the UK's DPT model<sup>3</sup>, and should consider the

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<sup>1</sup> AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,700 corporate members in over 50 countries. AIMA works closely with its members to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes, and sound practice guides. Providing an extensive global network for its members, AIMA's primary membership is drawn from the alternative investment industry whose managers pursue a wide range of sophisticated asset management strategies. AIMA's manager members collectively manage more than \$1.5 trillion in assets.

<sup>2</sup> The principal purpose test, which can be found in the anti-avoidance rules of many other tax regimes, takes into account any principal purpose that is to obtain a tax benefit, but, in the case of the DPT, with only limited regard (in the form of exceptions) to other principal purposes or to the circumstances of the arrangement. Accordingly, when obtaining a tax benefit is not the dominant purpose of entering into an arrangement, and the arrangement complies in other regards with tax legislation, in particular transfer pricing standards, it could nevertheless be caught under the DPT rules.

<sup>3</sup> The UK DPT provides a series of carve outs which exclude certain entities not intended to be caught by the legislation. In



possible adverse business and commercial outcomes that may follow if Australia is seen as possessing this relative disadvantage. The Australian Government has recently made clear its intention to enhance the competitiveness of its tax system, but, in our view, a DPT that is set too restrictively will run counter to such objective.

We wish to draw attention to a particular aspect of the DPT which we consider will be detrimental to investment into Australia by institutional investors, whether directly or through collective investment schemes. For such investors, the sufficient foreign tax test will not provide a safe harbour. This will in particular affect tax exempt institutional investors such as sovereign wealth funds and pension funds, but also other taxable investors resident in jurisdictions such as the UK where the applicable tax rate is less than 80% of the Australian corporation tax rate.

We believe that the Australian government should consider whether the sufficient foreign tax test could be better targeted and should at least introduce exemptions such as those in the UK DPT for payments to pension schemes, charities, persons with sovereign immunity and offshore funds that are widely held or mainly invested in by tax exempt persons.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Paul Hale", is positioned below the closing text.

**Paul Hale**  
**Managing Director, Global Head of Tax Affairs**

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addition to more general exclusions for financing arrangements and for the financial services sector, the UK DPT provides targeted exceptions relating to inward investment and investment management.