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AMENDMENTS TO THE TAXATION OF FINANCIAL ARRANGEMENTS (TOFA) STAGES 3 & 4 PROVISIONS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 29 June 2010 that it would make a range of refinements to the TOFA provisions that would further lower compliance costs and provide additional certainty to affected taxpayers.

This measure was included in Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, which was introduced into Parliament on 20 March 2013.

Consultation process

The measure was developed through extensive consultation with the Australian Taxation Office and industry as part of the Commissioner of Taxation's National Tax Liaison Group – TOFA Working Group consultation process.

Consultation on the exposure draft legislation and explanatory materials was conducted between 10 January 2013 and 13 February 2013. Six submissions were received, including three confidential submissions.

The public submissions can be viewed by clicking on the following link.

<http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2013/TOFA-Stages-3-and-4>

Summary of key issues

Key concerns raised by industry

The main concerns raised in the submissions relate to: the flow-on consequences of the hierarchy change between the application of the accruals method to particular gains or losses and to overall gains or losses; the tax timing of accrued gains and losses from prepayments and reversal of impairments; the requirements that foreign bank branches' Australian Prudential Regulation Authority (APRA) statements must satisfy for the purposes of various TOFA elections; and the consequences of failing the hedging documentation requirements given the tax hedging 'one in, all in' principle.

Response to the key concerns raised by industry

Amendments were made in the Bill to address the concerns raised regarding the flow-on consequences of the hierarchy change between the application of the accruals method to particular gains or losses and to overall gains or losses.



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In particular, amendments were made to the 'consistency of application of choice' rule in the TOFA provisions to ensure that taxpayers would not be prevented from applying the accruals method to particular gains and losses from a financial arrangement where they had applied the accruals method to an overall gain or loss from similar financial arrangements in the past.

Amendments were made to the accruals provisions to ensure that the application of the accruals method to prepayments and reversal of impairments does not require taxpayers to amend their prior year assessments to reflect gains and losses being accrued to periods prior to them becoming sufficiently certain.

The proposed amendments to allow Australian branches of foreign banks to use their audited APRA statements for the purpose of various TOFA elections are a compliance concession. The concession must be balanced against ensuring a similar degree of integrity with regards to the amount and timing of gains or losses as taxpayers using their audited financial reports. Consequently, the APRA statements must still be prepared in accordance with the recognition and measurement standards under the accounting principles and be audited in accordance with the auditing principles.

The tax hedging rules broadly remove distorting tax mismatch effects on pre-tax hedging activity by allowing the 'matching' of gains and losses made on hedges with the gains and losses made on the underlying hedged arrangement. The 'one in, all in' principle and the hedging documentation requirements are necessary integrity measures, without which there is the potential for considerable selectivity of recognising the timing and classification of tax amounts under the tax hedging method. This selectivity would create a risk to revenue.

As such, failure to meet the hedging documentation requirements has the consequence that the tax hedging method is no longer available to all future hedging financial arrangements after the failure, until the Commissioner of Taxation is satisfied a future failure is unlikely.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Nan Wang on 6263 2768.

Thank you to all participants in the consultation process.