



Australian Government

The Treasury

AMENDMENTS TO THE TAXATION OF FINANCIAL ARRANGEMENTS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 4 September 2009 a number of amendments to the taxation of financial arrangements (TOFA) regime. These amendments make minor policy refinements and technical corrections to Division 230 and the consequential and transitional provisions inserted by the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*, which gives effect to TOFA Stages 3 & 4.

The Tax Laws Amendment (2010 Measures No. 4) Bill 2010 (the Bill) gives effect to these amendments and was introduced into Parliament on 23 June 2010.

Consultation process

On 20 April 2010 the Government announced public consultation on draft legislation to implement the refinements to the TOFA regime and to clarify the taxation treatment of financial arrangements. Public consultation concluded on 14 May 2010. Submissions can be viewed on the [TOFA website](#).

Summary of key issues

Consultation on Exposure Draft Bill and Explanatory Materials

Key issues raised during consultation:

'Debt interests' as financial arrangements

The ATO and industry submitted that while interests that are 'debt interests' for the purposes of the debt/equity rules should be financial arrangements, specific inclusion of 'debt interests' as financial arrangements poses some issues. One of the key issues identified is the interaction between the grouping rules in Division 230 and Division 974.

Sufficiently certain financial benefits – not translated into Australian currency

Submissions outlined concerns that taxpayers who prepare their tax returns in Australian currency were required to translate financial benefits under an arrangement, where all of the financial benefits under that arrangement are denominated in a particular foreign currency, for the purposes of determining whether accruals tax treatment applies. This is inconsistent with the treatment of taxpayers who prepare their tax returns using an applicable functional currency.

Retrospective application of the accounting principles definition

Submissions raised concerns that the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*, which introduced the definition of 'accounting principles' which will be used for the purposes of Division 230, does not apply from the application of Division 230. The accounting principles

definition as introduced applied from the date of Royal Assent of the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*.

Response:

'Debt interests' as financial arrangements

Following consultation the item which specifically includes a 'debt interest' as a financial arrangement was removed from the draft Bill. However, the definition of 'cash settleable' rights and obligations was amended so as to ensure that arrangements that have a debt-like nature are treated as financial arrangements.

Whether a right to receive, or an obligation to provide, a financial benefit under an arrangement is 'cash settleable' will depend on the nature or purpose of the financial arrangement under which the financial benefit is to be received or provided.

Sufficiently certain financial benefits – not translated into Australian currency

Following consultation the draft Bill was amended so that both Australian currency and applicable functional currency taxpayers are not required to translate, for the purposes of determining sufficient certainty, financial benefits under an arrangement, where all financial benefits under that arrangement are denominated in a particular foreign currency.

The amendment will facilitate accruals tax treatment of financial instruments wholly denominated in a foreign currency for taxpayers who use Australian currency to prepare their tax returns. This amendment gives effect to the original policy intention.

Retrospective application of the accounting principles definition

Following consultation, the amendment will ensure that the 'accounting principles' definition will commence from the commencement of Division 230; that is, 1 July 2010, or on an elective basis, 1 July 2009. This will provide certainty as to the application of Division 230 and the application of the accounting principles definition.

Feedback

Feedback on the consultation process for this measure can be forwarded to tofa@treasury.gov.au. Alternatively, you can contact Nan Wang on 02 6263 2768.

Thank you to all participants in the consultation process.