18 December 2025

The Secretariat
The Board of Taxation

Via email: taxboard@taxboard.gov.au

Dear Secretariat,

Red Tape Reduction Review

The Australian Financial Markets Association (**AFMA**) represents the interests of over 130 participants in Australia's 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. AFMA's members are the major providers of wholesale banking and financial market services to Australian businesses and investors.

We are pleased to contribute to the Board's Red Tape Reduction Review. In framing our comments below, we note that many AFMA members operate in a number of jurisdictions, both regionally and globally, and therefore have as a key operational priority that there is consistency across jurisdictions in operationalising compliance requirements, particularly those multilateral initiatives from the OECD and otherwise.

Executive Summary

AFMA recommends the following by way of executive summary:

- That the ATO significantly reduce the regulatory burden associated with Justified Trust reviews in subsequent reviews through tailoring further enquiries to understandings gained through the initial review cycle;
- That additional compliance disclosures are subject to discrete review to ensure that the benefit arising from the disclosure is proportionate to the increased regulatory burden;
- That the ATO aligns the compliance approach for the Anti-Hybrid rules to comparable jurisdictions;
- That the definition of "financial entity" is aligned to licensing requirements and such entities are carved out from the Debt Creation Rules;
- That any duplication between the disclosures on the International Dealings Schedule (IDS) and the Local File be eliminated;

- That Australia aligns the disclosure requirements for Public Country-by-Country reporting to the EU requirements; and
- The compliance burden associated with Pillar Two compliance be mitigated through use of safe harbours and transitional rules.

Justified Trust

A significant proportion of AFMA's members sit within either the Top 100 or Top 1,000 taxpayers and accordingly have been reviewed by the ATO as part of the Justified Trust program. While the decision to undertake a Justified Trust program was a policy decision made by Government, the program is undoubtedly a source of significant regulatory burden for affected taxpayers. For example, in no other jurisdiction that AFMA is aware of, does a revenue authority require the local CEO to present on corporate strategy.

Notwithstanding the regulatory burden imposed by the program, AFMA members expended considerable resources to assure the ATO as to their tax performance and governance. AFMA has been advised by the ATO that the ATO "have not identified any widespread material concerns that would usually result in taxpayers receiving a low assurance rating and/or having specific issues raised as a red flag. This is certainly seen as a positive result for the industry overall."

The relevant point for the purposes of the Board's review is that, having demonstrated satisfaction of the ATO's requirements through the first round of reviews, AFMA would expect that, in the current second round of reviews, there would be a significant reduction in the regulatory burden, reflecting a payoff for the investment taxpayers made in the first round of reviews and an understanding by the ATO of the commercial and tax positions of the taxpayer. However, this has not been the experience of AFMA members so far, with reviews commencing with voluminous Requests For Information (RFIs) that have not been tailored to taxpayers, reviews with different teams than for the first round and unrealistic timeframes for response, driven by the fact that the ATO is behind in its review cycle.

AFMA recommends that a significant area of reducing red tape/regulatory burden in the tax system would be reducing the invasiveness of subsequent Justified Trust reviews.

ITR Disclosure Items

A significant source of red tape in the taxation system is the annual income tax return that is lodged by all corporate taxpayers. For taxpayers within the AFMA membership, this requires lodgement some or all of:

- Income Tax Return;
- International Dealings Schedule;
- Reportable Tax Positions Schedule;
- Capital Gains Tax Schedule;
- Losses Schedule;
- Trust Income Schedule;
- R&D Tax Incentive Schedule;
- Dividend and Interest Schedule.

This is in addition to other lodgement obligations arising from Country-by-Country reporting (Master File, Local File).

Given the existing volume of compliance requirements arising from these lodgements, AFMA recommends that the ATO instil a process where any additional disclosure items/schedules are subject to a discrete review and approvals process to ensure that the benefit arising from the disclosure is proportionate to the regulatory burden that the additional disclosure imposes.

A live example from the 2025 Income Tax Return is the additional disclosure in relation to Gross Distributions from Trusts. Many AFMA members trade instruments such as ETFs that are legal-form trusts. However, as the taxpayers are within TOFA and have made the financial reports election, the receipt of any distribution will have no consequence from a tax perspective; however, the regulatory burden associated with identifying the distributions is significant. AFMA recommends, in this specific circumstance, that an exemption exists for taxpayers that are within TOFA.

Anti-Hybrid Rules – Imported Hybrid Mismatch

Australia has enacted legislation to give effect to the OECD's Anti-Hybrid Rules. As part of the requirements imposed by the legislation, Australia has included an Imported Hybrid Mismatch Rule which, generally, requires Australia to neutralise a hybrid mismatch to the extent that it has not been otherwise neutralised.

AFMA's observation is that the ATO's administration of the Imported Hybrid Mismatch Rule imposes significantly more burdensome requirements than other jurisdictions that have adopted a similar rule.

The compliance approach to assess hybrids in Australia requires an assessment of a taxpayer's related party transactions against each of the hybrid mismatch types in the order set out in the legislation. Then, if a mismatch is identified the hybrid needs to be neutralised. As a consequence of this, taxpayers are required to go through a very extensive approach to assess and document the review undertaken, which includes obtaining confirmations from colleagues in other jurisdictions on each transaction that has been undertaken with them.

This contrasts with the requirements in other jurisdictions, who adopt an approach to focus only on those areas that potentially could lead to a hybrid mismatch and then review and monitor for changes in those areas and assessing for new products or transactions which could potentially result in hybrids. As a result, the regulatory burden in Australia is approximately four times that of other jurisdictions in terms of hours required to satisfy the Australian requirements.

As noted above, AFMA's clear preference in relation to multilateral initiatives, such as those implemented to give effect to OECD recommendations, is that the Australian administration of those initiatives aligns with other adopting jurisdictions. The administration of the Imported Hybrid Mismatch rule is out of step with the approach from Australia's peers.

Debt Creation Rules and Financial Entities

The recently enacted Debt Creation Rules are a significant source of red tape and regulatory burden for affected taxpayers. This is scarcely surprising, as the legislation to give effect to the Debt Creation Rules was not subject to consultation prior to introduction into Parliament, resulting in significant likelihood of unintended consequences.

While the enactment of new legislation may be initially seen as a policy issue, legislation which is unclear as to its purpose and imprecise as to the situations in which it applies is necessarily a source of regulatory burden. AFMA members advise that significant resources must be expended in both factual and legal analysis to determine whether they are in scope for the application of unclear legislation and there will always be an element of remaining uncertainty due to the ambiguous nature of the legislation. This is an indirect form of 'red tape' where unproductive resources are diverted to compliance activities which may only be subject to regulatory scrutiny many years later.

Noting that banks (ADIs) are carved-out from the Debt Creation Rules, the most significant regulatory burden arises for those financial entities that operate in similar markets and undertake similar transactions to banks (e.g. non-ADIs) but are not carved out from the operation of the rules. This creates frictions for routine markets transactions and significant compliance burden in respect of transactions that are ordinary course business. For example, financial entities (ADIs and non-ADIs) typically enter into financing activities such as securities lending transactions, repurchase transactions ang hedging activities with related and unrelated parties. These activities undertaken by an ADI do not require tracing of source of funds but for non-ADIs, undertaking the same activity they are required to trace the source of funds under the debt creation rules. This puts non-ADIs in a competitive disadvantage to ADIs who undertake exactly the same transaction.

AFMA recommends that financial entities (including non-ADIs) be excluded from the Debt Creation Rules or, in the absence of that recommendation prevailing, there be exemptions for routine financing transactions that are undertaken in the ordinary course of business, such as securities lending transactions, repurchase transactions and derivative transactions.

Financial Entity Definition

Further to the point raised above in relation to the Debt Creation Rules, an area of significant red tape and regulatory burden for AFMA members is the amended definition of "financial entity." In the absence of any guidance from the ATO, entities that would routinely be considered to be financial are undertaking significant analysis, including senior legal opinion, to justify the approach adopted.

In AFMA's view, Australian entities which have an Australian Financial Services Licence (AFSL) but are not ADIs should be considered "financial entities" under the derivatives definition if such Australian entities, in their standard course of business, transact with affiliates offshore as part of the global trading business to support their businesses in Australia, which principally involves facilitating client transactions. This includes executing client transactions, market making, acting as principal to assist clients in managing their risk, and hedging risk. Securities are pooled across multiple jurisdictions. Dealing with affiliates offshore (such as entering into derivatives) is integral for Australian entities to conduct their businesses in line with the business model to manage risks (e.g. by entering into various hedging agreements with other parties which reduces or eliminates its exposures).

AFMA's view is that the ATO could provide guidance confirming this point which would greatly reduce the regulatory burden associated with proving that an entity meets the definition of "financial entity."

International Dealings Schedule and Local File

AFMA members advise that there is significant duplication in terms of the disclosures made on the International Dealings Schedule (IDS) and the Local File lodged for Country-by-Country reporting purposes. Consistent with the Government's current mantra of "telling regulators once," where a taxpayer has lodged an IDS, this information should be used by the ATO to populate the Local File.

Public Country-by-Country Reporting

AFMA notes the Government's policy decision to require Significant Global Entities (**SGEs**) with operations in Australia to make certain Country-by-Country (**CbC**) information public. Notably, this is consistent with decisions to make information publicly available in other jurisdictions, such as the European Union.

To assist with consistent interpretation of the CbC disclosures and to reduce regulatory burden, ideally Australia would have aligned its disclosure requirements to those of the EU, to allow SGEs to adopt a globally consistent compliance program. However, Australia instead adopted a disclosure approach aligned to a voluntary standard, GRI 207, which means that there is duplication of effort to comply different requirements that are ostensibly aimed at the same objective.

Moreover, there is a discrepancy between the jurisdictions that are required to be disclosed on a non-aggregated basis in the Australian requirements relative to the EU, which exacerbates the compliance burden. The EU list of non-aggregated jurisdictions is based on a rigorous process and allows jurisdictions to be removed from the list where the jurisdictions can evidence improvements in tax transparency. Conversely, the Australian list is based on current compliance schedule requirements (such as the International Dealings Schedule) and there is no robust, transparent process for jurisdictions to be moved from non-aggregated to aggregated. Perversely, the Australian list of non-aggregated jurisdictions includes Switzerland and Singapore, both of which have concluded a Double Taxation Treaty with Australia.

AFMA recommends that the disclosure requirements for Public CbC purposes are aligned to the EU requirements to significantly reduce regulatory burden and red tape.

Pillar Two

AFMA notes that the data that is to be used to populate the Globe Return for Pillar Two purposes does not natively exist in current systems, meaning that affected taxpayers will need to build new systems purely for the purpose of Pillar Two compliance. Given Australia's headline corporate tax-rate for affected taxpayers of 30%, the likely revenue generated by

Pillar Two is estimated to be *de minimis,* meaning that the cost of compliance for Australian taxpayers will significantly outweigh the revenue generated.

To this end, the ATO should allow taxpayers to utilise all permissible safe harbours and transitional rules to minimise the regulatory impact with complying with the Pillar Two requirements.

Section 128F

AFMA notes that a considerable source of regulatory burden and red tape arises from evidencing the availability of the interest withholding tax exemption under Section 128F. The public offer test is idiosyncratic to Australia and the concept of “debenture” is unclear. The uncertainty that arises due to the current structure of Section 128F is a significant disincentive for Australia being a destination for foreign debt capital.

Wholesale reform of Section 128F, such as to codify the financial institutions exemption that exists in many Double Tax Treaties in the domestic law, requires legislative intervention and accordingly may be beyond the scope of the Board’s review. However, the Board may consider ways in which the scope and application of Section 128F could be clarified through ATO guidance.

Fringe Benefits Tax

AFMA agrees with other stakeholders that compliance with Fringe Benefits Tax is a significant source of regulatory burden. A simple measure to assist would be the increasing of the minor benefit threshold of $300, which was set in 2007, so a higher figure, say $500.

Other Operational Duplication

PAYG Withholding Form

Taxpayers are required to lodge a ‘PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report’ where they are required to obtain a certificate of payment to evidence payments of withholding tax. The report discloses interest, dividend and royalty payments to non-residents not reported in the AIIR. The ATO may already have this information via monthly activity statements where the amount of withholding tax is reported and remitted, as well as tax return disclosures. Accordingly, AFMA’s view is that the PAYG form is duplicative and queries whether any remaining information can be obtained through additional disclosure in existing tax filings instead of a separate lodgement.

Certificate of Residency

Taxpayers may be required to provide a Certificate of Residency (COR) to foreign counterparties for treaty purposes. The process of obtaining the certificate requires a submission of a form to the ATO and the standard processing time. The COR is only valid for one year so taxpayers need to request it each year. AFMA queries whether this can be automated and available to be downloaded from the ATO portal instead of completing forms.

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Please contact me on (02) 9776 7996 or at rcolquhoun@afma.com.au to discuss any of the matters that we have raised in this submission.

Yours sincerely,

Rob Colquhoun
Head of Tax