18 July 2014

Manager
International Engagement Unit
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via Email: BEPS@treasury.gov.au

Dear Treasury,

Common Reporting Standard for the automatic exchange of tax information

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.

We welcome the opportunity to provide a submission in relation to the Treasury Discussion Paper titled "Common Reporting Standard for the automatic exchange of tax information" (**the Common Reporting Standard**).

We acknowledge that the Common Reporting Standard, and the Australian implementation of the standard, is in its formative stages and expect that further issues and perspectives will continue to arise as institutions refine their compliance responses. Accordingly we look forward to continuing to work with Treasury to address any such issues as they arise.

At the outset, we reiterate previous comments that the best tool in terms of reduction in compliance costs in relation to the implementation of the Common Reporting Standard is certainty in the form of legislation and explanatory material in a timely manner. We acknowledge the efforts of Treasury in participating in the OECD process in

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developing the standard for the automatic exchange of information and urge this process to continue.

Definition of "Reporting Financial Institution"

AFMA members include a number of global financial institutions that operate in Australia with varying business models and to varying extents. These may include institutions that are authorised by APRA to operate as Representative Offices and consequently do not have any local account-holders, through to full-service institutions that operate either via a branch, a subsidiary or both, that are both headquartered locally or offshore.

We seek clarity from Treasury as to when a financial institution with a presence in Australia will constitute a "reporting financial institution." We assume that only those institutions that are authorised by APRA to carry on banking business and have accounts held locally will have a reporting obligation. That is, to the extent that the role of the Australian operations is merely to introduce Australian clients to Head Office, and any accounts held by the account-holder are not held in Australia, then that institution will not be obliged to report to the ATO.

Further, page 3 of the Discussion Paper states that "some brokers" will be covered by the definition of a Reporting Financial Institution. We request that Treasury articulate further the circumstances in which it believes that brokers will be caught and have reporting requirements.

In relation to the third Consultation Question in Section 2.1 of the Discussion Paper, and subject to the comments above, AFMA is not aware of any circumstances where its members will be treated as Non-Reporting Financial Institutions for Australian purposes but as Reporting Financial Institutions elsewhere. As a general comment, however, we would expect that an exemption in Australia for an institution that would otherwise be treated as reporting would not materially reduce compliance costs.

Obligations for Foreign Controlled Financial Institutions

For those AFMA members that operate in Australia but are, or their parents are, resident in other jurisdictions, it is expected that the compliance response to the Common Reporting Standard will be determined by Head Office and then implemented globally, including by the Australian operations. This is consistent with the FATCA experience. Where this is the case and the financial institution is headquartered in a jurisdiction that has adopted the Common Reporting Standard, there should be within the Australian requirements embedded sufficient flexibility to ensure that the institution's global response to the Common Reporting Standard may be implemented in Australia with minimal discrepancies.

For example, to the extent that an institution is headquartered in a jurisdiction that is one of the "CRS Early Adopters Group," the institution may determine pre-existing account-holders with reference to 31 December 2015 and then implement on-boarding

systems for new account holders from 1 January 2016. This may be earlier than the proposed Australian implementation timeline. Accordingly, the Australian framework should allow for the determination of when an account holder is "pre-existing" or "new" to be determined in accordance with the Head Office requirements should the financial institution prefer this.

On a related point, AFMA appreciates the consideration by Government of allowing the extension of due diligence procedures to cover all non-residents (the so-called "big-bang" approach) to ensure that determination of the tax residence of all pre-existing account holders only occurs once. From AFMA's perspective, this will result in significant compliance costs savings when compared to requiring an institution to undertake due diligence in respect of each new jurisdiction as it commences compliance with the Common Reporting Standard.

Reporting Requirements

AFMA submits that the AIIR should not be the reporting mechanism under the CRS for those institutions with multinational operations. Rather, utilisation of the FATCA reporting solutions will most efficiently leverage the work done for FATCA in terms of compliance with the Common Reporting Standard. We agree that for local institutions that may not be subject to FATCA that a modified AIIR may be preferable. We urge Treasury and the ATO to be somewhat flexible on this point to the extent possible/practical.

Requirement to look through Passive NFFEs

AFMA acknowledges that one of the key differences between the Common Reporting Standard and FATCA is that the Common Reporting Standard requires financial institutions to look through passive vehicles and identify/report on controlling persons.

We request that Treasury confirm that this requirement only extends to entities designated as Passive NFFEs and not other entities, including, for example, financial institutions that are located in jurisdictions that have not adopted the Common Reporting Standard.

Further, we request confirmation that the determination of the controlling persons in that instance is determined in compliance with prevailing AML/KYC processes as they pertain to the institution that is performing the due diligence, i.e. compliance with AML/CTF processes for customer due diligence, regardless of which jurisdiction they are set by, is acceptable from a Common Reporting Standard perspective.

As an aside, we note that where there are multiple controlling persons of one Passive NFFE located in different jurisdictions, the account information of that NFFE may need to be reported to multiple jurisdictions. Guidance on how this will work practically may be necessary in the future.

Exception from "Reportable Accounts" – listed and regularly traded

As Treasury is aware, there is generally an exception from the definition of "reportable account" to the extent that an instrument is listed and regularly traded on an approved securities exchange. This is because, generally, the account is held via an interposed financial institution and that relationship will give rise to a reportable account.

During the negotiations of the Australian FATCA Intergovernmental Agreement, certain Australian listed securities were excluded from the exception on the basis that they were held directly by the investor. AFMA submits that this exclusion should not be replicated for the purposes of the common reporting standard. In order for the Common Reporting Standard to deliver on its stated objectives there ought, to the extent possible, be consistency in terms of approach for each participating jurisdiction. There will be additional compliance costs in terms of identification of affected listed instruments and also understanding as to how due diligence will be performed on such instruments to the extent that they are brought into the Common Reporting standard net.

Further Comments on Discussion Questions

In respect of some of the questions embedded in the Discussion Paper, AFMA makes the following observations (in addition to the comments above):

- AFMA agrees that the definition of an Excluded Account be determined primarily with reference to Annex II of the Model I FATCA Intergovernmental Agreement, which should mean that there is generally consistency as to what is included and excluded. Where there are discrepancies, we submit that flexibility be given to the financial institution to characterise accounts based on either the views of Australia or the headquarter jurisdiction so as to minimise compliance costs;
- Given the diverse nature of the AFMA membership, we are unable to provide meaningful information as to the proportion of accounts held by non-residents as this will vary markedly between outbound and inbound institutions;
- There will similarly be a divergence between the extent to which institutions are able to rely on the FATCA on-boarding processes for the purpose of compliance with the Common Reporting Standard. This will be a function of whether the FATCA on-boarding solution has been to ask the account holder to certify as to their residence or merely that they are/are not a resident of the United States for tax purposes;
- We consider that generally the AML/CTF requirements, including the additional CDD requirements that commenced on 1 June 2014, should meet the requirements of the Common Reporting Standards, and this will be beneficial from a compliance cost perspective;

- We do not envisage any changes to other parts of the law (privacy, anti-discrimination) to the extent that reporting entities report information to the ATO, who then exchanges the information under existing protocols/agreements;
- We believe that Australia's timetable for implementation of the Common Reporting Standard, as set out in the Discussion Paper, is achievable.

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AFMA is keen to continue to engage with Treasury regarding the implementation of the Common Reporting Standard from an Australian perspective and to ensure that there is requisite consistency and, therefore, reduction in compliance costs for global institutions. Please contact me with any queries or comments in relation to the AFMA submission.

Yours sincerely,

Rob Colquhoun
Director, Policy