

Dear Mark

The Australian Securitisation Forum (ASF) is the peak industry body representing the Australian securitisation and covered bond markets. The ASF's goals are to facilitate the formation of industry positions on policy and market matters, represent the Australian industry to local and global policymakers and regulators and to advance the professional standards of the industry through comprehensive educational initiatives.

1. The ASF, with the assistance of several of our member organisations, has been liaising with Treasury in relation to the impact of the proposed OECD Hybrid Mismatch Rules (incorporated in Schedule 1 of the *Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill 2018* on the Australian securitisation industry. The fundamental concern for the industry has been that the Bill does not specifically reference or adopt the securitisation exclusion recommended by the OECD in Recommendation 1.5 of its report "*Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2*" (October 2015). Initially the ASF approached Treasury requesting that the exemption for securitisation vehicles detailed in Recommendation 1.5 of the OECD Report and also Recommendation 9 of the Board of Taxation Report be inserted in the Bill. Our first submission dated 29 March 2018 (**ATTACHED**) included suggested language for inclusion in the Bill.
2. Following a subsequent teleconference with members of Treasury (including [REDACTED] [REDACTED] from the Revenue Group) and a representative of the ATO, the ASF prepared a second submission dated 8 May 2018 (**ATTACHED**) explaining the unintended consequences that the drafted Hybrid Mismatch Rules in the Bill (without change or clarification) could have on securitisation transactions and more broadly on the market. Again the ASF recommended to Treasury that the Bill be amended to ensure that ordinary securitisation transaction vehicles not be caught under the structured arrangements definition as proposed. Despite being advised by Treasury in discussions that certainly is not the intention of the legislation, no changes were made to the Bill before it was introduced into Parliament on 24 May 2018. The Explanatory Memorandum also did not clarify the issue.
3. When the ASF became aware that the Bill had been introduced into Parliament without amendment or without any clarifying statements being incorporated in the Explanatory Memorandum to address our concerns, we once again contacted [REDACTED] [REDACTED] (Revenue Group) and [REDACTED] [REDACTED] (Head, Financial System Division) from Treasury who advised us to prepare some clarifying statements that could potentially be included in an addendum or replacement Explanatory Memorandum (if the Minister were to agree to this) OR that could be included in the Minister's second reading speech. Those statements are set out in the **attached** email. Of course, our strong preference would be for an additional statement be made in the Explanatory Memorandum (by way of an addendum if necessary) as this would be the most effective way of providing clear guidance (and would avoid misinterpretation of the new provisions) on the issue for the ATO in the future when it looks to prepare its own guidance. The additional text we would appreciate being incorporated into the Explanatory Memorandum to address our concerns is:

"It would not be expected that payments made upon tranches of debt issued by a bona fide securitisation vehicle (for example, a vehicle engaged in "securitisation" transactions as defined in the Prudential Practice Guide APG 120 released by APRA) would be regarded as having been made under a "structured arrangement" for the purposes of section 832-210. For example, if payments on certain tranches of notes issued by the securitisation vehicle were taxed at a later time in the noteholder's country of residence than when a deduction is

allowed in Australia, and it would not be reasonable to conclude that the issuer had regard to the hybrid tax outcome in the pricing and marketing of those notes, then in the absence of any other indicia the requirements of section 832-210 should not be satisfied.”

In addition (and the following statement could be included in the Minister’s second reading speech) is:

“The “*structured arrangement*” definition is not intended to impinge upon ordinary commercial transactions, including ordinary bond issuances and securitisation transactions, where, although participants would reasonably be expected to take into account the tax treatment of the investment in making their investment decision, it would not be reasonable to conclude that the issuer had regard to the availability of hybrid tax outcomes in the pricing and marketing of those notes.”

The attached submissions made to Treasury on 29 March 2018 and on 8 May 2018 have been posted to the ASF’s website and therefore are already publicly available. Therefore we have no objection to the submissions being made public by the Senate Standing Committee.

We do appreciate the Committee considering our position and we would be happy to provide further explanations if so required.

We look forward to hearing from you.

Many thanks and regards

Robert

ROBERT GALLIMORE

Policy Executive | Australian Securitisation Forum