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ASSET MANAGEMENT

9 June 2015

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Email: economics.sen@aph.gov.au

Dear Sirs

Submissions to the Inquiry into the Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015 ("Bill")

Thank you for the opportunity to make a submission on the Bill to the Senate Standing Committees on Economics ("**Committee**"). Our submissions relate specifically to Schedule 7 – Investment Manager Regime ("**IMR**").

We welcome the IMR reforms sought be implemented through the Bill which, as the Honourable Josh Frydenberg, Assistant Treasurer, remarked in his Second Reading Speech, "are aimed at promoting Australia as a financial services centre by removing the uncertainties in the application of Australia's tax laws as they apply to widely held foreign funds and foreign investors".

We are, however, concerned by the ambiguities present in a number of provisions in Schedule 7 of the Bill which can give rise to interpretations that have the effect of undermining the policy objective of the IMR reform. In particular:

1. Whether a fund resident in a treaty country but to which the treaty does not apply (for example, an Irish UCITS), and which is managed by an independent Australian manager, will have the benefit of the concessions relating to permanent establishment under paragraph 842-215(2)(a).

2. What income falls within the ambit of "income that *relates to* or arises under" an IMR financial arrangement under paragraph 842-215(2)(a) and what income is excluded.

Further details on these issues are set out in the Appendix to this letter.

As a well-established Australian investment manager with more than $29 billion under management, Platinum has seen first-hand the demand from overseas investors for the services of world-class Australian managers. The uncertainties in Australian tax law, however, have jeopardised and, if left unaddressed, will continue to jeopardise, our ability to export our services globally.

In order to remove such uncertainties and to implement an effective IMR that allow Australia's funds management industry to compete globally, we ask that the Committee give consideration to the issues set out in these submissions and provide the necessary clarifications in its report.

Yours sincerely,

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Appendix – Detailed Submissions

1. Further concessions relating to permanent establishments (PE)

Under paragraph 842-215(2)(a), whether an IMR entity's income qualifies for the concessions relating to PE will depend on whether the income is treated as having a source in Australia under the applicable treaty or subsection 815-230(1) of the *Income Tax Assessment Act 1997* (Cth) (**Act**), as applicable. However, it is not always clear from subparagraphs (i) and (ii) whether the applicable test is the relevant treaty or the Act.

Specifically, we seek clarification on the following:

- Confirmation that the reference to "resident" in the opening sentence of subparagraph (i) refers to residence under the relevant treaty definition.
- Whether the reference to "*permanent establishment" in subparagraph (i) is intended to refer to the definition under the relevant treaty or that contained in section 6 of *the Income Tax Assessment Act 1936* (Cth).
- If an IMR entity is resident (under the relevant definition) in a country that has entered into a tax treaty with Australia and that treaty contains a business profits article, but the entity's income is not treated under that treaty as having a source in Australia or attributable to a PE (under the treaty definition) in Australia, can it be said that "subparagraph (i) does not apply" within the meaning of subparagraph (ii), thereby allowing the IMR entity to rely on subparagraph (ii)?

By way of illustration, Ireland is a country with which Australian has entered into an international tax treaty. Assuming that under the domestic laws of Ireland XYZ Fund plc is considered "resident in Ireland" but has tax exempt status, XYZ Fund plc would not be considered a "resident" of Ireland under the treaty. Moreover, the treaty would not operate to treat XYZ Fund plc's income to have an Australian source as the treaty does not apply to it. In such a case, it is not clear from paragraph 842-215(2)(a) whether subparagraph (i) or (ii) or neither would apply to XYZ Fund plc.

2. What income is covered

Paragraph 842-215(2)(a) limits the application of the PE concession to "income that relates to or arises under" an IMR financial arrangement. While paragraph 7.26 of the Explanatory Memorandum refers to "gains arising from the disposal of bonds and foreign exchange gains made under forward contracts" as types of income that would qualify for the concessions, it would be helpful if further examples can be provided. In particular, we seek clarification on the status of the following types of income, all of which are common types of income that may arise from an IMR entity's ordinary eligible investment activities:

- foreign exchange gains on normal expense accruals which are not directly related to a specific IMR financial arrangement (such as management fees, administration and custody fees, accounting fees);
- incidental sub-underwriting fees which may not result in the IMR entity actually acquiring an IMR financial arrangement;
- good value claims; and
- compensation amounts.

[End of Submissions]