

Additional Remarks by Labor and Democrat Senators

We the undersigned Senators support the Bill as a whole with the exception of Schedule 2. The Bill should be split with Schedule 2 of the Bill to be considered at a later time, but before the end of the financial year.

The undersigned Senators are concerned that Schedule 2 may seriously inhibit Australian firms' ability to raise cost effective finance. As evidenced by the submissions, there are concerns that the amendments may particularly affect Australian firms' ability to participate in syndicated loans. As noted in the ABA's submission, "the Bill will unreasonably impede access by borrowers to international debt markets"... "the proposed amendments will prejudice the ability of Australian firms to participate in the syndicated loan market".¹

The submissions also raised concerns that significant compliance costs would be imposed on business as a result of schedule 2. AFMA's submission notes that "the regulation impact statement describes the compliance costs as negligible. However, this is not consistent with the feedback we have from a number of firms".² The compliance costs arise from the uncertainty created in the loan market by schedule 2. The legislation creates significant uncertainty in the market as to which types of financial instruments are eligible for the withholding tax exemption. The proposed regulation making power to exclude debentures and to include debt interests creates this uncertainty. APLMA's submission explains that the failure to issue regulations concurrently with the introduction of the Bill introduces uncertainty into an issue regarded as settled ie: that debentures qualify for the exemption.³

The inquiry also highlighted that the Bill may have retrospective application. ABA's submission stated that "the Bill will be retrospective and will effectively impose costs (via interest withholding tax "gross up" clauses) on Australian borrowers who negotiated loan agreements in good faith based on current law".⁴ There is a need for transitional rules, as stated by the ICCA submission to ensure that certain financial instruments currently used by Australian borrowers are not negatively affected.⁵

1 Australian Bankers' Association, *Submission 1*, p. 1.

2 Australian Financial Markets Association, *Submission 4*, p. 3.

3 Asia Pacific Loan Markets Association, *Submission 3*, attachment, p. 3.

4 Australian Bankers' Association, *Submission 1*, p. 1.

5 Institute of Chartered Accountants in Australia, *Submission 2*, p. 4.

The problems with the legislation stem from the Government's failure to adequately consult with key stakeholders. As the ABA noted in its submission "a breakdown occurred in the consultation process in relation to the IWT amendments".⁶

We believe that the proposed schedule 2 substantially reverses the changes made by the Parliament in 2005, and we do not believe the Government has yet made a case to do so. As a minimum, we believe that schedule 2 of the Bill should be withdrawn until the regulations that would accompany the Bill in the first instance are ready. However, we also believe that the Government should seriously consider further consulting with industry with a view to giving Treasury the power to prescribe financial instruments which will not receive the withholding tax exemption rather than those that will.

Recommendation

The undersigned Senators recommend that:

- **as a minimum, the Bill be split with schedule 2 of the Bill to be considered at a later time once the legislation or once the regulations that will accompany the legislation are completed. Further, the Government should amend schedule 2 to give Treasury by regulation, the power to prescribe financial instruments which will not receive the withholding tax exemption rather than those that will.**
- **the Senate pass the remainder of the Bill (schedules 1 and schedules 3 to 7).**
- **Schedule 2 be dealt with before the end of the 2006-07 financial year.**

Senator Ursula Stephens
Deputy Chair

Senator Ruth Webber

Senator Andrew Murray

6 Australian Bankers' Association, *Submission 1*, p. 3.