



20 August 2024

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

Via email: [MNETaxIntegrity@treasury.gov.au](mailto:MNETaxIntegrity@treasury.gov.au)

Dear Director

### **Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024**

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 lodge a submission to the Treasury Consultation Paper titled "Strengthening the foreign resident capital gains tax regime" (**the Consultation Paper**).

#### **Notification Obligation for Markets Transactions**

AFMA has obtained confirmation from Treasury that the exemptions that currently exist from a withholding obligation will apply to any proposed notification requirement. This includes transactions that are covered by the exclusions in Section 14-215 of Schedule 1 to the *Taxation Administration Act 1953* or are in respect of a membership interest is not a non-portfolio interest. This is appropriate and will preserve the efficient operation of Australia's financial markets.

It is particularly noted that there are current exemptions from a withholding requirement for transactions on an approved stock exchange or those conducted using a crossing system, within the meaning of the Market Integrity Rules (Section 14-215(c)). The extension of these exemptions to the notification requirement is appreciated and AFMA notes that the crossing system exemption should apply to block trades that are notified through a crossing system as well as those conducted through such a system. Consideration should be given to a broad exemption for interests that are listed on an approved stock exchange given the potential

interactions with other regulatory measures relating to notifications and disclosures such as market integrity rules, continuous disclosure obligations, substantial shareholder notifications and material non-public information requirements.

We make two additional points in relation to the proposed notification and review requirement. Firstly, the notification requirement should not apply in circumstances where banks and other finance providers need to enforce security in distress scenarios, where the ability for banks/providers to act nimbly to preserve their commercial interests is paramount.

Secondly, AFMA's view is that there should not be a notification requirement in respect of disposals that qualify for rollover relief under Subdivision 126-B, given there should not be a tax consequence arising from the disposal.

### **Economic Interests in TARP and Other Integrity Measures**

AFMA believes that the risks of unintended consequences arising from extending the foreign resident CGT measures to synthetic exposure to taxable Australian real property would be significant. We further submit that the Commissioner has existing tools in the current suite of anti-avoidance provisions that would address any concerns.

Total return swaps and other derivatives that provide economic exposure to assets are common and allow investors to obtain access to the performance of assets that may be otherwise inaccessible, facilitating diversification and enhancing investor returns. Derivatives may also provide leveraged exposure to the performance of the underlying asset. That is, there are significant and widely-accepted commercial reasons as to why an investor would enter into a total return swap or other derivative and it is exceptionally rare that such a transaction would be undertaken for the dominant purpose of obtaining a tax benefit.

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Thank you for the opportunity to provide a submission. Please contact me on (02) 9776 7996 or at [rcolquhoun@afma.com.au](mailto:rcolquhoun@afma.com.au) to discuss any of the matters that we have raised in this submission.

Yours sincerely,



Rob Colquhoun  
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