



20 March, 2014

Mr Jason McNamara
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
1 National Circuit
BARTON ACT 2600

Dear Mr McNamara

DETAILS-STAGE REGULATION IMPACT STATEMENT - FOR FORMAL ASSESSMENT

I am writing in relation to the attached final details-stage Regulation Impact Statement (RIS) prepared by the Treasury for the implementation of the United States' Foreign Account Tax Compliance Act in Australia from 1 July 2014.

I am satisfied that the final details-stage RIS addresses the concerns raised in your letter of 17 March 2014. Specifically, we have revised the RIS to insert additional information regarding the scope and nature of the problem, consultation and implementation, and the impact analysis. The attachment to this letter provides more detailed information about the aspects of the RIS that we have altered in response to the concerns you raised and, where necessary, further clarification on elements where detailed changes were not possible.

Accordingly, I am satisfied that the final details-stage RIS now meets the Government's best practice regulation requirements.

I submit the final details-stage RIS to the Office of Best Practice Regulation for formal assessment. Due to the nature of this content of this RIS, it is necessary that it be treated as confidential until such time that the proposed IGA has been signed with the US. I ask that this matter be given urgent consideration to allow for relevant ministerial approvals to be obtained so that signature of the IGA can be considered by the Federal Executive Council as soon as possible.

Yours sincerely

Rob Heferen
Executive Director
Revenue Group

Attachment: Response to 17 March 2014 Concerns

General:

- In order to provide greater clarity regarding the overall regulatory framework and the comparative advantages and disadvantages of the options, an executive summary has been included.
 - A new table has also been inserted in the Analysis of Options section comparing the advantages and disadvantages of the options.

Nature and Extent of the Problem

- Australia's regulatory environment does not currently permit Australian financial institutions to comply with FATCA. Non-compliance would generate significant costs for financial institutions, which would in turn be passed on to their customers and reduce their international competitiveness.
- Further information has been provided about the relative advantages and drawbacks of the options to give further clarity around the risks associated with nil action.

Exposure to the Withholding Tax

- A lack of data prevents us from providing a reliable estimate of the amount of US source income derived by Australian financial institutions that could be subject to US FATCA withholding tax. However, large Australian financial institutions (such as banks) are assumed to derive high levels of US source income (directly or indirectly) compared to smaller financial institutions.

Linkages between the compliance costs of FATCA in the absence of Government intervention and the likely economic and compliance impacts for consumers and the economy more generally

- Further information has been provided on the factors that will affect Australian financial institutions that will have flow-on effects for consumers.

Australia-US Tax Treaty Interactions

- Further information has been provided in the text, under 'Tax treaty relief from FATCA withholding tax' and under further analysis under Option 3.
- The proposed IGA and the Australia-US tax treaty are two separate treaties; the interaction between them is limited to the facilitation of exchanging information between the respective competent tax authorities (the ATO and IRS). The degree to which the competent authorities are involved varies between Model 1 and Model 2.
- The withholding tax risk associated with no government intervention is not eliminated by the tax treaty. The remittance function under the treaty is not designed to return such a withholding tax and it is not permissible under that treaty. Significant problems exist with the return of funds, incomplete funds and an inaccessibility to tax credit.

Information Exchange and FATCA

- The Australia-US tax treaty provides for automatic exchange of information between competent authorities.
- FATCA serves the purpose of increasing the possibility of detection of US citizens who may seek to hide their funds in alternative jurisdictions.
- If Option 1 as described by the RIS is taken, there is reciprocity in obligations, which will allow to the extent that there is potential tax avoidance and evasion by Australian tax residents for greater information to be shared with the ATO. The quality, flow and significance of the revenue raised using these exchanges are intrinsically variable and unquantifiable due to the hidden nature of the flows.



Response to OBPR 17 March 2014 Comments (Attachment A)

General

1.	<ul style="list-style-type: none">The incremental benefits of each of the options have been highlighted by the insertion of a table which briefly summarises the relative advantages and disadvantages of each option.In the introduction to the 'Analysis of Options' section, we have inserted further analysis to better present the compliance cost saving and broader economic benefits offered by a Model 1 IGA.
1. a)	<ul style="list-style-type: none">An Executive Summary has been inserted to inform the reader about the three options to be considered in the RIS, the risks associated with the no-government action option and an indication of the incremental costs of each option.
1. b)	<ul style="list-style-type: none">In order to present the narrative in such a way that the compliance burden and costs are incrementally increasing with each option it is preferable to present it in the current order (Option 1 – Model 1 IGA, Option 2 – Model 2 IGA, Option 3 – No-Government Intervention). Unlike other regulations which may be proposed, the no-government intervention option will still result in a change to the operating field. It is more useful to consider then in this case, the options according the relative amount of the compliance burden and costs.In order to provide the reader with greater clarity, which may go to the point regarding to cohesion, a short summary of the impacts has been inserted prior to a consideration of the options in Part 5, to alert the reader to the trend that the costs and observations provide – that less government action will increase the compliance costs for business. Furthermore, as to readability a table has been inserted at the conclusion of Part 5 to summarise the relative advantages and disadvantages of each option.With regard to the Options Comparison table in Part 5, greater clarity has been provided by including subheadings that indicate the Option numbers.
<i>Introduction/Problem</i>	
2.	<ul style="list-style-type: none">Further explanation of the tax treaty and its impact on the FATCA withholding tax has been added under the heading 'Tax treaty relief from FATCA withholding tax'. A reference to the withholding tax refunds has also been included in the discussion of Option 3 under the heading 'Choosing to ignore FATCA'.

Response to OBPR 17 March 2014 Comments (Attachment A)	
	<ul style="list-style-type: none"> The RIS currently includes an indication of the assets held by members of the ABA, COBA and the FSC. The ABA and COBA have confirmed that figures for the quantum of US source income derived by Australian financial institutions are not readily available (and may be commercial-in-confidence in any event). However, they have further confirmed that large Australian financial institutions (such as banks) are expected to directly or indirectly derive high levels of US source income and smaller Australian financial institutions (such as credit unions) are expected to only directly or indirectly derive low levels of US source income. This explanation has been inserted under the heading 'FATCA withholding tax'.
4.	<ul style="list-style-type: none"> The introduction and the description of the problem sections of the RIS have been revised to better explain the nature of the problem.
<i>Analysis of Options ('Impact Analysis')</i>	
5.	<ul style="list-style-type: none"> The Analysis of Options currently provides an analysis for each option that considers the costs and benefits. The insertion of a summary table and the inclusion of an introduction to this section provide greater clarity. Each option provides a high level compliance cost for the purpose of the reader understanding the quantum. This is intended to be read in conjunction with the Part 6 compliance costs consideration which will provide more detail about the yearly and total costs as per the requirements of the Business Cost Calculator; that is annualised start-up costs and yearly ongoing costs. It is not possible to delineate the compliance costs across different stakeholder groups. The nature of the data provided by industry is such that it was provided in aggregate for each peak bodies set of members. Given the variety in the businesses within these peak bodies and the nature of the data, this is not possible. Some assessment has been made in relation to the response to Comment 8 that may be of assistance in understanding how the costs may practically spread across these businesses. With regards to the benefits, each option provides an explanation of how it will benefit the affected Australian financial institutions to varying degrees.
6.	<ul style="list-style-type: none"> The existing information exchange arrangements under the Australian-US tax treaty will only be enhanced by a Model 1 IGA. These enhancements will provide an expanded range of information. It is not possible to speculate on how much revenue or data this is likely to produce. To say that this is marginal does not take a holistic view of how information exchange agreements work. Furthermore, expanding Australia's information exchange arrangements with the proposed Model 1 IGA is important in a broader sense, it is consistent with Australia's commitment to expanding its tax information exchange network, its long standing position of exchange of information and its recent commitment to the global Common Reporting Standard.

Response to OBPR 17 March 2014 Comments (Attachment A)	
7.	<ul style="list-style-type: none"> Further information on international tax evasion has been produced under 'Exchange of tax information under the Australia-US tax treaty' and 'Enhancing tax system integrity'. Combating tax evasion and avoidance is an incremental process, of which an affective and expanding global network of tax information exchange agreements is an integral part. Signing a Model 1 IGA will expand Australia's information exchange gathering capacity and this process will pave the way for the Common Reporting Standard to be implemented. It is not possible, nor is it necessarily helpful to consider the incremental benefit of this information exchange agreement in isolation. It is the usefulness of continuing to expand Australia's network of information sharing options.
8.	<ul style="list-style-type: none"> A new section on customer obligations has been inserted into the Introduction section of the RIS to explain how FATCA may affect customers of financial institutions. It was not possible, however, to accurately quantify these obligations.
9.	<ul style="list-style-type: none"> A new paragraph, 'customer obligations' has been provided in 'Part 1: Introduction to FATCA'
10.	<ul style="list-style-type: none"> The Analysis of Options is intended to provide the narrative detail of the relative costs and benefits to industry of each option. In each option, we have provided high level compliance cost figures to give the reader a high level understanding of the cost differential. A further analysis of the compliance costs themselves is provided in Part 6. An introductory paragraph has been inserted in Part 5 in order to indicate to the reader that a consideration of the compliance cost in more depth follows the description of each option and their costs and benefits.
11.	<ul style="list-style-type: none"> A footnote has been inserted to explain the relationship between the FATCA regulations and the Annex II entities and products, and which exclusions were particularly important from an Australian compliance cost perspective.
12.	<ul style="list-style-type: none"> The adoption of Model 1 rather than Model 2, or vice versa, will not impact on the relative attractiveness of jurisdictions to Australia. The least attractive option to a jurisdiction will be a non-compliant jurisdiction under Option 3. There would be no difference for consumers choosing their financial product or service, nor would their interaction with their financial service provider be likely to be different, under Model 1 and Model 2.
<i>Consultation</i>	
13.	<ul style="list-style-type: none"> No response needed
14.	<ul style="list-style-type: none"> Further explanation has been inserted in the Consultation section of key concerns raised by industry and the extent to which these have been addressed.
<i>Implementation and Review</i>	
15.	<ul style="list-style-type: none"> Additional explanation regarding the proposed enabling legislation has been inserted in the Implementation and Review section.