



Australian Government

Department of the Prime Minister and Cabinet Office of Best Practice Regulation

Reference: 14024
Telephone: 6271 6270
e-mail: helpdesk@obpr.gov.au

Rob Heferen
Executive Director
Revenue Group
The Treasury

Dear Mr Heferen

Final Assessment Regulation Impact Statement- Implementation of the United States Foreign Account Tax Compliance Act in Australia

Thank you for forwarding the Regulation Impact Statement (RIS) for the above proposal for final assessment on Thursday 20 March 2014. I note that you have formally certified the RIS as required by the best practice regulation requirements.

The Office of Best Practice Regulation's (OBPR) final assessment is that the Treasury is compliant with the Government's requirements. This assessment is based on:

- The regulatory costs and cost offsets have been agreed with the OBPR.
- Your letter of 20 March 2014 certifying the RIS responds to the OBPR's formal assessment of the RIS on 17 March 2014. In some instances, the letter sets out how the OBPR's comments have been addressed in the RIS. In others, your letter refers to limitations in the available data that prevented or limited the inclusion of additional analysis in response to the OBPR's comments.

In addition, I note that the RIS:

- Does not contain obvious errors, provides an outline of the problem, and makes some effort to quantify the order of magnitude of that problem, albeit without estimating the scale and scope of the likely impacts of the problem for different industry or consumer groups.
- Provides a detailed account of the nature and likely magnitude of the compliance costs for key financial sector institutions, which has been supported by industry consultation. As noted above, these costs have been quantified consistent with the OBPR compliance costing methodology and agreed with the OBPR.
- Presents a conclusion and preferred option which is consistent with the evidence and analysis presented in the RIS.

However, having regard to the scale and scope of the problem, and the significance of the likely impacts of the proposal on industry, the OBPR considers that certain areas of the RIS would have benefited from more detailed analysis and greater clarity.

Specifically – and consistent with our previous comments – the impacts analysis section of the RIS would have benefitted from a more detailed distributional analysis of the likely implications of the FATCA for industry in the absence of Government intervention (Option 3). For example, a more in-depth qualitative analysis of the different impacts for (for example) insurers, compared with banks or investment/superannuation industry, would have assisted readers in appreciating the nature of FATCA impacts as well as adding depth to the discussion of the scale and scope of the problem.

This discussion would also have formed the basis for a more detailed discussion of the specific transmission mechanisms through which the impacts of FATCA, in the absence of Government intervention, would have raised costs for consumers (for example, in terms of increased borrowing costs, reduced returns in investments or savings, or higher insurance premiums).

The RIS would have also benefitted from a clearer discussion of the magnitude of the costs arising under the status quo. The RIS could have better explained the effect of the refund or credit that may be sought from the US Internal Revenue Service in the absence of Australian Government intervention, particularly within the discussion of the impacts.

The inclusion of this additional clarity and depth of analysis would have elevated the RIS to the level of best practice regulation impact analysis.

Publication requirements

The Office of Best Practice Regulation (OBPR) maintains a RIS website and the Government requires that RISs be posted within 5 business days of a regulatory decision being publicly announced. We would appreciate you advising us when a decision on this proposal is announced, and forwarding a final copy of the RIS in *Microsoft Word .doc* format in a form meeting the Australian Government's *Web Content Accessibility Guidelines*.

We suggest liaising with your web services team to ensure these guidelines are met. The OBPR should be consulted if the RIS is amended. It is the agency preparing the RIS, not the OBPR, which is responsible for the content of the published RIS.

The website provides a public comment facility on RISs posted on the site. The OBPR moderates this facility for offensive content but does not moderate debate. Please retain this letter as a record of the OBPR's advice.

Our reference number for this issue is 14024. If you have any further queries, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. McNamara', with a long horizontal flourish extending to the right.

Jason McNamara
Executive Director
Office of Best Practice Regulation
25 March 2014