

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY  
FINANCIAL SERVICES COUNCIL OF AUSTRALIA]

1 November 2010

Hon. Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
CC:PA:LPD:PR (NOT-121556-10)  
Room 5203  
PO Box 7604, Ben Franklin Station  
Washington DC 20044  
UNITED STATES OF AMERICA

Dear Mr Shulman

**COMMENTS BY THE FINANCIAL SERVICES COUNCIL OF AUSTRALIA ON THE FOREIGN ACCOUNT TAX COMPLIANCE ACT (“FATCA”) AND *NOTICE 2010-60* (“THE NOTICE”)**

The FSC welcomes the opportunity to comment on the FATCA provisions and the Notice issued pursuant thereto.

The FSC represents the retail and wholesale funds management, superannuation and life insurance industries within Australia. The FSC has 135 members who collectively are responsible for investing more than AUD 1 trillion on behalf of the Australian public. The Australian funds management industry is the fifth largest in the world.

We summarise below our members’ proposals on how FATCA could apply within the existing Australian legislative and regulatory framework in a manner that our members believe supports the policy objective of the law. A more detailed explanation of our proposals is contained in Addendum A.

**Executive summary**

1. Managed Investment Trusts (“MITs”) that are low risk based on investor type or profile should be excluded from the operation of FATCA on the basis that the risk of tax avoidance/evasion is extremely low, if present at all.
2. Widely held MITs should be deemed to comply with the provisions of FATCA on the basis that:
  - a. Australian tax law limits the percentage of foreign

ownership of MITs;

b. Our members estimate that foreign investors (including interests held by US account holders) equal approximately 3% of all MIT members;

c. It is likely to be practically and legally impossible to obtain the information required under FATCA for existing US account holders; and

d. Significant costs will have to be incurred in making IT changes, which, given the small percentage of overall foreign investors, is unlikely to produce any revenue benefit for the US Treasury.

3. MITs that do not have a low risk profile or are not widely held should be subject to FATCA on a prospective basis (i.e. after 1 January 2013) because it is likely to be practically and legally impossible to obtain the information required under FATCA for existing US account holders.

4. Apart from pure risk policies issued by life companies, superannuation policies issued by the superannuation class of life companies should be exempted from reporting requirements under FATCA. Annuity policies and investment bond policies should be subject to FATCA on a prospective basis (i.e. after 1 January 2013) because it is likely to be practically and legally impossible to obtain the information required under FATCA for existing US account holders.

The FSC would also welcome any opportunity to meet with representatives of the IRS to discuss and answer any questions it may have in respect of our proposals.

Yours sincerely

Martin Codina  
Director of Policy