



**CPA Australia**  
ABN 64 008 392 452

**CPA Centre**  
Level 28, 385 Bourke Street  
Melbourne VIC 3000 Australia  
GPO Box 2820AA  
Melbourne VIC 3001 Australia  
**T** +61 3 9606 9606  
**F** +61 3 9670 8901  
**E** vic@cpaaustralia.com.au  
**W** www.cpaaustralia.com.au

15 March 2007

The Manager  
Taxation of Financial Arrangements Unit  
Business Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**By email:** tofa@treasury.gov.au

Dear Sir/Madam,

### **TOFA 3&4 - Revised EDL**

CPA Australia welcomes the opportunity to make the following submission on the TOFA 3 & 4 revised Exposure Draft Legislation (EDL) as released by the Assistant Treasurer on 3 January 2007.

As Australia's pre-eminent professional association, representing the diverse interests of more than 112,000 finance, accounting and business advisors, we are committed to working with governments and government agencies to ensure current and future economic and social policies foster an environment that facilitates sustainable economic growth.

Our detailed comments and recommendations for changes to the current draft are detailed in the submission accompanying this letter. For ease of reference, a summary of our recommendations is appended below:

1. The objects section should refer to the fact that the use of accounting standards provides a considered and codified approach to the treatment of financial arrangements.
2. The Commissioner to have discretion to approve the use of financial reports where the substantive requirements of the law have been met.
3. The 'sole or dominant' risk test in proposed s.230-215(4)(a) should be removed to ensure consistency with the hedge accounting rules in AASB 139.
4. The definition of 'financial arrangement' for tax purposes be fully aligned with (and not be any wider than) the basic definitions of financial instruments and derivatives in AASB 132 and AASB 139 respectively.
5. The policy behind the proposed approach to the characterisation of financial arrangements be reconsidered and/or its full implications spelt out in the relevant legislation.

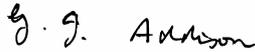
6. Finance leases be excluded from the proposed TOFA regime pending a separate review of such arrangements.
7. Confirmation that where the intention of a buyer under a deferred purchase agreement (DPA) is to take and hold the relevant shares, this does not give rise to a financial arrangement as defined.
8. The EDL be appropriately amended to confirm that proposed Division 230 does not apply to a financial arrangement that is an equity interest unless (i) the equity interest is held for trading purposes and always classified in your financial results at fair value through the P&L account; or (ii) the equity interest is a hedging financial arrangement under Division 230.
9. Proposed Division 230 be varied to confirm that scrip for scrip transactions remain under the CGT provisions.
10. The proposed particular gain/loss method for implementing the compounding accruals regime not be implemented.
11. Further clarification be provided of the applicable start dates for the TOFA regime for SA taxpayers and the timing of elections where a transitional election is required to be made.
12. The outstanding consolidation interaction issues be appropriately resolved as soon as possible.
13. The impact of the proposed TOFA regime on the existing capital losses of SME taxpayers be given further consideration with a view to it being ameliorated perhaps by way of an increase in the proposed de minimis threshold for these taxpayers.
14. An appropriate smoothing arrangement be introduced to ameliorate the impact of fully taxing unrealised gains under the proposed TOFA regime.
15. The long-standing treatment of bad debts by way of the allowance of an immediate deduction for such costs should be maintained.
16. The proposed de minimis threshold for small taxpayers be varied by extending it to SMEs with an annual turnover of up to \$100 million.
17. Larger taxpayers subject to Division 30 should be excluded from application of the Division 16E (and related) provisions.
18. The proposed exception rule for earn-outs should be extended to a sale of interests in an entity which owns a business.
19. The proposed arm's length rule for financial arrangements should only apply in anti-avoidance situations and appropriate integrity rules should be included for this purpose.
20. The proposed TOFA rules should not override the more specific income tax rules on debt forgiveness.
21. The definition of 'turnover' for the purposes of the de minimis threshold for SMEs be linked to the definition developed for the proposed new small business framework legislation.

14 March 2007

22. The central concept of a sufficiently certain gain or loss from a financial arrangement should be defined more clearly within the proposed legislation.
23. the remaining necessary interactive provisions be released for comment as soon as practicable and prior to the finalisation of the relevant TOFA legislation.
24. The additional exclusions identified in the attached submission should be either clarified or included in the existing list.

If you have any questions regarding the above, please do not hesitate to contact me on (03) 9606 9771.

Yours faithfully



Garry Addison FCPA  
Senior Tax Counsel  
CPA Australia

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