FINANCIAL SERVICES COUNCIL

24 June 2015

Mr Greg Wood
Manager
Tax Treaties Unit
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Greg

RE: TAX TREATY NEGOTIATIONS WITH GERMANY

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than $2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

In relation to the tax treaty with Germany, we believe it should be updated to be in line with treaties agreed with our major OECD trading partners.

Particular areas that should be addressed include a full exemption for dividend withholding tax on substantial shareholdings, a full exemption from interest withholding tax for interest paid to unrelated financial institutions and protection from taxation of disposals of portfolio interests in non-land rich companies. We have made further comments in Appendix A.

Also we would be interested to understand the treaty negotiation timetable and in particular whether tax treaties with Luxembourg and Hong Kong will be progressed. As major funds management centres the lack of tax treaties with these countries hampers Australia's ability to increase exports of Australia funds management services.

Should you wish to discuss this submission further please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely

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Appendix A

Further detail:

1. Interest withholding tax exemption. Although withholding tax is nominally imposed on the foreign lender, as a commercial matter the cost is almost always passed back to the borrower contractually through a gross-up. An interest withholding tax therefore increases the cost of the capital for the Australian borrower. Under almost all German treaties, there is a blanket exemption for interest, i.e. no withholding tax. It would therefore seem appropriate for there to be a zero rate of source taxation applied to interest, with the possible exception of related party lending. Alternatively an exemption for interest paid to unrelated financial institutions such as is contained in the French, US, UK, Japanese treaties.

2. Dividend withholding tax exemption. As with other recent treaties, a reduced rate for non-portfolio holdings, and a zero rate for 80% holdings should be inserted.

3. Royalties should exclude equipment royalties.

4. Consideration should be given to whether Australia will adopt the functionally separate entity approach adopted by the OECD. If not, the current Article 7, with its explicit references to executive and general administrative expenses, should be retained, and a workable mutual agreement procedure should be included.

5. An explicit exemption for governmental bodies should added, ie the Dividends and Interest Article in Articles 10(4) and 11(3) of the Australia-Switzerland treaty.

6. Explicit recognition of trusts would be helpful. Alternatively recognition of Managed Investment Trusts.

7. Explicit recognition of complying superannuation funds, along the lines of the Australia – Switzerland treaty.

8. Most favoured nation clause - there's no MFN currently, but it would be good to have one for withholding taxes. Automatic MFN would be great.

9. Inclusion of an “Other Income” article would be helpful.