



The Manager
Taxation of Financial Arrangements
Business Income Division
Revenue Group Treasury
Langton Crescent
Parkes ACT 2600
tofa@leasing@treasury.gov.au

28 January 2005

Dear Sir

**Taxation of Financial Arrangements
Stages 3 and 4 - Coherent Principles**

The Australian Securitisation Forum ("ASF") is grateful for the opportunity to be involved in the consultative process being conducted by the Department of Treasury ("Treasury") in respect of the reform of the tax rules for financial arrangements ("TOFA").

The taxation committee of the ASF has reviewed the coherent principles paper that Treasury issued to various interested parties on a confidential basis in December 2004 ("Paper").

The ASF does not support the approach proposed in the Paper.

The ASF agrees that reform of TOFA is warranted and the ASF will support reforms that it is confident can meet the following two key objectives:

- (a) the application of, and outcome under, the new rules to securitisation vehicles is sufficiently certain; and
- (b) the new rules allow securitisation vehicles (or a consolidated group that they form a part of) to recognise net taxable income in a way that reflects the economic reality of the securitisation vehicle. Ordinarily the true economic position of a securitisation vehicle can be determined having regard to its periodic cash flows.

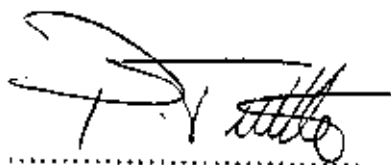
The ASF does not support the approach in the Paper because it is not sufficiently certain that either of the two objectives outlined above will be met. In particular the ASF notes that a critical commercial aspect of many securitisation vehicles is to ensure that they have no net exposures in respect of assets and/or liabilities that are denominated in different currencies. The lack of certainty in the Paper about the taxation of hedging arrangements is of fundamental concern to the ASF.

The ASF is keen to consult further with Treasury about the design and application of the TOFA rules as they apply to securitisation arrangements. The ASF recognises that the taxation of securitisation vehicles is a narrow aspect of the financial system that TOFA is required to cover.¹ Accordingly the ASF is prepared to allow other stakeholders to lead the debate with Treasury about the design of TOFA and the ASF expects to limit its role in the debate to determining whether the proposals published from time to time can be expected to achieve the two key objectives referred to above. To the extent that the rules ultimately expected to be introduced into the tax law do not achieve those objectives the ASF would wish to discuss particular changes and/or exemptions to those rules for securitisation vehicles. However that is somewhat of a last resort and the ASF would anticipate that an appropriately constructed TOFA regime could align the tax treatment of special purpose entities (of which securitisation vehicles are a particular type) to their economic position without the need for any particular exemptions and/or concessions.

Further the ASF would support any drafting style (eg. broad principles or detailed law) that achieved the twin objectives outlined above. Likewise the ASF would support the adoption of accounting principles as the prime test for the TOFA outcomes provided that sufficient comfort can be obtained from the ASF's accounting advisors that the application of the IFRS to securitisation vehicles will achieve the twin objectives outlined above.

The ASF Tax Committee looks forward to discussing these issues with you further as appropriate. The committee can brief Treasury officers on the typical form and main taxation and commercial drivers of securitisation vehicles if that would be useful to Treasury.

Yours sincerely,



.....
Patrick Tuttle
Chairman - ASF Taxation Committee

¹ Nonetheless the role the securitisation industry plays in the Australian financial system cannot be underestimated. Over the past 10 years, the outstanding assets and liabilities of Australian securitisation vehicles have increased from around \$10 billion in March 1995 to \$160 billion in June 2004 (Sources: ABS, RBA).