



New Zealand Market

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25 January 2024

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington
BY E-MAIL

TAXATION (ANNUAL RATES FOR 2023–24, MULTINATIONAL TAX, AND REMEDIAL MATTERS) BILL: SUPPLEMENTARY SUBMISSION

1. Background to supplementary submission

- 1.1 This letter supplements the Australian Securitisation Forum’s (ASF) submission on the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill (Bill) dated 13 July 2023 (ASF submission). That submission, among other things, raised concerns about the impact on securitisation transactions of changes proposed in the Bill (see clauses 39 and 62 of the Bill) to the treatment of trust income, in particular for securitisation trusts of which the beneficiary is a closely-held company.
- 1.2 In discussions with Inland Revenue officials since the ASF Submission was finalised in July 2023, it has been put to us that the negative impact on securitisation structures of the changes proposed in the Bill can be avoided. Officials have put to us that trusts established to hold assets in a securitisation structure can elect into the debt-funding special purpose vehicle (DF SPV) regime, such that any income of the special purpose vehicle (SPV) trust would be taxable to the originator (a company) and therefore fall outside the trust rules.
- 1.3 This letter explains why (contrary to the assumption officials may have been making) it is relatively common for securitisation structures not to use the DF SPV regime, and why, therefore, the concerns raised in the ASF Submission are real concerns that need to be addressed.

2. Impact of trustee tax rate proposals in Bill

Empirical evidence as to likely impact of Bill proposals on securitisation structures

2.1 The ASF has been assisted in relation to this submission by Bell Gully and Mayne Wetherell. Bell Gully and Mayne Wetherell are two of a small number of New Zealand law firms that frequently advise on securitisation transactions.

2.2 Bell Gully and Mayne Wetherell have each reviewed their files in order to provide (on an aggregated basis, so as not to disclose information regarding any particular matter) evidence relevant to officials' suggestion that securitisation trusts can use the DF SPV regime so as not to be adversely affected by the proposed changes to the tax treatment of trusts. The findings of that review are as follow:

(a) Based on a sample of around 40 securitisation trusts (there is some imprecision around the total so as not to double-count trusts that both firms have acted in relation to), a majority (around 60%) do not use the DF SPV regime. The reasons for this include:

(i) the DF SPV regime is not available to trusts in respect of which there are multiple originators, not all of which are in the same wholly-owned group;

(ii) where receivables that have been financed via a warehouse trust that has not been subject to the DF SPV regime are to be transferred to a new trust, the new trust may not qualify for the regime;

(iii) where a given originator finds that some of its trusts do not qualify for the DF SPV regime, it is easier administratively to have a consistent approach (rather than that originator having some trusts that are and some trusts that are not DF SPVs): and

(iv) some arrangements involve origination within the trust itself, and the DF SPV regime cannot be applied in these cases (receivables must be originated by a corporate to qualify).

(b) For trusts that do not use the DF SPV regime, it is usual for the net income of the trust to be allocated as beneficiary income to a company within the sponsor/originator group. This practice:

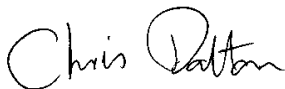
(i) reflects the economic substance of securitisation structures as being akin to secured borrowings by the sponsor/originator, such that any surplus (after meeting operating and financing costs) should belong to the sponsor/originator group; and

- (ii) is intended to achieve tax neutrality for the trustee, which is a requirement of lenders and rating agencies and appropriate given that the trustee wishes to avoid the risk of being taxed on any unforeseen amount of income.
- (c) Across the industry, the amount of net income of a non-DF SPV trust that is allocated to a corporate beneficiary (as described in (b) above) appears to be in the millions of dollars; i.e., the net income amounts allocated from the trust as beneficiary income to a company within the sponsor/originator group are not de minimis. While the majority of trusts are unlikely to have closely-held company sponsors/originators, some do, and they could be significantly affected by the proposed law changes.

Consequence of the Bill proposals for securitisation SPVs that do not use the DF SPV regime and so are taxed under the trust rules

- 2.3 Under the proposals in clauses 39 and 62 of the Bill, beneficiary income derived by certain closely-held company beneficiaries of securitisation trusts would be taxable to the trust at 39%, rather than taxable to the beneficiary at 28%.
- 2.4 For the net income of a securitisation trust allocated to a company within the sponsor/originator group to be treated as trustee income and taxed at 39% is plainly the wrong policy outcome. The income is properly income of the corporate group and should be taxed at 28% until such time as it is distributed to shareholders who are on a higher rate.
- 2.5 Accordingly, if the Bill proposals were to proceed without including exceptions for securitisation trusts as recommended in the ASF Submission (see paragraph 1.5(a) of that submission), this would increase both the tax burden and administrative burden on closely-held businesses using securitisation as a means of accessing funding or minimising their funding costs. This in turn would reduce competition and harm consumers and businesses through increased funding costs.

Yours sincerely,



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