5 February 2020

Review of Australia's Corporate Tax Residency Rules
Board of Taxation Secretariat
c/- the Treasury
Langton Crescent
PARKES ACT 2600

By email: CorporateResidency@taxboard.gov.au

Dear Secretariat

Corporate Tax residency – reform options

The FSC welcomes the opportunity to comment on the Board of Taxation's paper on corporate tax residency – reform options (**the Consultation Paper**).

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost $3 trillion on behalf of more than 14.8 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 fourth largest pool of managed funds in the world.

Submission

The FSC's first submission to the Board of Taxation's (**The Board**) Review made a detailed argument that the tax residency test for corporates (and similar entities including managed investment trusts) should be amended to be a place of incorporation test only.

This is consistent with the position put in a submission to the Consultation Paper by the Corporate Tax Association (CTA) and Business Council of Australia (BCA). On this basis, the FSC supports the joint CTA/BCA submission on the Consultation Paper.

The FSC highlights some relevant points from our first submission to the Board:

- The existing residency test, after the Bywater decision, has caused considerable problems for the managed funds industry, particularly for managed funds that are legally established overseas and have an Australian manager. For these funds, the ATO's interpretation of the CM&C test is considerably reducing if not negating the benefits of the Investment Manager Regime (**IMR**).
- A foreign managed fund that is unexpectedly reclassified as an Australian resident for tax purposes could be faced with numerous detrimental tax outcomes, potentially including loss of flowthrough tax status, increased capital gains tax, increased withholding tax and substantial increases in tax complexity and administration costs.
- Any changes relating to corporate tax residency should also apply to structures used by managed funds, particularly Managed Investment Trusts (MITs) and attribution MITs (AMITs).

The FSC's first submission to the Board is available from:
https://cdn.tspace.gov.au/uploads/sites/74/2019/09/10-Financial-Services-Council.pdf

We would be happy to discuss this submission further. I may be contacted on mpotter@fsc.org.au or +61 (2) 9299 3022.

Yours sincerely,

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