



Review of the Taxation Treatment of Islamic Finance Products

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Most Crescent Times readers would be well aware that on 26 April 2010, the then Rudd Government announced that the Board of Taxation ('Board') would be undertaking a comprehensive review of Australia's tax laws to ensure that, wherever possible, they do not inhibit the expansion of Islamic finance, banking and insurance products. In late October 2010, the Board announced the release of a discussion paper on the its review of the taxation treatment of Islamic finance, banking and insurance products.



or speculation: Uncertainty in contractual terms and conditions is forbidden. However, risk taking is allowed when all the terms and conditions are clear and known to all parties.

The Board was asked to:

- Identify impediments in current Australian tax laws (at the Commonwealth, State and Territory level) to the development and provision of Islamic financial products in Australia;

- Examine the tax policy response to the development of Islamic financial products in other jurisdictions (including the United Kingdom, France, South Korea and relevant Asian jurisdictions); and

- Make recommendations (for Commonwealth tax laws) and findings (for State and Territory tax laws) that will ensure, wherever possible, that Islamic financial products have parity of tax treatment with conventional products.

To facilitate public consultation, the Board has developed the discussion paper as a basis for further discussion. The closing date for submissions is Friday 17 December 2010, and I urge all Crescent Times readers to make a submission.

Copies of the Board's discussion paper are available from www.taxboard.gov.au.

Principles Underlying Islamic Banking & Finance

- Prohibition of financing certain economic sectors: Financing of industries deemed unlawful by Shariah – such as weapons, pork and gambling – is forbidden.

- Principle of profit and loss sharing: Parties to a financial transaction must share in risks and rewards attached to it.
- Principle of asset backing: Each financial transaction must refer to tangible, identifiable underlying asset.

The Board is looking at the tax treatment of Islamic finance products based on their economic substance rather than their form. Where an Islamic finance product is economically equivalent to a conventional finance product, the tax treatment of the two products should be the same.

If the Board concludes that amendments to the tax law are required, the Board will consider whether adjustments can be made to existing tax frameworks rather than the development of specific provisions directed solely at

- Hire purchase
 - Non-resident withholding tax
 - Interaction between CGT rules and finance taxation & securities lending arrangements
 - GST State and Territory taxes
- Australia's National Interest**

Why is this issue so important for Australia? Well here are the following points why it is in Australia's National interest to consider these amendments:

1. Attracting foreign Islamic banks and conventional banks with Islamic windows to establish operations in Australia;
2. Attracting investment in Australian assets and businesses from overseas Shariah investors and tapping into new funding sources through sukuk and other securitised issues;
3. Australian based banks providing from Australia a range of Shariah compliant investment and financing products and services to Islamic banks, corporations, institutions and high net worth individuals in the Asia Pacific and the Gulf regions;
4. Fund managers establishing Shariah compliant funds for Asian and Gulf institutional and high net worth individual investors;
5. Local exchanges providing Islamic listings platforms for domestic and international issues of Shariah compliant instruments; and
6. Australian based financial firms, professional services providers and educational institutions exporting their services into Asia and the Gulf.

It's a pity that some of our elected officials cannot see that it is in Australia's National interest to ensure that the benefits of Islamic Banking and Finance flow to all Australians,

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Applications deadline: COB Jumu'ah, 10th Muharram 1432 (17/12/2010).

(Applications after this date may be considered under exceptional circumstances).

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As a refresher for readers, the principles underlying Islamic Banking & Finance as derived from the Shariah are:

- Prohibition of paying and receiving interest: Interest must not be charged or paid on any financial transaction.
- Prohibition of uncertainty

Islamic finance products.

Australian Considerations

- So, in summary the tax considerations are:
- Taxation of financial arrangements (TOFA)
 - Debt / equity rules
 - TOFA tax timing rules

irrespective of race or religion.

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both in Australia and overseas. He has published in areas such as trans-cultural nursing, health law, criminal law and military law. Hyder has also worked in indigenous health, paediatric nursing, aged care, as well as emergency and trauma. This article is for educational and general information purposes only and should not be relied on as (or in substitution for) legal, accounting, financial or other professional advice.

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