

# MCCA Medical Practitioners Seminar – Islamic Banking & Finance



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# Who am I?

- Expert Panel member to the Board of Taxation
- Worked in IB&F in Saudi Arabia
- Undertaken IB&F work in Australia
- ICV Executive
- Legal Editor Crescent Times
- Co-founder Muslim Legal Network
- Honorary Solicitor to the Australian National Imams Council
- Sit on various Boards – i.e. RCNA, ARC, Vista, LIV etc

# Review of the Taxation Treatment of Islamic Finance

May 2010 the then Assistant Treasurer while launching a book entitled *Demystifying Islamic Finance - Correcting Misconceptions, Advancing Value Propositions* said:

- *We are taking a keen interest in ensuring there are no impediments to the development of Islamic finance in this country, to allow market forces to operate freely. This is in line with our commitment to foster an open and competitive financial system, and a socially inclusive environment for all Australians. We also recognise that Islamic finance has great potential for creating jobs and wealth.*

# Contents of Discussion Paper

- Board of Taxation tasked to undertake a review "in order to ensure that Islamic finance products have parity with conventional products, having regard to their economic substance“.
- Islamic Finance overview
- Australia’s Finance Taxation Framework
- Issues raised by Australia’s current approach to Finance Taxation
- International Approach

# IB&F

- Conventional banking and finance is based on interest bearing loans or investments, or equity financing arrangements. Islamic banking and finance provides equivalent functionality to conventional finance but the underlying arrangement is based on the trading of assets, profit and loss sharing investments or leasing arrangements.
- The issues in Australia include uncertainty in the application of the law, double taxation, tax treatment that does not appropriately recognise the financing component of arrangements and increased cost of certain Islamic finance products in comparison to conventional finance.

# BoT Mandate

- The tax treatment of Islamic finance products should be 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 should consider whether adjustments can be made to existing tax frameworks rather than the development of specific provisions directed solely at Islamic finance products.

# Why?

- Petrodollar liquidity
- Muslim population
- Low penetration levels
- Ethical character and financial stability of Islamic financial products

# Opportunities

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

# Principals of Islamic Finance

- **Prohibition of paying and receiving interest**

Interest must not be charged or paid on any financial transaction.

- **Prohibition of uncertainty 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.

- **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.

# Tax Issues

- Taxation of financial arrangements (TOFA)
- Debt / equity rules
- TOFA tax timing rules
- Hire purchase and finance lease
- Non-resident withholding tax
- Interaction between CGT rules and finance taxation & securities lending arrangements
- GST State and Territory taxes

# Questions?



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