



# TAXATION OF FINANCIAL ARRANGEMENTS

**ACCI Submission to the  
Department of Treasury**

March 2007



**ABN 85 008 391 795**

**Canberra Office**

24 Brisbane Avenue  
BARTON ACT 2600

PO Box 6005  
KINGSTON ACT 2604

Telephone: (02) 6273 2311  
Facsimile: (02) 6273 3286  
Email: [info@acci.asn.au](mailto:info@acci.asn.au)

**Melbourne Office**

Level 3  
486 Albert Street  
EAST MELBOURNE VIC 3002

PO Box 18008  
Collins Street East  
MELBOURNE VIC 8003

Telephone: (03) 9668 9950  
Facsimile: (03) 9668 9958  
Email: [melb@acci.asn.au](mailto:melb@acci.asn.au)

Web: [www.acci.asn.au](http://www.acci.asn.au)

© Australian Chamber of Commerce and Industry 2007.

This work is copyright. Reproduction is permitted, with direct attribution and notification to the Australian Chamber of Commerce and Industry.

# CONTENTS

About ACCI	4
Background	4
ACCI Response	4
Accrual Rules	4
Elective Methods	4
Accounting	5
Hedging	5
Miscellaneous	5
Conclusion	5
ACCI Members	6

## ABOUT ACCI

The Australian Chamber of Commerce and Industry (ACCI) has been the peak council of Australian business associations for 104 years and traces its heritage back to Australia's first Chamber of Commerce in 1826.

ACCI is Australia's largest and most representative business association.

Through our membership, ACCI represents over 350,000 businesses nationwide, including:

- Australia's top 100 companies
- Over 55,000 medium sized enterprises employing 20 to 100 people
- Over 280,000 smaller enterprises employing less than 20 people

These businesses collectively employ over 4 million people.

ACCI's 35 member organisations include the State and Territory Chambers of Commerce and Australia's leading national employer and industry associations. Our members represent all major sectors of Australian industry including small employers and sole traders as well as medium and larger businesses.

A list of ACCI members is attached.

## BACKGROUND

The Government released an exposure draft of legislation relating to the Taxation of Financial Arrangements<sup>1</sup> in January 2007.

- Financial arrangements include debt, equity, derivatives, commodities and foreign exchange.

The Government argues that the current tax treatment of these arrangements is very ad hoc, complex and out of date, encouraging tax minimisation. The TOFA reforms are designed to make the law more systematic, reducing complexity and compliance costs while reducing tax minimisation.

In simple terms, the TOFA proposals mean that the gains

and losses on most financial arrangements will be accrued rather than taxed on a realisation (cashflow) basis.

Some transactions are exempt from the accrual rules, including equity and trade credit. Most transactions of smaller business and individuals will be fully excluded.

Instead of using accruals, taxpayers can instead use other methods, including fair value (or market value), retranslation, hedging or financial accounts.

These alternatives are generally only available for taxpayers whose accounts are required to be audited under law.

This submission is in response to the exposure draft legislation.

## ACCI RESPONSE

ACCI appreciates the development of the TOFA rules over time. The current draft is a significant improvement over the previous draft, particularly in relation to the definition of financial arrangement and in the character hedging rules.

However, ACCI has some remaining concerns over the current draft. These are outlined below.

### Accrual Rules

Under the TOFA accruals rules, taxpayers are required to assume that all economic variables retain their current value. The Government should explore some scope for using forecasts in the accrual rules.

The draft states that accrual only applies to "sufficiently certain" payments. This term needs further explanation and definition. This does not necessarily need to be in the legislation.

The draft requires taxpayers to re-estimate accrual amounts under a financial arrangements when circumstances arise that "materially affect the amount or value of financial benefits". Technically, this means that accruals will have to be recalculated on a variable rate debt instrument (even an overdraft) every time the interest rate changes, which is unnecessarily complex. A simpler approach is needed for simpler arrangements.

### Elective Methods

Under the TOFA draft, the fair value, foreign exchange

<sup>1</sup> Available from <http://tofa.treasury.gov.au/content/default.asp>.

retranslation, and use of financial accounts elective methods are only available to taxpayers whose accounts are required to be audited under law. It is not clear why these elective methods should not be available to all taxpayers whose accounts are audited, even if this auditing is not required under law. There would be a number of businesses whose accounts are audited, even though this is not required by law.

## Accounting

The rules relating to the accounting elective method should clarify the treatment of changes in accounting rules.

The conditions on the use of the accounting elective method appear excessive. The current rules require the total gain or loss on a financial arrangement to be the same under the tax and accounting method, and the difference in timing between the two has to “not be substantial”. The compliance costs with meeting this requirement for every transaction may be excessive.

It may be difficult to measure the difference between accounting and tax methods, when taxpayers have a choice of (other) tax methods. In particular, there may be significant differences between the accrual, fair value, hedging and retranslation methods, so it is not clear what the comparison should be with.

## Hedging

There may be value in including a regulation making power in the table in Section 230-215 (which relates to character hedging). This would allow additional items to be added to the table more easily.

The table in Section 230-215 (which relates to character hedging) does not appear to include character matching for hedges relating to CFCs, FIFs and transferor trusts. There may be other character hedging items that are not included in the current draft. Either these items should be included in the laws or a regulation making power should be included to enable these items to be added later if and when concerns have been addressed.

## Miscellaneous

It is not clear why the TOFA rules need special rules for whether losses are deductible, when these rules are already elsewhere in the law.

It is unclear why there need to be various different

treatments of finance leases under TOFA and other current and proposed laws (including the proposed Division 250). The Government has been trying to reduce the length of the tax law, as well as limit any increases in the law. In this context, any scope for reducing duplicate new laws should be explored.

- However, we would not like to see any further significant delays in the proposed Division 250 to take account of this concern.

The Government should explore a de minimis exemption from TOFA for small-value transactions.

Detailed communication, particularly with medium size businesses, is needed when the TOFA proposals become law.

## CONCLUSION

ACCI welcomes the development of the TOFA laws since the previous draft. However, we consider that a number of improvements still need to be made, particularly relating to companies that do not meet the small business exemption but are not large enough to be required to be audited. This could potentially cover tens of thousands of businesses.

## ACCI MEMBERS

### CHAMBERS OF COMMERCE & INDUSTRY

#### ACT and Region Chamber of Commerce & Industry

12A Thesiger Court  
DEAKIN ACT 2600  
Telephone: 02 6283 5200  
Facsimile: 02 6282 5045  
Email: [chamber@actchamber.com.au](mailto:chamber@actchamber.com.au)  
Website: [www.actchamber.com.au](http://www.actchamber.com.au)

#### Business SA

Enterprise House  
136 Greenhill Road  
UNLEY SA 5061  
Telephone: 08 8300 0000  
Facsimile: 08 8300 0001  
Email: [enquiries@business-sa.com](mailto:enquiries@business-sa.com)  
Website: [www.business-sa.com](http://www.business-sa.com)

#### Chamber of Commerce & Industry Western Australia (Inc)

PO Box 6209  
EAST PERTH WA 6892  
Telephone: 08 9365 7555  
Facsimile: 08 9365 7550  
Email: [info@cciwa.com](mailto:info@cciwa.com)  
Website: [www.cciwa.com](http://www.cciwa.com)

#### Chamber of Commerce Northern Territory

Confederation House  
1/2 Shepherd Street  
DARWIN NT 0800  
Telephone: 08 8936 3100  
Facsimile: 08 8981 1405  
Email: [darwin@chambernt.com.au](mailto:darwin@chambernt.com.au)  
Website: [www.chambernt.com.au](http://www.chambernt.com.au)

#### Commerce Queensland

Industry House  
375 Wickham Terrace  
BRISBANE QLD 4000  
Telephone: 07 3842 2244  
Facsimile: 07 3832 3195  
Email: [info@commerceqld.com.au](mailto:info@commerceqld.com.au)  
Website: [www.commerceqld.com.au](http://www.commerceqld.com.au)

#### Employers First™

PO Box A233  
SYDNEY SOUTH NSW 1235  
Telephone: 02 9264 2000  
Facsimile: 02 9261 1968  
Email: [empfirst@employersfirst.org.au](mailto:empfirst@employersfirst.org.au)  
Website: [www.employersfirst.org.au](http://www.employersfirst.org.au)

#### NSW Business Chamber

Level 15  
140 Arthur Street  
NORTH SYDNEY NSW 2060  
Telephone: 13 26 96  
Facsimile: 1300 655 277  
Email: [navigation@nswbc.com.au](mailto:navigation@nswbc.com.au)  
Website: [www.nswbusinesschamber.com.au](http://www.nswbusinesschamber.com.au)

#### Tasmanian Chamber of Commerce and Industry Ltd

GPO Box 793  
HOBART TAS 7001  
Telephone: 03 6236 3600  
Facsimile: 03 6231 1278  
Email: [admin@tcci.com.au](mailto:admin@tcci.com.au)  
Website: [www.tcci.com.au](http://www.tcci.com.au)

#### Victorian Employers' Chamber of Commerce & Industry

GPO Box 4352QQ  
MELBOURNE VIC 3001  
Telephone: 03 8662 5333  
Facsimile: 03 8662 5367  
Email: [vecci@vecci.org.au](mailto:vecci@vecci.org.au)  
Website: [www.vecci.org.au](http://www.vecci.org.au)

### NATIONAL INDUSTRY ASSOCIATIONS

#### ACCORD

Dalgety Square  
Suite C7, 99 Jones Street  
ULTIMO NSW 2007  
Telephone: 02 9281 2322  
Facsimile: 02 9281 0366  
Email: [bcapanna@acspsa.asn.au](mailto:bcapanna@acspsa.asn.au)  
Website: [www.acspsa.asn.au](http://www.acspsa.asn.au)

**Agribusiness Employers' Federation**

GPO Box 2883  
ADELAIDE SA 5001  
Telephone: 08 8212 0585  
Facsimile: 08 8212 0311  
Email: [aef@aef.net.au](mailto:aef@aef.net.au)  
Website: [www.aef.net.au](http://www.aef.net.au)

**Air Conditioning and Mechanical Contractors' Association**

30 Cromwell Street  
BURWOOD VIC 3125  
Telephone: 03 9888 8266  
Facsimile: 03 9888 8459  
Email: [deynon@amca.com.au](mailto:deynon@amca.com.au)  
Website: [www.amca.com.au/vic](http://www.amca.com.au/vic)

**Association of Consulting Engineers Australia (The)**

75 Miller Street  
NORTH SYDNEY NSW 2060  
Telephone: 02 9922 4711  
Facsimile: 02 9957 2484  
Email: [acea@acea.com.au](mailto:acea@acea.com.au)  
Website: [www.acea.com.au](http://www.acea.com.au)

**Australian Beverages Council Ltd**

Suite 4, Level 1  
6-8 Crewe Place  
ROSEBERRY NSW 2018  
Telephone: 02 9662 2844  
Facsimile: 02 9662 2899  
Email: [info@australianbeverages.org](mailto:info@australianbeverages.org)  
Website: [www.australianbeverages.org](http://www.australianbeverages.org)

**Australian Hotels Association**

Level 1, Commerce House  
24 Brisbane Avenue  
BARTON ACT 2600  
Telephone: 02 6273 4007  
Facsimile: 02 6273 4011  
Email: [aha@aha.org.au](mailto:aha@aha.org.au)  
Website: [www.aha.org.au](http://www.aha.org.au)

**Australian International Airlines Operations Group**

c/- QANTAS Airways  
QANTAS Centre  
QCA4, 203 Coward Street  
MASCOT NSW 2020  
Telephone: 02 9691 3636

**Australian Made Campaign Limited**

486 Albert Street  
EAST MELBOURNE VIC 3002  
Telephone: 03 8662 5390  
Facsimile: 03 8662 5201  
Email: [ausmade@australianmade.com.au](mailto:ausmade@australianmade.com.au)  
Website: [www.australianmade.com.au](http://www.australianmade.com.au)

**Australian Mines and Metals Association**

Level 10  
607 Bourke Street  
MELBOURNE VIC 3000  
Telephone: 03 9614 4777  
Facsimile: 03 9614 3970  
Email: [vicamma@amma.org.au](mailto:vicamma@amma.org.au)  
Website: [www.amma.org.au](http://www.amma.org.au)

**Australian Paint Manufacturers' Federation Inc**

Suite 1201, Level 12  
275 Alfred Street  
NORTH SYDNEY NSW 2060  
Telephone: 02 9922 3955  
Facsimile: 02 9929 9743  
Email: [office@apmf.asn.au](mailto:office@apmf.asn.au)  
Website: [www.apmf.asn.au](http://www.apmf.asn.au)

**Australian Retailers' Association**

Level 2  
104 Franklin Street  
MELBOURNE VIC 3000  
Telephone: 03 9321 5000  
Facsimile: 03 9321 5001  
Email: [vivienne.atkinson@vic.ara.com.au](mailto:vivienne.atkinson@vic.ara.com.au)  
Website: [www.ara.com.au](http://www.ara.com.au)

**Insurance Council of Australia**

Level 3  
56 Pitt Street  
SYDNEY NSW 2000  
Telephone: 02 9253 5100  
Facsimile: 02 9253 5111  
Email: [ica@ica.com.au](mailto:ica@ica.com.au)  
Website: [www.ica.com.au](http://www.ica.com.au)

**Live Performance Australia**

Level 1, 15-17 Queen Street  
MELBOURNE VIC 3000  
Telephone: 03 9614 1111  
Facsimile: 03 9614 1166  
Email: [info@liverperformance.com.au](mailto:info@liverperformance.com.au)  
Website: [www.liverperformance.com.au](http://www.liverperformance.com.au)

**Master Builders Australia Inc.**

16 Bentham Street  
 YARRALUMLA ACT 2600  
 Telephone: 02 6202 8888  
 Facsimile: 02 6202 8877  
 Email: enquiries@masterbuilders.com.au  
 Website: www.masterbuilders.com.au

**Master Plumbers' and Mechanical Services Association Australia (The)**

525 King Street  
 WEST MELBOURNE VIC 3003  
 Telephone: 03 9329 9622  
 Facsimile: 03 9329 5060  
 Email: info@mpmsaa.org.au  
 Website: www.plumber.com.au

**National Electrical and Communications Association**

Level 3  
 100 Dorcas Street  
 SOUTH MELBOURNE VIC 3205  
 Telephone: 03 9645 5566  
 Facsimile: 03 9645 5577  
 Email: necanat@neca.asn.au  
 Website: www.neca.asn.au

**National Fire Industry Association**

PO Box 6825  
 ST KILDA RD CENTRAL VIC 3000  
 Telephone: 03 9865 8611  
 Facsimile: 03 9865 8615  
 Email: info@nfia.com.au  
 Website: www.nfia.com.au

**National Retail Association Ltd**

PO Box 91  
 FORTITUDE VALLEY QLD 4006  
 Telephone: 07 3251 3000  
 Facsimile: 07 3251 3030  
 Email: info@nationalretailassociation.com.au  
 Website: www.nationalretailassociation.com.au

**NSW Farmers Industrial Association**

Level 10  
 255 Elizabeth Street  
 SYDNEY NSW 2000  
 Telephone: 02 8251 1700  
 Facsimile: 02 8251 1750  
 Email: industrial@nswfarmers.org.au  
 Website: www.iressentials.com

**Oil Industry Industrial Association**

c/- Shell Australia  
 GPO Box 872K  
 MELBOURNE VIC 3001  
 Telephone: 03 9666 5444  
 Facsimile: 03 9666 5008

**Pharmacy Guild of Australia**

PO Box 7036  
 CANBERRA BC ACT 2610  
 Telephone: 02 6270 1888  
 Facsimile: 02 6270 1800  
 Email: guild.nat@guild.org.au  
 Website: www.guild.org.au

**Plastics and Chemicals Industries Association Inc**

Level 2, 263 Mary Street  
 RICHMOND VIC 3121  
 Telephone: 03 9429 0670  
 Facsimile: 03 9429 0690  
 Email: info@pacia.org.au  
 Website: www.pacia.org.au

**Printing Industries Association of Australia**

25 South Parade  
 AUBURN NSW 2144  
 Telephone: 02 8789 7300  
 Facsimile: 02 8789 7387  
 Email: info@printnet.com.au  
 Website: www.printnet.com.au

**Restaurant & Catering Australia**

Suite 32  
 401 Pacific Highway  
 ARTARMON NSW 2604  
 Telephone: 02 9966 0055  
 Facsimile: 02 9966 9915  
 Email: restncat@restaurantcater.asn.au  
 Website: www.restaurantcater.asn.au

**Standards Australia Limited**

286 Sussex Street  
 SYDNEY NSW 2000  
 Telephone: 1300 65 46 46  
 Facsimile: 1300 65 49 49  
 Email: mail@standards.org.au  
 Website: www.standards.org.au

**Victorian Automobile Chamber of Commerce**

7th Floor

464 St Kilda Road

MELBOURNE VIC 3000

Telephone: 03 9829 1111

Facsimile: 03 9820 3401

Email: [vacc@vacc.asn.au](mailto:vacc@vacc.asn.au)

Website: [www.vacc.motor.net.au](http://www.vacc.motor.net.au)