28 February 2023

Rebecca Saint
Deputy Commissioner of Taxation
Australian Taxation Office

Dear Deputy Commissioner

Hybrid mismatch rules: interpretation and reporting

The Australian Banking Association (**ABA**) welcomes the Australian Taxation Office (**ATO**)'s engagement with industry regarding the ongoing uncertainty in relation to the application of elements of the hybrid mismatch rules. The ABA and its members are committed to the full implementation of the hybrid mismatch rules and thank the ATO for the opportunity to provide feedback.

As stated in the ATO's letter, the ABA acknowledges a level of uncertainty regarding the implementation of the hybrid mismatch rules. This uncertainty stems from the complex and onerous nature of hybrid mismatch rules. In the ABA's view the uncertainty is in respect to the specific expectations of the ATO as to what should be disclosed in the *International Dealings Schedule and Reportable Tax Position* schedule.

Complex analysis is required to ascertain whether the hybrid mismatch rules apply. This is due to the size of banks and the scope of their operations, including operating across multiple jurisdictions with significant numbers of importing payments. The task is further complicated by the requirement to interpret the rules for transactions in other jurisdictions and establishing the positions of related overseas entities. For example, it is currently unclear whether the hybrid mismatch rules require banks to have visibility of and assess every transaction globally for the applicability of hybrid mismatch rules. If this is the case, a local operation in Australia of a global enterprise would have very limited capacity to develop such an understanding.

The complexity also creates practical challenges in self-assessing against the rules. While banks apply the hybrid mismatch rules in accordance with what they ascertain the rules to require, ultimately their self-assessment will need to meet the ATO's interpretation of hybrid mismatch rules. As the ATO is yet to provide its interpretation there remains a degree of uncertainty as to whether the banks' have made the correct interpretation.

In respect to the ATO's request for specific industry level examples, fact patterns and scenarios from ABA members. Given that complexities noted above, in the ABA's opinion the best path forward is for continued ATO engagement with individual members.

Further, we note that the implementation of the hybrid mismatch rules is still in the early stages of the engagement between the ATO and members. As part of this engagement the ABA understands that the ATO issues RFIs to members. We acknowledge the importance of data to the ATO's work but we also note that at times RFIs have been issued for data which the ATO already had in its possession through other information gathering channels, such as justified trust. It would be helpful if the ATO were to utilise the data it holds in the first instance and thereby avoiding the issuance of new RFIs for the same data. Such an approach would lead to a more efficient and streamlined data request process and will also have to benefit of avoiding duplication of the same data being produced.

Thank you for the opportunity to provide feedback. If you require further information or would like to discuss any of the content of this letter, please do not hesitate to contact

Kind regards

Head of Economy Policy

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.