THE TAX INSTITUTE

23 November 2012

Ms Nan Wang
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Dear Ms Wang

EXPOSURE DRAFT AND EXPLANATORY STATEMENT: "INCOME TAX ASSESSMENT AMENDMENT REGULATION 2012: BASEL III"

The Tax Institute thanks you for the opportunity to provide this submission in response to Treasury's Exposure Draft of legislation and related Explanatory Statement entitled **"**Income Tax Assessment Amendment Regulation 2012: Basel III**"** which relates to the implementation of a measure announced by the Government in the 2012-13 Budget.

As the proposed amendments relate primarily to changes to capital requirements for financial institutions (including authorised deposit taking institutions ("**ADIs**") and insurers), The Tax Institute is of the view that industry associations that represent the views and interests of taxpayers in the banking and finance sector are best placed to provide feedback on industry views on the Exposure Draft and Explanatory Statement.

Nonetheless, we raise the following drafting points for your consideration:

- The terminology in the draft regulation differs to the terminology in the Australian Prudential Regulation Authority ("**APRA**") standards for ADIs and insurers. Unless there is a specific policy rationale for such differences, the terminology and concepts should be aligned.

- The draft regulation only applies to a note with a term of no more than 30 years. The policy rationale for this restriction is unclear to us, as there is no such restriction in either the related APRA standards (which only specify a minimum term of 5 years) or the existing tax regulations (which are based on now superseded APRA standards and allowed for perpetual notes). Unless there is a specific policy rationale for this difference, the regulations should be aligned with the requirements of the APRA standard.

- The commencement date for the regulations is fixed at 1 January 2013. Due to this start date, it would seem that a Note that is issued up to 31 December 2012 that is Basel III compliant may never qualify for deductibility since the time at which the status of debt or equity is determined is at issue (unless there is a material change in the terms of the note). This means that a Note issued on 31 December 2012 will be treated differently from a Note issued on 1 January 2013, even when both notes are Basel III compliant. We recommend that this start date be revised so that the proposed regulation also applies to Notes issued before 1 January 2013, so long as the Notes are Basel III compliant.

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Should you wish to discuss any of the above, please do not hesitate to contact either me or Tax Counsel, Deepti Paton on 02 8223 0044.

Yours sincerely

Ken Schurgott

Ken Schurgott
President