

31 July 2017

TO: ALL AUTHORISED DEPOSIT-TAKING INSTITUTIONS

JOINT TREASURY, AUSTRALIAN TAXATION OFFICE (ATO) AND AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA) RESPONSE TO SUBMISSIONS ON PROPOSED *REPORTING STANDARD ARS 760.0 ATO COLLECTION FOR THE MAJOR BANK LEVY ACT 2017*

In June 2017, the Commonwealth Government passed legislation to implement the major bank levy, which was announced as part of the 2017-18 Budget. This legislation empowered APRA to collect data under the *Financial Sector (Collection of Data) Act 2001* for the purposes of the major bank levy. In response to the Treasurer's request to APRA to determine a reporting standard for the bank levy, on 13 June 2017, APRA released for public consultation a draft of *Reporting Standard ARS 760.0 ATO collection for the Major Bank Levy Act 2017* (ARS 760.0).

Six submissions were received from authorised deposit-taking institutions (ADIs) and industry associations, five of which were confidential. Treasury, the ATO and APRA (collectively, the agencies) also met with the five directly affected ADIs to discuss issues raised in the submissions. The agencies' response to issues raised in submissions is set out in the Attachment to this letter. These issues have been considered with a view to minimising the compliance costs for the ADIs within the scope of the *Major Bank Levy Act 2017* and the *Treasury Laws Amendment (Major Bank Levy) Act 2017* (the primary legislation), which received Royal Assent on 23 June 2017.

Together with this letter, APRA has released the final *ARS 760.0*. The reporting standard applies for the quarter ending 30 September 2017 and subsequent quarters. The first reporting forms are due to be lodged on 13 February 2018, and are to be completed on a best endeavours basis. The reporting standard is available at:

<http://www.apra.gov.au/CrossIndustry/Consultations/Pages/Response-to-submissions-ATO-major-bank-levy-data-collection.aspx>

The ATO is currently updating its internal systems to accommodate the major bank levy's requirements, and will consult with ADIs on relevant developments on an ongoing basis.

Yours sincerely,

James Kelly
Acting Division Head
Financial System Division
Treasury

Andrew England
Deputy Commissioner
Policy, Analysis & Legislation
ATO

Katrina Ellis
General Manager
Data Analytics
APRA

ATTACHMENT - RESPONSE TO SUBMISSIONS

Dual reporting to APRA and the ATO

Five submissions sought clarification on the role of APRA and the ATO in the implementation of the major bank levy. In particular, the submissions sought confirmation that ADIs would not be required to separately report the same data to the ATO and to APRA.

In line with the objective of minimising compliance costs, ADIs will only be required to submit a single reporting form to APRA. This information will be taken as having been received by the ATO when it is provided to APRA. The ADIs will still have to pay the levy to the ATO by the due date.

To accommodate this and meet relevant ATO requirements, the reporting standard was amended such that ADIs provide a declaration as to their authority to submit, and the accuracy of, the form.

Any amendments to the information submitted under ARS 760.0 will be managed through APRA. As the major bank levy is self-assessed, the ATO will accept amendments as and when they are reported to APRA and will manage any additional payments or refunds.

Reporting form due date

Four submissions recommended that the due date for the reporting form match APRA's capital adequacy reporting requirements, given that the reporting standard includes data relating to capital instruments.

The agencies have agreed that ADIs should have 30 business days following the end of the relevant quarter. The standard has been amended accordingly.

Annual reporting processes

Four submissions suggested that to minimise compliance costs, the reporting form should be completed annually, rather than quarterly, in line with the audited and published financial statements. This was because those statements contained much of the information required under this reporting standard. ADIs also suggested that a 'true-up' mechanism could be used to align estimated quarterly payments against the final calculation for the year.

Treasury notes that the primary legislation does not envisage an annual calculation or a true-up mechanism. Further, a true-up mechanism would still require ADIs to work out the actual 'applicable liabilities amount' for each quarter (at some point) to be compared with payments actually made, as part of a true-up process.

Consequently, as set out in the primary legislation, the relevant amounts must be calculated and reported on a quarterly basis.

Reporting on deposits protected by the Financial Claims Scheme (FCS-protected deposits)

Two submissions noted that the total amount of FCS-protected deposits is not currently calculated quarterly. It was suggested that this be calculated annually instead.

This approach, however, is not consistent with the legislation that requires ADIs to calculate liabilities on a quarterly basis. Therefore, no changes have been made to the reporting standard.

Changes to daily averaging

Two submissions suggested modifications to, or removal of, the requirement for daily averaging of some liabilities.

The Government considered the approach to daily averaging as part of the consultation process on the primary legislation. The primary legislation, which reflects the outcomes of that consultation, does not accommodate the suggested modifications or removals for daily averaging. As such, no changes have been made to the reporting standard in response to this issue.

A ‘transitional period’ for implementation

Submissions stated that system changes would be needed to generate the information required to be reported and that this would take significant time to implement. One submission also suggested there be a transitional period of ‘best endeavours’ reporting to allow time to implement necessary system changes and establish additional governance and control processes relating to data required by the reporting standard.

Recognising that current systems may require upgrading to accommodate the new reporting standard, as well as time needed to develop appropriate governance processes, ADIs will only be required to report on a ‘best endeavours’ basis, as outlined in the reporting standard, for the reporting periods ending on or before 30 June 2019. This will complement the Government’s decision to delay the due date of the first reporting form and payment until the March quarter of 2018.

One submission suggested that the ATO should remit general interest charge (GIC) where the ADI has taken reasonable steps to calculate the major bank levy during this transitional period. The ATO advises that the Commissioner of Taxation will exercise his discretion, where appropriate, to remit GIC on a case-by-case basis. Remission of GIC will be considered in light of the scope of the remission provisions, and is subject to existing guidance.

Accounting Principles

Two submissions requested that concepts in the reporting standard be aligned with applicable accounting principles and standards used to prepare licenced ADIs’ financial statements.

As far as possible, concepts in the reporting standard have been amended to align with Generally Accepted Accounting Principles and Australian Accounting Standards. The reporting standard also clarifies that each ADI should calculate amounts in line with the accounting standards that it applies in its published financial statements.

Changes to Australian Accounting Standards

Two submissions sought clarification as to the impact of changes to the Australian Accounting Standards on levies paid in prior periods, particularly where those accounting standards changes result in restatement of prior period comparatives in the financial statements of the ADI.

The ATO confirms that changes made to prior period comparatives on first time adoption of Australian Accounting Standards will *not* result in the recalculation and resubmission of prior returns and additional payments or refunds to the ADI.

Interbank loans

Four submissions noted difficulty in calculating the daily average for loans from ADIs and foreign banks separately due to the level of availability of counterparty information in their core systems. Two submissions suggested that this reporting split be removed and two suggested that the standard refer to a reporting category from the ADI's published financial statements, such as 'payables to financial institutions'.

In the interest of minimising compliance costs, the standard has been amended to require ADIs to report interbank loans from ADIs and foreign banks as one item.

Treasury has given consideration to reporting categories used in ADI's published financial statements and concluded that those categories are significantly broader than interbank loans and would be inconsistent with the primary legislation.

Clarification of concepts

Five submissions requested that various concepts (such as reporting on a 'licensed ADI' basis and concepts related to the adjustments for daily averaging and adjustments to obtain the 'applicable liabilities amount') be clarified in the reporting standard. Modifications have been made to the reporting standard accordingly.

In particular, the reporting standard clarifies that 'licensed ADI' aligns with the accounting concept of a 'parent'.

The reporting standard also clarifies that for the purpose of daily averaging, references to debt securities only refer to those issued by the licensed ADI. As such, the value of liabilities in relation to short-sold debt securities are not daily averaged, but must still be included in the 'applicable liabilities amount' as calculated at quarter end.

The reporting standard also makes clear that for the purpose of the daily average adjustments, loans from ADIs and foreign banks only refers to interbank loans, which includes funds lent to the licensed ADI, but not loan assets.

For the purpose of determining amounts to be subtracted from the 'total liabilities amount' to get the 'applicable liabilities amount', the reporting standard clarifies that:

- additional Tier 1 instruments refer to instruments accounted for as liabilities issued by the licensed ADI; and
- the balance of FCS-protected deposits should be calculated in line with *Prudential Standard APS 910 – Financial Claims Scheme*, and therefore should include accrued interest.

Intra-group liabilities

Four submissions sought clarification on the treatment of intra-group liabilities, advising that such liabilities are reported in their own category in published financial statements. The ADIs advised that the categories in those financial statements that correspond to the amounts that must be disclosed separately¹ for the purposes of the major bank levy do not include intra-group liabilities in some cases.

¹ The relevant 'disclosed amounts' are debt securities, repurchase agreements, loans with ADIs and foreign banks, derivative assets and derivative liabilities. Additional Tier 1 Capital, FCS-protected deposits and balances

Amounts related to daily averaging adjustments

The Government's Explanatory Memorandum to the *Major Bank Levy Bill* notes that daily averaging is required to minimise disruptions to financial markets around quarter end reporting dates. Considering this and the compliance cost of having to categorise intra-group liabilities into the separate 'disclosed amounts' just for the major bank levy, Treasury advised that the reporting standard will not require intra-group liabilities to be included in amounts disclosed with respect to debt securities, repurchase agreements and loans with ADIs and foreign banks.

Accordingly, the value of intra-group liabilities that relate to debt securities, repurchase agreements and loans with ADIs and foreign banks will not be daily averaged. These liabilities are to be calculated on a quarter end basis and included in the 'applicable liabilities amount'.

Amounts related to derivatives

For derivatives, and contrary to the treatment for the amounts disclosed for daily averaging purposes, three submissions explicitly sought confirmation that intra-group derivatives would be included in the derivative asset and derivative liability amounts to be disclosed on the reporting form.

One submission sought the opposite treatment; seeking to be consistent with their published financial statements, applying the same reasoning as for excluding intra-group liabilities in daily averaging adjustments.

The primary reason for allowing the netting of derivatives (with a minimum value of zero) was that it provides a better measure of economic exposure and that capturing the gross position would unduly penalise hedging. Consistent with this, the derivative liability and asset amounts to be disclosed on the reporting form should include contracts with all parties.

Accordingly, either all derivative assets or all derivative liabilities (depending on which is the lesser), whether intra-group or not, are used to net off derivative liabilities to reach the 'applicable liabilities amount'.

Operation of the anti-avoidance law

The approach taken in the reporting standard in relation to the reporting of intra-group liabilities and amounts related to derivatives addresses issues raised by the ADIs in their submissions, in line with the scope and intent of the primary legislation. However, this approach is not intended to allow ADIs to manipulate the amounts reported in an endeavour to reduce their liability to the major bank levy. Therefore, the ATO will monitor amounts reported by ADIs and consider the application of the new anti-avoidance rule in appropriate circumstances.

In this regard, the new anti-avoidance rule in Division 117 of Schedule 1 to the *Taxation Administration Act 1953* is intended to target schemes that have a sole or dominant purpose of avoiding the major bank levy, including through reducing or delaying a liability to the major bank levy. Types of arrangements that could potentially be subject to the anti-avoidance rule include those that involve temporary reductions in liabilities before the end of a quarter that have the effect of reducing liability to the major bank levy which are not explicable by the

relating to Exchange Settlement Accounts held at the Reserve Bank of Australia also have to be disclosed separately, but by definition, cannot be held with an intra-group counterparty.

ordinary operations of the ADI and permanent reductions in liabilities that do not involve any substantive change in the activities or risks of the ADI.

Application to Australian branches of foreign ADIs

One submission sought clarification about the application of the reporting standard to Australian branches of foreign ADIs.

The primary legislation applies to foreign ADIs. However, the liabilities that are taken into account in determining whether the major bank levy applies to a foreign ADI are only those relating to their Australian branch operations. The Government made this clear in the debate on the Major Bank Levy Bill.

Currently, the liabilities relating to the Australian branch operations do not exceed the \$100 billion major bank levy threshold for any foreign ADI. However, if the liabilities relating to the Australian branch operations of a foreign ADI exceed that threshold in the future, the foreign ADI will be liable to pay the levy. The amount of the levy payable will be based on the relevant amount of liabilities relating to the Australian branch operations of the foreign ADI.

Other matters

One submission requested that APRA consult industry if legislative instruments are being considered. As it is the Minister rather than APRA who would make any legislative instruments, the Government would be responsible for any consultations.