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The Manager
Taxation of Financial Arrangements
The Treasury
Langton Crescent
PARKES ACT 2600

By email: tofa@treasury.gov.au

Dear Sir/Madam

Taxation of Financial Arrangements – Revised Exposure Draft on Division 230

General Electric (GE) in Australia welcomes the revised Exposure Draft on Division 230 and recognises that it does much to alleviate the concerns raised in respect of the initial exposure draft. The closer alignment with accounting in the context of the ability to apply the financial reports election in proposed Sub-division 230-F is particularly welcomed as are the other elections which allow a closer alignment with accounting results.

There remains, however, an area of significant concern for GE, which requires adjustment.

Each of the method elections (except sub-division 230-E which deals with hedging) are only available if the taxpayer prepares financial reports in accordance with accounting standards and the financial report is required by law to be audited in accordance with auditing standards. In this respect, we draw your attention to proposed sections 230-150(1)(b)(i), 230-180(1)(b)(i), 230-270(1)(c)(i).

GE in Australia comprises 7 separate Multiple Entry Consolidated (MEC) groups and approximately 110 stand alone companies that do not form part of a tax consolidated group. The complexity of the group from a tax consolidation perspective and the high number of entry points into Australia means that GE is relatively unique in this regard.

Under the proposed law the relevant elections must be made by the taxpayer or in the case of a tax consolidated group we understand that the elections would be required to be made by the head entity of that group. Further, the requirement that the taxpayer be prepare a financial report and be required by law to have it audited in accordance with auditing standards is, we understand, also relevant to the head company of a tax consolidated group.

We would request that Treasury reconsider the requirement that in applying the relevant elective methods, the taxpayer be required under law to prepare financial reports audited in accordance with the auditing standards. We recognise that from an integrity perspective it may be necessary in allowing an elective method to apply that the accounts be prepared under accounting standards. However, the additional requirement that they be required by law to be audited is, in our view, unnecessary and in the context of complex tax consolidated groups makes the elective methods unworkable. The reasons for this are discussed below.

There are a number of types of entities and groups that would fall under the TOPA rules but may not be required by the Corporations Act to prepare audited financial statements. For example:

- Consolidated financial statements for related MECs;
- Entities within a group which are subject to a deed of cross guarantee under Class Order 98/1418 where the group includes more than one taxpayer / tax consolidated group;

These points have been discussed in further detail below.

MECs

Where a number of related entities which are subject to common foreign control exist in Australia, each head entry point is required to have consolidated financial statements. There is no scope under the Corporations Act, or AASB 127 *Consolidated and Separate Financial Statements* to combine Australian MECs which may be part of the one tax consolidated group.

AASB 127 requires that a group prepare consolidated financial statements, however defines a group as "*...a parent and all its subsidiaries*". Based on this definition, financial statements cannot be prepared in accordance with Australian Equivalents to International Financial Reporting Standards.

On this basis, tax consolidated groups would be precluded from making certain TOPA elections which require audited financial statements.

Cross Guarantee

As a cost saving measure, entities within a consolidated group may enter into a deed of cross guarantee of their debts and can consequently obtain relief from preparing financial statements for subsidiaries.

Where a consolidated group which has elected to apply CO 98/1418 has a number of tax consolidated groups, there is no legal requirement to prepare sub-consolidated financial statements

aligning to those tax groups. On this basis, tax consolidated groups would be precluded from making certain TOFA elections which require audited financial statements.

If the TOFA legislation is enacted as provided in the Exposure Draft GE and other complex MEC groups will be unable to take advantage of several important elections that attempt to more closely align the tax with the accounting results. This would provide a result inconsistent with the overall object of the provisions as outlined in proposed section 230-10.

Proposed solution

It is proposed that the final legislation not include an election requirement that the taxpayer be required by law to prepare financial reports required by a law to be audited in accordance with auditing standards in certain circumstances. These circumstances would be where the tax consolidated group is made up of eligible tier 1 entities and their subsidiaries which themselves prepare consolidated accounts in accordance with accounting standards or entities which are relieved from preparing accounts under CO 98/1418 and would have been required to prepare such accounts in the absence of this Class Order applying.

In our view this amendment would maintain the integrity of the rules and ensure the elections remained workable in the case of complex groups having multiple entry points into Australia.

Should you have any queries or wish to discuss any aspect of this submission please do not hesitate to call me on 03 9921 6513.

Yours sincerely

Chris Vanderkley
Chief Financial Officer