

The AIMA logo consists of the letters 'AIMA' in white, bold, sans-serif font, centered within a dark blue square. A horizontal magenta bar is positioned directly below the square.

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AIMA AUSTRALIA SUBMISSION
Consultation Paper 336: Financial Requirements: Treatment of Lease Assets

Executive Summary

The removal of right of use assets from the definition of excluded assets by amending the relevant ASIC instruments AIMA also considers classification of the treatment of Deferred Tax Assets when calculating the licensee's NTA should be made at the same time.

Response to consultation paper 336 (CP336)

We have attached a table which sets out our more detailed responses to CP336.

Contact points

We would be happy to meet with ASIC to discuss any aspect of our submission or provide further information.

The AIMA contacts in respect of this Submission are:

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Yours faithfully

A handwritten signature in black ink, appearing to read 'Lee Kher Sheng'.

Lee Kher Sheng

A handwritten signature in black ink, appearing to read 'Nikki Bentley'.

Nikki Bentley

¹ AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 80 members that manage \$500 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

List of proposals and questions

Proposal	Feedback	AIMA Response
<p>B1</p> <p>We propose to amend the 'excluded assets' definition in the ASIC instruments to provide that a right-of-use asset is not an excluded asset. If we proceed with this proposal, we intend to implement it by:</p> <p>a) issuing two legislative instruments—one legislative instrument will amend the definition of 'excluded asset' in the ASIC instruments so that a right-of-use asset is excluded from the definition; the other legislative instrument will implement corresponding changes to the licence conditions of AFS licensees;</p> <p>b) revising PF 209 and the relevant AFS licence conditions, to make it clear that a right-of-use asset is not an excluded asset; and</p> <p>c) updating our guidance in RG 166.</p>	<p>B1Q1 Do you agree with our proposal? If not, why not?</p> <p>B1Q2 Are there other options we should consider that might adequately address the concerns about potential unfairness? If yes, please specify.</p> <p>B1Q3 Do you agree that changes should be made to the ASIC instruments and the existing requirements in RG 166? If not, why not?</p>	<p>AIMA agrees with ASIC's proposal to amend the 'excluded assets' definition in the ASIC instruments to provide that a right-of-use asset is not an excluded asset.</p> <p>AIMA also agrees that changes should be made to the ASIC instruments and the existing requirements in RG166 and PF209.</p> <p>However, AIMA recommends ASIC to revisit the proposed wording to avoid any potential confusion.</p> <p>For instance, the proposed insertion of -</p> <p><i>'(e) a right-of-use asset arising under a lease.'</i></p> <p>in RG166.152 could be interpreted as an expansion of the definition of excluded assets to now include a right-of-use asset. It is recommended that the wording be changed to</p> <p><i>'(e) despite paragraphs (a) to (d) in RG166.152, a right-of-use asset arising under a lease is not an excluded asset.'</i></p> <p><i>or equivalent.</i></p> <p>Similarly, it is recommended that the proposed wording in PF209 be changed from <i>'(ea) a right-of-use asset arising under a lease; and'</i></p> <p>to</p> <p><i>'(ea) despite paragraphs (a) to (d) of this definition, a right-of-use asset arising under a lease is not an excluded asset; and'</i></p> <p><i>or equivalent.</i></p> <p>AIMA also requests that changes in the legislative instruments CO 12/752, CO 13/760 and CO13/761 be worded such that any potential confusion can be avoided.</p>

Proposal	Feedback	AIMA Response
		<p>Deferred Tax Assets:</p> <p>AIMA would also like to take this opportunity to request a clarification on the treatment of Deferred Tax Asset (DTA) when calculating the licensee’s net tangible assets (NTA).</p> <p>The definition of ‘excluded assets’ in ASIC Class Orders CO 13/760 and CO 13/761 issued in 2013 state:</p> <p><i>“(a) intangible assets (<u>excluding</u>, for the avoidance of doubt, a deferred tax asset); and”</i></p> <p>This implies that DTA is excluded from intangible assets and consequently is not an excluded asset. ASIC has further confirmed this treatment in its recent media releases 20-158MR and 20-322MR which state:</p> <p><i>“intangible assets (<u>excluding</u> deferred tax assets)”.</i></p> <p>However, a confusion arises because ASIC Class Order CO 12/752 states:</p> <p><i>“(a) intangible assets (<u>including</u>, for the avoidance of doubt, a deferred tax asset); and”</i></p> <p>AIMA agrees with ASIC’s position in CO 13/760 and CO 13/761 to exclude DTA from intangible assets. Accordingly, we request ASIC to rectify the definition of excluded assets in CO 12/752 to remove the inconsistency.</p> <p>It is also recommended that the definition of excluded asset in RG166 and PF209 be amended in line with ASIC instruments.</p>