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Sent via email: james.grapsas@asic.gov.au

Deloitte response to ASIC Consultation Paper 336 Financial Requirements: Treatment of lease assets

Dear Mr Grapsas,

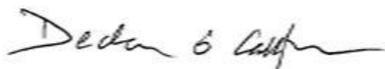
Deloitte Touche Tohmatsu is pleased to respond to the consultation process for treatment of lease assets in calculating net tangible assets for Australian Financial Services Licence holders.

We support ASIC's proposal to amend the definition of "excluded assets" in relevant ASIC instruments, Regulatory Guide 166 and the standard licence conditions in PF 209. **Appendix A** outlines our detailed response to ASIC's proposed changes with some drafting suggestions.

We would also like to take this opportunity to bring to your attention an inconsistency between ASIC instruments regarding the treatment of Deferred Tax Asset (DTA) when calculating the net tangible assets. **Appendix B** outlines our concern and request for clarification.

Please feel free to contact me to discuss this further.

Regards



Declan O'Callaghan
Partner

Appendix A – detailed responses and drafting suggestions

ASIC Proposal	Feedback requested	Deloitte Response
<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>We agree 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>We also agree that changes should be made to the ASIC instruments and the existing requirements in RG166 and PF209.</p> <p>However, we have made some drafting suggestions to avoid any potential ambiguity.</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. We would like to suggest 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>or equivalent.</p> <p>Similarly, we would like to suggest that the proposed wording in PF209 be changed from</p> <p><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>or equivalent.</p>

Appendix B – request for additional clarification

We would like to take this opportunity to draw your attention to another area that may require clarification in legislative instruments CO 12/752, CO 13/760 and CO13/761 regarding Deferred Tax Assets.

We request that you consider clarifying the treatment of Deferred Tax Assets (DTAs) when calculating the licensee's net tangible assets (NTA).

The definition of 'excluded assets' in ASIC Class Orders [CO 13/760](#) and [CO 13/761](#) issued in 2013 state:

"Excluded assets mean, in relation to a financial services license:

(a) intangible assets (excluding, for the avoidance of doubt, a deferred tax asset); and..."

This implies that DTAs are 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:

"intangible assets (excluding deferred tax assets)".

However, a confusion arises because ASIC Class Order [CO 12/752](#) states:

"(a) intangible assets (including, for the avoidance of doubt, a deferred tax asset); and"

We agree with ASIC's position in CO 13/760 and CO 13/761 to exclude DTAs from intangible assets. However, we request that ASIC clarify the definition of excluded assets in CO 12/752 to remove ambiguity.

It is also recommended that the definition of excluded asset in RG166 and PF209 be amended in line with ASIC instruments.