

**Senator the Hon  
Nick Sherry**  
Assistant Treasurer



**Chris Bowen MP**  
Minister for Financial  
Services, Corporate  
Law and  
Superannuation

## **PRESS RELEASE**

### **BOARD OF TAXATION TO REVIEW AUSTRALIA'S TAX LAWS TO ENSURE ISLAMIC FINANCE MARKET CAN EXPAND**

The Assistant Treasurer, Senator Nick Sherry and the Minister for Financial Services, Corporate Law and Superannuation, Chris Bowen, today announced that the Board of Taxation would undertake a comprehensive review of Australia's tax laws to ensure that, wherever possible, they do not inhibit the expansion of Islamic finance, banking and insurance products.

The Assistant Treasurer, made the announcement at a major business event in the United Arab Emirates (UAE) jointly organised by the Australian Business Group of Abu Dhabi and The Australian Business Council of Dubai, with the support of the Abu Dhabi Chamber of Commerce and Industry and attended by key figures from business, finance and banking community across the Gulf Region.

The Islamic finance, banking and insurance market is worth almost \$1 trillion and could reach as much as \$5 trillion, according to Moody's Investor Services.

"Islamic finance is a rapidly growing part of the global financial system and Australia is in an excellent position capitalise on that growth, but we have to identify if our tax system doesn't unnecessarily prevent that from happening," said the Assistant Treasurer.

"Today's announcement is the first step in ensuring that we get the settings right."

The report of the Australian Financial Centre Forum (AFCF) which was released by the Government in January 2010, recommended that the Board of Taxation undertake such a review "in order to ensure that Islamic finance products have parity with conventional products, having regards to their economic substance" (Recommendation 3.6).

"Accessing this major source of capital, could assist Australian businesses to diversify their funding base in the future," Mr Bowen said.

Islamic finance is finance that is consistent with Shariah or Islamic law, as set out in the Qu'ran. Among other features, it must exclude the payment of interest, or riba, it prohibits excessive uncertainty and investments in certain sectors such as gambling and alcohol, it provides that there must be a genuine and tangible underlying asset to any investment and that profit and loss must be shared.

The main tax issue faced in relation to accommodating Shariah-compliant financial products in most Western tax systems is the form-based nature of such instruments. That is, whereas Western tax codes normally focus on the details of the transaction in question and levy tax accordingly, this approach may give rise to anomalous tax treatments for Islamic instruments.

In a strict “form” approach, a transaction may, on its face, indicate one tax outcome, while the economic substance of the transaction may indicate another.

“Australia has made major inroads into integrating an economic substance approach into our tax laws, particularly with the latest Taxation of Financial Arrangements (TOFA) legislative reforms progressed by the Rudd Government, which are squarely based on assessing the economic substance of a transaction rather than its legal form,” said the Assistant Treasurer.

“The Board of Taxation review will take this work to the next level by examining the Australian tax laws to study the wholesale market for Islamic instruments to identify if this is not being hampered.”

“I would like to be clear, this is not about special treatment or concessions for Islamic finance or its providers, but about ensuring that our system doesn’t unfairly disadvantage or preclude such instruments and, in doing so, deprive Australia of capital, jobs and growth.”

The detailed Terms of Reference of the review, including the dates for reporting to Government, will be released in the near future.

ABU DHABI, UNITED ARAB EMIRATES

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