



New Zealand Market

Australian Securitisation Forum

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1 May 2024

Hon Simon Watts
Minister of Revenue
Parliament Buildings
WELLINGTON

Dear Minister

Overview

1. The Australian Securitisation Forum (**ASF**) is writing to request that certain remedial amendments to the taxation of securitisation transactions in New Zealand, which are intended to reduce compliance costs - and therefore to reduce the cost of borrowing money for New Zealand businesses and consumers – are addressed in the next tax Bill. The suggested amendments:
 - (a) would remedy what appear to be unintended consequences under existing law such as (for example) anti-avoidance measures and the “associated person” definitions applicable to those measures, which were designed with family trusts in mind and result in overreach when applied to trusts that are securitisation vehicles;
 - (b) should not give rise to fiscal costs (because in practice commercial parties respond to overreach in the relevant rules by structuring around the issue, or if the cost and uncertainty of doing so would be prohibitive, by not transacting at all) but would reduce the costs of undertaking securitisation transactions which in turn will reduce financing costs for consumers and businesses;
 - (c) have been raised in the ASF’s submissions to the Finance and Expenditure Select Committee on two recent Tax Bills, and officials in their Departmental Report on submissions have acknowledged the issues and

recommended considering them in a later Bill, subject to prioritisation on the Government's work programme.

2. We would be pleased to meet with you to discuss this letter if that would be helpful.

Background

3. The ASF is the leading industry body representing participants in the securitisation and covered bond markets in Australia and New Zealand. A securitisation is a funding arrangement involving the transfer of receivables to a special purpose vehicle which then issues debt securities backed by the expected cash flows from those receivables.
4. Securitisation provides an important source of funding for a range of financial institutions by allowing them access to wholesale debt markets for their funding needs on competitive terms, thereby serving as an alternative to the provision of funding from the major banks. Tax or other impediments to securitisation transactions will therefore reduce competition in the financial sector, to the detriment of New Zealand businesses and consumers.
5. For funders/investors to be prepared to provide debt financing to securitisation vehicles, it is critical that the securitisation vehicle has no unanticipated liabilities, including tax liabilities (ie, that the vehicle is "tax neutral"). A confirmation of tax neutrality is always a condition precedent to draw down of funding by the securitisation vehicle, illustrating the commercial importance of the tax treatment.

How unnecessary compliance costs arise and how the problem can be addressed

6. The ASF has previously proposed (in submissions to the Finance and Expenditure Committee dated 29 October 2021 and 13 July 2023) certain remedial amendments which are intended to:
 - (a) address the overreach of certain limitations on interest deductibility which were not designed with securitisation vehicles in mind and which impact tax neutrality. Interest paid to a lender who is "associated" with the borrower can be subject to limitations on interest deductibility and/or a higher rate of withholding tax. It is common in New Zealand for securitisation vehicles to be trusts. However, under current law, whether a third-party lender is treated as "associated" with a securitisation trust is determined by applying association tests developed with family trusts in mind. A third party lender to a securitisation trust may be technically associated with a securitisation trust merely as an incident of its rights as a creditor;

(b) prevent certain securitisation vehicles from being inappropriately excluded from specific tax neutrality rules in section HR 9 of the Income Tax Act 2007 (which permit certain securitisation vehicles to achieve tax neutrality by electing to be transparent for tax purposes). For example, under current law, where assets are to be transferred from one securitisation vehicle (that is not subject to the provision) to a new securitisation vehicle (that will be), it can be necessary to undertake a “two-step” transfer of those assets from the first vehicle to the originator, and then from the originator to the new vehicle, in order to meet the technical requirements of section HR 9. The “two-step” transfer however will involve increased costs and complexity and may not be feasible in all cases.

7. In many cases it is possible to navigate the deficiencies in these rules (such that there is no loss of tax neutrality for the securitisation vehicle), but doing so increases the cost of implementing the structure, or requires changes to the commercial structure that would otherwise have been adopted. It is reasonable to assume that in some cases, the increased cost and uncertainty that result from structuring around the unintended consequences of the tax laws may mean that transactions that would otherwise occur do not proceed. We have been advised, for instance, that the New Zealand tax treatment of securitisation transactions makes such transactions more complex and potentially costly to undertake in New Zealand than in (eg) the United Kingdom.

Next steps

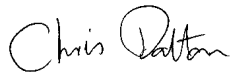
8. The ASF has proposed specific remedial amendments that can be acted on to address these issues in a way that is consistent with New Zealand’s tax policy settings. Further details of these are set out in section 3 of the ASF submission dated 13 July 2023, and are summarised in the Appendix to this letter.
9. Importantly, we understand that officials do not disagree with the ASF’s submission. Their response to submissions in 2023, echoing similar responses to our earlier 2021 submission, indicated that:¹

We recommend considering these issues for a later Bill, subject to prioritisation on the Government’s tax and social policy work programme.

¹ See the *Departmental Report to the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill* at page 121, and at 241 to 243. See also the *Officials Report to the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Bill* at pages 252, 254, 255 and 256.

10. The ASF and other industry bodies have devoted significant time and resource to proposing targeted and actionable amendments to reduce tax compliance costs affecting business (and therefore consumers) in this sector. We respectfully submit that, having acknowledged the overreach in the existing tax laws over some years now, but not devoted resource to addressing the issues, now is the time for the Government to do so.

Yours faithfully



Chris Dalton
Chief Executive Officer
Australian Securitisation Forum



Simon O'Connell
Head of Structured Finance, Westpac
ASF New Zealand Market sub-committee chair

Appendix – summary of proposed remedial amendments

1. The following is a summary of the remedial amendments proposed by the ASF. For further detail, see section 3 of the ASF submission to the Finance and Expenditure Committee on the Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill dated 13 July 2023.
2. In summary, the ASF submits that:
 - (a) a person should not be associated with a securitisation trust (or treated as holding related-party debt) simply because the person (or an associate of the person) is a settlor of the securitisation trust, has the power to appoint or remove the trustee, or is a beneficiary, settlor or person with a power of appointment or removal of a security trust (*see paragraph 6(a) of the covering letter*);
 - (b) it should be possible to elect to use the debt funding special purpose vehicle (**DF SPV**) regime (which permits certain securitisation vehicles to consolidate with their originators for tax purposes) in a wider range of circumstances, including where receivables are transferred to a securitisation entity by an entity (other than the originator) that would be eligible to elect, but has not elected, into the regime (*see paragraph 6(b) of the covering letter*);
 - (c) notes issued by a securitisation entity should be excluded from section GC 18 (Loan features disregarded by rules for transfer pricing arrangements). By way of background, this rule requires (subject to certain exceptions) that junior notes held by related parties are priced (for interest deductibility purposes) as if they ranked equally with senior notes. This rule was not developed with securitisations in mind, and is not appropriate in this context. Subordination is fundamental to the structure and purpose of a securitisation, to allow different investors with different risk profiles to hold different classes of notes, priced differently to reflect their seniority; and
 - (d) securitisation entities should be excluded from the thin capitalisation rules. By way of background, the thin capitalisation rules limit interest deductions that can be claimed by excessively geared entities (determined by reference to a ratio of debt-to-net assets). It is not appropriate for those rules to apply to a securitisation entity, which is a funding vehicle that is intended to be tax neutral. Where the securitisation entity's assets are financial arrangements (such as loans or finance leases), an existing "on-lending concession" addresses this issue. But where the securitisation entity's

assets are not financial arrangements (such as operating leases), the on-lending concession is not available, and ensuring there is no denial of deductions under the thin capitalisation rules is more complex and can require changes to the commercial funding structure that would otherwise be adopted.

29 April 2024

Hon Simon Watts
Minister of Revenue
Parliament Buildings
WELLINGTON

Dear Minister

Remedial amendments to taxation of securitisation transactions

1. We understand the Australian Securitisation Forum (ASF) is writing to you to request that remedial amendments to the taxation of securitisation transactions in New Zealand are prioritised for inclusion in the next tax Bill.
2. The New Zealand Banking Association – Te Rangapū Pēke (NZBA) has reviewed a final draft of the ASF letter. The NZBA supports the prioritisation of remedial reforms in this area.
3. New Zealand's banking sector often participates in securitisation transactions, which are designed to ring fence a book of receivables inside a special purpose trust vehicle (SPV). The banks may set these SPVs up themselves, transferring parts of their lending book into the SPVs, or participate in the funding of SPVs created by other originators. The use of the SPV structure reduces credit risk and allows the SPVs to reduce the cost of funding for these books, ensuring efficient, competitive funding is available, to the ultimate benefit of New Zealand businesses and consumers.
4. The tax treatment of securitisation transactions in New Zealand is complex, and creates additional cost and complexity for parties involved in securitisation transactions, including ultimately businesses and consumers. As the ASF letter highlights, much of this complexity results from provisions of the income tax legislation overreaching or otherwise having unintended consequences in relation to securitisation transactions. The NZBA supports prioritisation of targeted remedial reforms to address obvious instances of such complexity.

Yours faithfully



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About NZBA

The NZBA is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders. The following eighteen registered banks in New Zealand are members of NZBA:

- ANZ Bank New Zealand Limited
- ASB Bank Limited
- Bank of China (NZ) Limited
- Bank of New Zealand
- China Construction Bank
- Citibank N.A.
- The Co-operative Bank Limited
- Heartland Bank Limited
- The Hongkong and Shanghai Banking Corporation Limited
- Industrial and Commercial Bank of China (New Zealand) Limited
- JPMorgan Chase Bank N.A.
- KB Kookmin Bank Auckland Branch
- Kiwibank Limited
- MUFG Bank Ltd
- Rabobank New Zealand Limited
- SBS Bank
- TSB Bank Limited
- Westpac New Zealand Limited



FINANCIAL SERVICES FEDERATION

1 May 2024

Hon Simon Watts
Minister of Revenue
Parliament Buildings
WELLINGTON

Dear Minister

The Financial Services Federation (FSF) wishes to express its full support for the letter (which the FSF has reviewed in draft) addressed to you from the Australian Securitisation Forum (ASF), in relation to the tax treatment of securitisation transactions in New Zealand.

By way of background, the FSF is the industry body representing the responsible and ethical non-bank lending sector in New Zealand including finance, leasing, and credit-related insurance providers. We have over 90 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. A list of our members is attached as Appendix A.

The responsible non-bank sector exists partly because there are sectors of our community and society that are not able to be as well served by the registered banks. This includes non-bank lenders providing specialist finance options to small and medium size businesses using the asset being purchased as the means to secure the loan (as opposed to taking a mortgage over the family home). Non-bank lenders also support consumers with specialised products in areas such as housing lending, motor vehicle lending, point of sale finance, and so on.

Many non-bank lenders are funded for their lending activities through the use of securitisation vehicles or special purpose vehicles (SPVs) and it is on this basis that the FSF is writing to you in support of the ASF submission. The key points made in the ASF letter with which the FSF is in agreement are:

- The amendments proposed in Appendix 1 of the ASF letter would remedy what appear to be unintended consequences under existing law (such as overreach of anti-avoidance measures).

- The amendments should not give rise to fiscal cost, but would reduce the cost of undertaking securitisation transactions which will in turn reduce costs for consumers and businesses.
- Having been raised in the ASF's submissions to the Finance and Expenditure Committee on two recent Tax Bills, in circumstances where officials have acknowledged the issues and recommended considering them in a later Bill, now is the time for the Government to act.

Please do not hesitate to contact me if you wish to discuss this letter.

A handwritten signature in blue ink, appearing to read 'L. McMorran'.

Lyn McMorran
EXECUTIVE DIRECTOR



FSF Membership List as at April 2024

Non-Bank Deposit Takers, Specialist Housing/Property Lenders, Credit-related Insurance Providers	Vehicle Lenders Finance Companies/Diversified Lenders	Finance Companies/ Diversified Lenders contd.	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Affiliate Members	Affiliate Members contd., and Leasing Providers
<p>XCEDA (B)</p> <p>Finance Direct Limited ➤ Lending Crowd</p> <p>General Finance (BB)</p> <p>Gold Band Finance ➤ Loan Co</p> <p>Mutual Credit Finance</p> <p><u>Credit Unions/Building Societies</u></p> <p>First Credit Union</p> <p>Nelson Building Society</p> <p>Police and Families Credit Union</p> <p><u>Specialist Housing/Property Lenders</u></p> <p>Basecorp Finance Limited</p> <p>First Mortgage Managers Ltd.</p> <p>Liberty Financial Limited</p> <p>Pepper NZ Limited</p> <p>Resimac NZ Limited</p> <p><u>Credit-related Insurance Providers</u></p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p>	<p>Auto Finance Direct Limited</p> <p>BMW Financial Services ➤ Mini ➤ Alpha Financial Services</p> <p>Community Financial Services</p> <p>Go Car Finance Ltd</p> <p>Honda Financial Services</p> <p>Kubota New Zealand Ltd</p> <p>Mercedes-Benz Financial</p> <p>Motor Trade Finance</p> <p>Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance</p> <p>Onyx Finance Limited</p> <p>Scania Finance NZ Limited</p> <p>Toyota Finance NZ ➤ Mazda Finance</p> <p>Yamaha Motor Finance</p> <p><u>Finance Companies/Diversified Lenders</u></p> <p>AfterPay</p> <p>Avanti Finance ➤ Branded Financial</p> <p>Basalt Group</p>	<p>Blackbird Finance</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>Centracorp Finance 2000</p> <p>DebtManagers</p> <p>Finance Now ➤ The Warehouse Financial Services ➤ SBS Insurance</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Harmony</p> <p>Humm Group</p> <p>Instant Finance ➤ Fair City ➤ My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Lifestyle Money NZ Ltd</p> <p>Limelight Group</p> <p>Mainland Finance Limited</p> <p>Metro Finance</p> <p>Nectar NZ Limited</p> <p>NZ Finance Ltd</p>	<p>Personal Loan Corporation</p> <p>Pioneer Finance</p> <p>Prospera NZ Ltd</p> <p>Speirs Finance Group (L &F) ➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yoogo Fleet</p> <p>Turners Automotive Group ➤ Autosure ➤ East Coast Credit ➤ Oxford Finance</p> <p>UDC Finance Limited</p> <p>Yes Finance Limited</p> <p>Zip Co NZ Finance Limited</p> <p><u>Insurance Premium Funders</u></p> <p>Elantis Premium Funding NZ Ltd</p> <p>Financial Synergy Limited</p> <p>Hunter Premium Funding</p> <p>IQumulate Premium Funding</p> <p>Rothbury Instalment Services</p>	<p>Alfa Financial Software NZ Limited</p> <p>AML Solutions Limited</p> <p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>Credisense Ltd</p> <p>Credit Sense Pty Ltd</p> <p>Deloitte</p> <p>EY</p> <p>FinTech NZ</p> <p>Finzsoft</p> <p>Happy Prime Consultancy Limited</p> <p>KPMG</p> <p>Loansmart Ltd</p> <p>LexisNexis</p> <p>Motor Trade Association</p> <p>Odessa Technology Inc.</p> <p>One Partner Limited</p> <p>PWC</p> <p>Sense Partners</p> <p>Simpson Western</p> <p>Summer Lawyers</p>	<p><u>Credit Reporting, Debt Collection Agencies,</u></p> <p>Centrix</p> <p>Credit Corp ➤ Baycorp</p> <p>Debtworks (NZ) Limited</p> <p>Equifax</p> <p>Gravity Credit Management Limited</p> <p>IDCARE Ltd</p> <p>Illion</p> <p>Quadrant Group (NZ) Ltd</p> <p>Recoveriescorp NZ Ltd</p> <p><u>Leasing Providers</u></p> <p>Custom Fleet</p> <p>Euro Rate Leasing Limited</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX New Zealand</p> <p>SG Fleet</p> <p>Total 97 members</p>



THE NON-BANK FINANCE INDUSTRY SECTOR - 2022



48%



of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

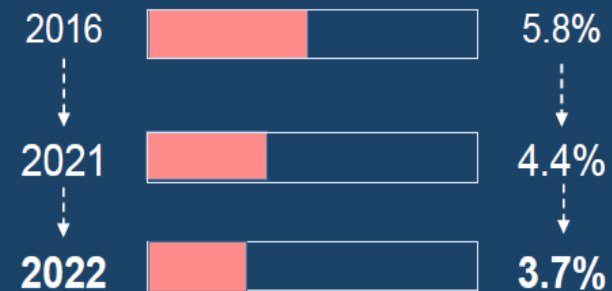
Setting industry standards for responsible lending, promoting compliance and consumer awareness.

Percent of Loan Requests Approved

46%



Percent of Loan Book in Arrears



KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	\$329B
Value of Consumer Loans	\$7.6B
Value of Business Loans	\$118B

Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	\$27.2M
Days to Approved Claim	20 days

Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	\$8.1B
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	\$330M

Average Value of Loan:

Mortgage	\$171,932
Vehicle Loan	\$12,393
Unsecured	\$2,467
Other Security	\$5,754
Lease Finance	\$2,804

Average Monthly Instalment:

Mortgage	\$257
Vehicle Loan	\$463
Unsecured	\$144
Other Security	\$302
Lease Finance	\$241

Business Loans (as at 28 Feb 2022)

Total Value of Loans	\$7.3B
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	\$590M

Average Value of Loan:

Mortgage	\$443,784
Vehicle Loan	\$28,869
Unsecured	\$7,443
Other Security	\$32,374
Lease Finance	\$24,921

Average Monthly Instalment:

Mortgage	\$2,281
Vehicle Loan	\$1,064
Unsecured	\$799
Other Security	\$11,044
Lease Finance	\$939



1 May 2024

Hon Simon Watts
Minister of Revenue
Parliament Buildings

WELLINGTON

Dear Minister

The Corporate Taxpayers Group (“**the Group**”) has been provided a final draft of a letter to you from the Australian Securitisation Forum (“**ASF**”) requesting prioritisation be given to certain remedial amendments to the taxation of securitisation transactions.

The Group is writing to express its support for the ASF’s proposals, which the Group has previously supported in submissions to the Finance and Expenditure Committee (on previous tax Bills) in 2021 and 2023.

The Group’s longstanding support for these proposals recognises that a well-functioning and efficient securitisation market plays an important role in the provision of funding to New Zealand businesses. There is an opportunity for targeted remedial amendments to be made to the tax treatment of securitisation transactions, to address overreach and unintended consequences in existing provisions, in a way that will lower costs for businesses (and therefore consumers), while being fiscally neutral. The broad industry support for the ASF submission demonstrates that the costs created by the overreach of existing provisions is real.

Given the targeted nature of the proposals, the Group considers they can, and should, be implemented in the next tax Bill. Not doing so at this time will mean that implementing securitisation transactions continues to be more complex and costly than is necessary and when compared to the position in other countries, to the detriment of New Zealand businesses and consumers.

We would be happy to discuss this matter further with you or your officials.

Yours sincerely

A handwritten signature in purple ink that reads "John Payne".

John Payne
For the Corporate Taxpayers Group

CC: David Carrigan, Deputy Commissioner, Policy & Regulatory Stewardship

Contact the CTG:
c/o Robyn Walker, Deloitte
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We note the views in this document are a reflection of the views of the Corporate Taxpayers Group and do not necessarily reflect the views of individual members.



For your information, the members of the Corporate Taxpayers Group include:

1	AIA New Zealand Limited	26	Meridian Energy Limited
2	Air New Zealand Limited	27	Methanex New Zealand Limited
3	Airways Corporation of New Zealand	28	New Zealand Post Limited
4	ANZ Bank New Zealand Limited	29	New Zealand Superannuation Fund
5	ASB Bank Limited	30	Oji Fibre Solutions (NZ) Limited
6	Auckland International Airport Limited	31	OMV New Zealand Limited
7	Bank of New Zealand	32	One New Zealand Limited
8	Chorus Limited	33	Pacific Aluminium (New Zealand) Limited
9	Contact Energy Limited	34	Powerco Limited
10	Downer New Zealand Limited	35	Resolution Life Australasia Limited
11	Entain New Zealand Limited	36	SkyCity Entertainment Group Limited
12	First Gas Limited	37	Sky Network Television Limited
13	Fisher Funds Limited	38	Spark New Zealand Limited
14	Fisher & Paykel Appliances Limited	39	Summerset Group Holdings Limited
15	Fisher & Paykel Healthcare Limited	40	Suncorp New Zealand
16	Fletcher Building Limited	41	Synlait Milk Limited
17	FNZ Limited	42	T & G Global Limited
18	Fonterra Cooperative Group Limited	43	The Todd Corporation Limited
19	Genesis Energy Limited	44	Watercare Services New Zealand
20	Heartland Bank	45	Westpac New Zealand Limited
21	IAG New Zealand Limited	46	WSP
22	Infratil Limited	47	Xero Limited
23	Kiwibank Limited	48	Z Energy Limited
24	Lion Pty Limited	49	ZESPRI International Limited
25	Mercury NZ Limited		

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