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BY EMAIL

Dear Manager

Currency (Restrictions on the Use of Cash) Bill 2019

Thank you for the opportunity to respond to the Australian Government's plans to introduce a cash transaction limit. I have read in detail the following materials made available on The Treasury's website:

- Currency (Restrictions on the Use of Cash) Bill 2019
- Currency (Restrictions on the Use of Cash) Bill 2019 Exposure Draft Explanatory Materials
- Currency (Restrictions on the Use of Cash – Excepted Transactions) Instrument 2019
- Currency (Restrictions on the Use of Cash) (Consequential Amendments and Transitional Provisions) Bill 2019
- Exposure Draft Explanatory Materials, Currency (Restrictions on the Use of Cash) Act 2019 and Currency (Restrictions on the Use of Cash – Excepted Transactions) Instrument 2019.

I am writing to express my serious concerns about the approach the Australian Government is proposing to take in relation to the recommendations of the Black Economy Taskforce. I do not believe putting in place a regime to limit cash transactions is in the interests of the Australian people or the economy. I have serious concerns about the real motivations for implementing such a change now as detailed below, when other methods already exist and could be further strengthened in the fight against black economy activities. The Australian Government should instead consider implementing a high value dealers regime similar to the United Kingdom and make use of the extensive powers already granted to AUSTRAC under the AML/CTF Act.

I am also concerned with the short consultation period for such an important issue. The Australian public deserve more time to understand and consider the ramifications of such a serious change to the use of physical currency now and potentially in the future. Short consultation times on such important issues do not promote trust in the Australian Government or financial institutions, both of which are critical as the Australian economy heads into more turbulent economic times.

Empirical evidence for the success of cash transaction limits

Making it an offence to carry out transactions of \$10,000 or more in physical currency in order to reduce terrorism financing, money laundering and tax fraud has very little empirical evidence to support it¹. In the case of tax fraud, under the AML/CTF Act reporting entities are already required to provide suspicious matter reports to AUSTRAC if they form a suspicion that the provision of a service (such as the use of a bank account), may be relevant to the investigation or prosecution of a person for (i) an evasion or attempted evasion of a tax law, (ii) a law of a State or Territory that deals with taxation or (iii) an offence against a law of the Commonwealth or of a State or Territory². In addition, failing to declare income and pay the appropriate amount of tax already carries penalties.

Implementation and operation of a cash transaction limit

Enforcing a cash transaction limit will be challenging and it is unclear how the Australian Government intends to do this over and above actions already available to it. In addition, a cost benefit analysis has not been provided to justify this new legislation.

The United Kingdom does not currently adopt a cash transaction limit but instead requires those businesses wanting to accept amounts of cash in excess of £10,000 to be registered as high value dealers³. This approach seems more likely to be successful given it can be aligned to the existing AML/CTF regime which allows the Commissioner of Taxation to access reported information in connection with the performance of the taxation officer's duties⁴. As noted from the proposed amendments to the AML/CTF Act, the ability to create regulations that require the reporting of specific types of transactions in money, property or digital currency (notably much wider than simply cash and the threshold transaction reporting obligations), already exist and are now proposed to be split out into a notifiable transaction regime under the proposed changes to the AML/CTF Act⁵. This power would allow for the targeting of specific transactions for reporting to AUSTRAC beyond merely cash transactions and if utilised could be more responsive to changes in the profile of tax fraud activities.

An example provided in the *Exposure Draft Explanatory Materials* highlights the impracticality of this legislation. The explanatory materials seem to suggest that where an individual sells their car in a private transaction to another individual, they would need to undertake reasonable inquiries such as searching the Australian Business Register to assure themselves that the person to whom they are selling the car is not in fact acquiring the car for use in a business. Failing to take such due diligence activities would mean the individual would not be able to avail themselves of the exemption for personal transactions and they would have committed an offence⁶. I have serious concerns about placing such due diligence obligations on the general public which includes individuals of various ages, means, financial and legal literacy. The Australian Government should urgently reconsider the approach taken by the United Kingdom, which places due diligence obligations on those more familiar with and better able to undertake these compliance obligations.

¹ https://ec.europa.eu/info/sites/info/files/economy-finance/com_2018_483_f1_report_from_commission_en_v4_p1_981536.pdf; <https://wolfstreet.com/2018/07/30/the-eu-backs-off-its-war-on-cash-heres-why/>

² Section 41, AML/CTF Act 2006.

³ <https://www.gov.uk/guidance/money-laundering-regulations-high-value-dealer-registration>

⁴ Section 122 of the AML/CTF Act 2006.

⁵ Proposed addition of the definition "notifiable transaction" and section 43A to the AML/CTF Act 2006 in *Currency (Restrictions on the Use of Cash) (Consequential Amendments and Transitional Provisions Bill 2019)*.

⁶ p4, *Exposure Draft Explanatory Materials*.

Potential to reduce the cash transaction limit in the future

Although the cash transaction limit is being set at \$10,000, calls already abound for this to be lowered to \$5000 or even \$2000 and certainly there is precedent in Europe for cash transaction limits as low as €1000 Euros⁷. The European Union is currently looking at imposing an EU wide cash transaction limit which is proving incredibly unpopular with the population⁸ and potentially not as effective as first thought⁹. Low limits on the use of cash are counterproductive and accelerate distrust in fiat money systems, financial institutions and governments. Such limits reduce personal freedom and the ability to take action to protect an individual's own interests in times of crisis¹⁰, it reduces privacy and makes an individual more susceptible to cyber crime¹¹ and failing bank IT systems. APRA itself has called out serious concerns about under investment in IT in the banking sector in Australia and the rising outages¹². TSB's customers in the United Kingdom were subjected to a serious outage limiting access to bank accounts followed by in excess of 22 weeks of continuing access issues¹³. I would suggest that the Australian public's acceptance of this type of regime is unlikely to be as positive if they were more fully aware of the low cash transaction limits currently existing in Europe. Being able to transact in cash is an important safety switch for the Australian economy and individuals.

Imprisonment a heavy-handed penalty

Given the time available I have not been able to undertake extensive research but from my initial investigations it would appear that the use of imprisonment as a penalty is unique to the Australian legislation, at least as far as equivalent European legislation is concerned¹⁴. Imprisonment is a serious penalty and should be reserved for serious offences. Given the negative personal consequences that arise from being imprisoned (e.g. the ability to secure employment, deportation), imprisonment should not be an option unless it can actually be proven that the person involved was guilty of a crime such as terrorist financing, money laundering or tax evasion or of aiding and abetting such a crime, not merely for paying in or receiving money in legal tender for what may be a completely legitimate transaction.

Misrepresenting the personal transaction exemption

To say that all personal transactions are exempt is not to be completely accurate when describing how the legislation is to operate. The exemptions currently exclude personal transactions related to supply and acquisition transactions only. Gifts do not appear to be captured by the exemption. Failing to exempt gifts becomes of greater concern if the cash transaction limits were to be reduced in the future.

The statement is also inaccurate because as discussed above, this exemption is not intended to be automatically available without further due diligence (refer again to the private car sale example above).

⁷ p 55 Chapter 3, *Black Economy Taskforce Final Report* (October 2017)

⁸ p 55 Chapter 3, *Black Economy Taskforce Final Report* (October 2017) and <https://wolfstreet.com/2017/01/28/europe-limits-on-cash-transactions-war-on-cash/>

⁹ Refer footnote 1 above.

¹⁰ *Report on the debate regarding EU cash payment limitations*, Passas N, Journal of Financial Crime 2018 Vol 25 No 1 pp 5-27

¹¹ <https://www.bankinfosecurity.com/after-cyber-heist-bangladesh-bank-sues-to-recover-funds-a-11993>

¹² <https://www.afr.com/business/banking-and-finance/apra-warns-banks-on-it-underinvestment-and-messy-data-20180924-h15rh8>,

¹³ <https://wolfstreet.com/2018/09/07/credit-cardholders-bank-customers-british-airways-lloyds-tsb/>

¹⁴ <https://www.evz.de/en/consumer-topics/buying-goods-and-services/shopping-in-the-eu/cash-payment-limitations/>

Transaction costs for digital transactions

The Australian Government has failed to deal with the issue of transaction costs for digital transactions which was called out in the Black Economy Taskforce Final Report¹⁵. The recent introduction of visa debit cards took the Australian population by surprise, many believing that the new “tap and go” option was no different from using a debit card to access their savings account. Shockingly, this has resulted in exorbitant costs for business and billions of dollars being channeled through to VISA and other financial institutions.¹⁶ If the Australian Government wants to reduce the ability of the public to use cash, it needs to, at the same time, address transaction costs particularly for small business.

Implication of negative interest rates and bail-in

The timing of this legislation is curious, as is the decision not to use the AML/CTF regime to implement a UK style high value dealers regime. Although the proposed cash transaction limit has received very little commentary in the mainstream press, both the Reserve Bank of Australia¹⁷ and the Reserve Bank of New Zealand¹⁸ have this week indicated that all measures including negative interest rates are on the table as the global economy continues to slow.

It is noted that in a recent IMFblog, there is an acknowledgement that:

“Severe recessions have historically required 3-6 percentage points cut in policy rates. If another crisis happens, few countries would have that kind of room for monetary policy to respond.”

Reducing cash transactions is considered an important factor in the success of negative interest rates. As the IMFblog notes:

“In a cashless world, there would be no lower bound on interest rates. A central bank could reduce the policy rate from, say 2 per cent to minus 4 percent to counter a severe recession. The interest rate cut would transmit to bank deposits, loans and bonds. Without cash depositors would have to pay the negative interest rate to keep their money with the bank, making consumption and investment more attractive. This would jolt lending, boost demand and stimulate the economy.”

“When cash is available, however, cutting rates significantly into negative territory becomes impossible. Cash has the same purchasing power as bank deposits, but at zero nominal interest.Therefore instead of paying negative interest, one can simply hold cash at zero interest. Cash is a free option on zero interest and acts as an interest rate floor.”¹⁹

This position was further outlined in *IMF Working Paper – Enabling Deep Negative Rates to Fight Recessions: A Guide (2019)*.

¹⁵ p 44 Chapter 3, *Black Economy Taskforce Final Report* (October 2017)

¹⁶ <https://www.wsj.com/articles/purchases-with-plastic-get-costlier-for-merchants-and-consumers-11550226601>

¹⁷ <https://www.bloomberg.com/news/articles/2018-08-10/behind-the-90-billion-brawl-over-credit-card-swipes-quicktake>

¹⁸ <https://www.abc.net.au/news/2019-08-09/reserve-bank-cuts-economic-forecasts-again/11399576>

¹⁹ <https://www.reuters.com/article/us-newzealand-economy-rbnz/new-zealand-could-cut-rates-again-wont-rule-out-negative-rates-central-bank-assistant-governor-idUSKCN1UY085>

¹⁹ <https://blogs.imf.org/2019/02/05/cashing-in-how-to-make-negative-interest-rates-work/>

In further developments, the ASX is updating its systems to allow for the trading of products with negative interest rates.²⁰

I am extremely concerned that the cash transactions limit is being structured in such a manner to allow for the phasing out of cash transactions and the implementation of negative interest rates, recent comments from the Reserve Bank of Australia would certainly support that assumption. It would also explain the decision not to use the UK model for high value dealers.

Negative interest rates are incredibly damaging for financial stability and have not been successful in either Japan²¹ or Europe. In Japan, the banks have attempted to minimize the impact of negative domestic interest rates through a number of measures including by investing more overseas and clawing back loan loss provisions. As these mitigating options become less available due to the wider use of negative interest rates across the globe and the downturn in economic activity, one could expect the impact of negative rates on bank balance sheets to be more pronounced.

The impact will be to weaken bank profitability further and, although reluctant to transfer negative interest rates to deposit holders, an increase in fees and charges seems likely at a minimum and is already being discussed.²² It penalises households who are saving, be this for retirement, education costs or as a buffer for loss of employment or unexpected expenses. This type of saving is relatively unresponsive to changes in interest rates and would unfairly impact Australian households. Generally, low and negative interest rates encourages more risky investment generally throughout the economy as individuals and organisations chase returns and potentially undermines insurers and pension funds who rely on returns to fund future obligations.

Coupled with the potential “bail-in” aspect of recent changes to the Banking Act, the savings and financial resources of average Australians are being put in harms way. It is certainly not overstating the situation given relatively recent experiences in Greece, Cyprus, Iceland and the global financial crisis more generally.

Summary

In summary, I am not supportive of a cash transaction limit. I believe Australian citizens should be free to transact in physical currency and to maintain absolute control over their assets in order to protect themselves and their families especially in times of crisis. Any actions which ultimately trap funds within the banking system, make wealth susceptible to the negative impacts of low or negative interest rates and “bail in” provisions. Taking actions that undermine this freedom is potentially destabilising to the Australian financial system (including in terms of trust, IT outages etc). The Australian Government

²⁰ <https://www.msn.com/en-my/finance/topstories/australia-e2-80-99s-asx-preparing-for-negative-interest-rate-trading/ar-AAEn9ly>, www.bloomberg.com/amp/news/articles/2019-07-15/australia-s-asx-prepares-for-negative-interest-rate-trading

²¹ <https://www.bloomberg.com/amp/news/articles/2019-07-25/spreading-gloom-of-negative-rates-squeezes-japan-banks-further>

²² <https://www.youtube.com/watch?v=Xs96KTVmdrE>, Bloomberg interview with David Kelly, Chief Global Strategist at JP Morgan Asset Management (commenting on the difficult environment for banks when interest rates are negative and banks adapting by amongst other things “...making money through various fees...”)

should instead implement a high value dealers regime similar to the UK if combatting tax fraud is truly the goal.

Thank you for the opportunity to comment on the cash transaction limit legislation.

Kind regards

A handwritten signature in blue ink, appearing to read 'Michelle Bradshaw', enclosed within a circular blue ink stamp.

Michelle Bradshaw
BCom (Hons) LLB (Hons) GradDipRiskMgmt&CorpGov