THE LAW SOCIETY OF NEW SOUTH WALES
youngLAWYERS

5 February
2010

The General Manager
International Tax and Treaties Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

Greater Certainty for Sovereign Investments

Thank you for your invitation to provide submissions on the legislative design of a tax exemption for foreign governments.

The NSW Young Lawyers Tax Committee is pleased to provide the attached submission.

NSW Young Lawyers is a division of the Law Society of New South Wales. Membership of the NSW Young Lawyers is free and automatic for all NSW lawyers under 36 years and/or in their first five years of practice, and law students. Membership of its committees is voluntary.

We support the policy objectives outlined in the Consultation Paper. We have made submissions on what we consider would be the best means to achieve those policy objectives, based on the experiences of our members.

The authors of this submission are myself, Adriana Bedon, Andrew Lam, Matt Weerden and Rhys Bortignon.

If you would like to discuss any of our comments, or if have any questions, please contact in the first instance Gulfam (Adam) Ahmed on (02) 9926 0270.

Yours sincerely,

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Chair, Tax Law Committee
NSW Young Lawyers

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THE LAW SOCIETY OF NEW SOUTH WALES
YOUNG LAWYERS

Taxation Law Committee

Greater certainty for Sovereign Investments

5 February 2010

Submission to the Treasury

NSW Young Lawyers

Taxation Law Committee

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3. Legislative Principles

3.1 WHAT KINDS OF ENTITIES ARE ELIGIBLE FOR THE EXEMPTION?

3.1.1 What should the definition of ‘foreign government’ entail?

Recommendation

NSW Young Lawyers recommends that the definition of 'foreign government' should be codified and legislated with a precise definition which is consistent with current income tax law. The definition should be consistent with and follow existing tax treaties. A definition which is consistent with Australia’s tax treaties will assist in legislation which is consistent with recognised definitions in other jurisdictions. Such consistency between jurisdictions will not be an impediment to foreign investment into Australia.

The definition that commonly appears in Australian tax treaties is:

A State, or a political or administrative subdivision or a local authority thereof or any other body exercising public functions in, or in part of, a State, or a bank performing central banking functions of a State.

Analysis

The two primary policy objectives which are expressed in the consultation paper are:

1. to provide greater certainty to investors; and
2. to make Australia a regional financial hub.

Further, the consultation paper refers to US law in a number of instances as either a benchmark or a point of comparison for discussion in relation to providing greater certainty for sovereign wealth.

Greater certainty – using the US law as a model?

NSW Young Lawyers submits that an adoption of the US approach to sovereign wealth may not be consistent with the policy objectives outlined in the consultation paper, nor consistent with the current administrative practice nor consistent with current aspects of the Australian income tax law.

Further discussion in relation to particular aspects of the US approach to sovereign wealth is discussed in respect of question 3.3.1.

Greater certainty – using current administrative practice?

Codifying the existing administrative practice as is would significantly reduce the administrative burden on Sovereign Wealth Funds (SWFs) as currently a SWFs must apply for, and obtain, a ruling from the ATO. Australia's withholding tax rules make the withholder liable for any withholding tax, so a SWF with a ruling will need to provide a copy of the ruling to the trustee of the fund it invests in, and hope that the trustee does not withhold. Technically, the trustee may still liable for the withholding tax in certain situations where it cannot rely on s12-300 or s15-15 of schedule 1 to the Taxation Administration Act 1953. An example of this would be an investment by a SWF in a managed investment trust. In such circumstances, we are aware of circumstances where a trustee of a managed investment trust will withhold from distributions to the SWF, notwithstanding the SWF having a ruling from the ATO. The ruling does not protect the trustee of the

managed investment trust, and it is difficult to obtain a ruling from the ATO to protect the trustee as there is no real basis in law for the trustee not being required to withhold.

If a managed investment trust does withhold, then our experience has been there are often significant delays in having any withholding tax refunded.

It is administrative concerns such as these that can create difficulties, but which can be dealt with relatively expediently by codifying the current administrative practice in the law.

Promoting Australia as a regional financial hub – extending coverage for sovereign immunity

The comments in the Consultation Paper suggest a broader definition of foreign government. In the Consultation Paper, the term 'foreign government' is intended to be broad enough to include political subdivisions, statutory authorities, agencies and instrumentalities, as well as government-owned enterprises. Many SWFs are owned by foreign government and would therefore potentially be eligible for exemption under the doctrine of sovereign immunity. NSW Young Lawyers supports the expansion of the definition in this way, as it recognises the varying arrangements used by governments in carrying on governmental activities.

Accordingly, NSW Young Lawyers recommends a solid definition for 'foreign government'. The lack of a solid definition of what constitutes a 'foreign government' would be a matter of concern in light of developing trends in foreign models of investment. This includes the rise of SWF's as an increasingly popular form of foreign investment by nation states. The ATO has expressed the view that as the increase of such investment activity develops, its corporate structure has become more closely aligned with practices of private equity investments.

In the context of international tax based practices it is clear that there is scope for interpretative debate as to definition of what constitutes a 'foreign government' and the activities carried out by foreign governments or their agencies.The Commentary on the OECD Model Convention clearly tries to avoid any discussion about the boundaries of the customary international law doctrine of sovereign immunity. This indicates that it may be some time before there is international agreement on how sovereign immunity should be applied with respect to taxation. Therefore, clarity in the application of any sovereign immunity legislation is essential, and this will require a clear definition in domestic law.

An issue that may need to be clarified is residence. The question is whether the same rules that apply to SWF's established offshore should also apply to an entity that is an Australian subsidiary of an offshore SWF.

Promoting Australia as a regional financial hub – Relying on existing treaty definitions

NSW Young Lawyers submits that the simplest way to define 'foreign government' would be to rely on existing treaty definitions. The treaties are somewhat indicative of internationally accepted practice, and in this regard fulfils the desire by Government to create a law that is 'familiar' (which is one of the reasons the Consultation Paper suggests using the US law as a model).

A definition for government is often included in the definition of 'resident', or in the interest withholding tax article. Some of Australia's treaties (for example, UK, New Zealand, Canada and Japan) extend to cover the government of the State, its 'political subdivisions' and 'local authorities'. The OECD Paper notes that some countries even include a 'statutory body,' 'agency' or instrumentality' of a State as a 'resident' for the purposes of the treaty. However, this is not universal practice in Australia's treaties and where the definition of 'resident' does require that the entity is liable to tax, there can be issues about the entitlement of a tax exempt SWF to enjoy treaty benefits.

Conclusion

Whilst we support a definition of 'foreign government' that follows Australia's tax treaties, we recommend that irrespective of the nature of the entity making the investment, whether the entity takes the form of a foreign government investment, SWF or controlled entity, the investment should be subject to further requirements to benefit from the sovereign immunity exemption.

The further requirements should include limitations on the type of income derived (discussed later) and the means by which it is derived (as discussed in 3.5). In relation to the latter, we note that the treaty definition would require the SWF to exercise 'public functions'. The interpretation of the phrase 'public functions' could be linked to a governmental functions test or inurement test (as discussed in 3.5.

3.1.2 Should the definition include monarchs and kingdoms, and if so, how should they be defined?

Recommendation

NSW Young Lawyers considers that the concept of monarchs and kingdoms, as is relevant for the application of sovereign immunity, should already be included within the definition or concept of 'foreign government' and subject to the general integrity measures and requirements which must be satisfied to avail itself of sovereign immunity.

Analysis

Broadly, the definition or concept of a Foreign Government should include the Head of State of that Foreign Government. In monarchical systems of government, that head of state will be a Monarch. Monarchs could be considered to have dual personas, that as a private individual and that of the Head of State. The inclusion of the concept of monarch into the codification of the sovereign immunity rules may lead to an unintended expansion of the sovereign immunity for those investments of Monarchs held in the private capacity of the Monarch. Investments held by a Monarch in their capacity as Head of State and for the purposes of fulfilling functions as the Head of State should be appropriate included within a definition of Foreign Government. We note that this is consistent with past administrative practice adopted by the Commissioner of Taxation and the Australian Taxation Office.

3.1.3 Which, if any, of the above options is most suitable for achieving this purpose?

Recommendation

NSW Young Lawyer recommends adopting option 3 with respect to defining Foreign Government with reference to current tax treaty definitions.

Analysis

There have been a number of proposed alternative definitions with respect to defining a ‘foreign government’ as discussed in the Consultation Paper. The following alternatives are discussed below:

- Omitting a legislative definition will allow the definition of foreign government to take its ‘ordinary meaning’. Under this option there would be no strict definition included in the legislation, however, commentary would be included in the extrinsic materials.

An international law perspective would argue that it is essential that legal principle be developed gradually to create enough scope for the evolving nature of socially contentious legal issues. The concept of sovereign immunity in this context would assert

the importance of maintaining an international system of taxation whereby individual nation states retain their claim to sovereignty in the development of law and policy as to taxation.

However, in order to effectively consolidate the international law based approach to the more pragmatic nature of taxation law the principle of sovereign immunity will need to reflect a more concrete network of laws that will provide the certainty necessary to overseas investors.

Therefore, the definition of a foreign government needs to be easily interpretable to facilitate the regulation of taxable revenue invested by foreign funds and governments. In light of the growing diversity in investments options and structures available to foreign governments it is not likely that international common law be a practicable resource for determining the definition of a 'foreign government'.

The option of using the current definition of 'exempt foreign government agency' in section 995 of the *Income Tax Assessment Act 1997*. This definition explains an exempt agency as:

- The government of a foreign country, or part of a foreign country;
- The authority of the government country, if the authority is of a similar nature to an authority that is an exempt Australian government agency; or
- An authority of the government that is an exempt Australian government agency.

This example provides for a more solid definition of a foreign government and entails a series of alternatives to broaden the applicability of the exemption to include entities that are similar to a government agency.

The standing definition of 'exempt foreign government agency' is also useful in that it provides the certainty of regulative network whilst still potentially being wide enough (or rather capable of being made wide enough) to allow for SWF's controlled by foreign governments to be eligible for the exemption.

NSW Young Lawyers recommends a statutory definition over an 'ordinary meaning' definition. As a principle of international law, sovereign immunity relies on standing practices rooted in international common law. The absence of statute makes it difficult to expand practices to adapt to the developing structures and business models that are now utilised such as that undertaken by SWF's.

It remains a matter of concern that as SWF's adopt more sophisticated tax structures and business models they begin to assimilate with practices of private equity investments. It is therefore imperative that the extent to which foreign governments or SWF's can benefit from the exemption under this definition is ultimately regulated by the nature of the income derived and the manner in which it was derived. This will continue to provide that additional level of control over the activities that will be found eligible for the exemption.

3.1.4 Are there any other alternatives that should be considered?

NSW Young Lawyers provides no submissions in relation to this question.

3.2 WHAT KINDS OF INCOME WILL BE EXEMPT?

3.2.1 Which of the three alternatives is the preferred design approach and why?

Recommendation

NSW Young Lawyers recommends that 'non-commercial income' be positively defined, with 'commercial income' taken to be anything that is 'non-commercial income'. We consider that this approach will provide the greatest clarity to investors.

We also recommend that the phrase 'passive income' be used, or, if the phrase changes after the rewrite of the CFC rules, then the new phrase from that rewrite be used.

Analysis

Current practice and international norms restrict sovereign immunity to non-commercial or passive income of foreign governments. Commercial or active income will continue to be taxed in order to ensure a level playing field for competing businesses operating in Australia.

The definitions of non-commercial or passive income should therefore be designed to avoid uncertainties and ambiguities as to their scope. In other words foreign governments should have certainty as to the types of investments it can make on which the earnings will not be subject to Australian withholding tax or income tax. If this can be achieved it will go some way towards achieving the policy objectives of the proposed changes, by

- enhancing Australia's attractiveness as a destination for foreign government investment by providing greater certainty as to the Australian tax consequences; and
- reducing compliance costs.

We consider the preferred design approach (from the 3 alternatives provided in the Consultation Paper) is the first. Namely, 'non-commercial income' should be positively defined, with commercial income taken to be anything that is not non-commercial. Specifically listing what types of investments would be within the scope of the immunity would provide certainty when compared to an approach of listing what is outside the scope of the immunity (i.e. see the second alternative). This approach is similar to the US 'whitelist' approach.

It is also suggested that in borderline or novel cases, a relevant Minister should be given the power to grant immunity where it would otherwise be in the national interest (or some similar concept or criteria).

The problem envisaged with the second alternative, namely positively defining 'commercial income', with 'non-commercial' income taken to be anything that is not commercial income is that by defining what is not allowed this may encourage or promote exotic structuring to technically fall outside the definition of 'commercial income' but may nevertheless contain commercial or active features.

Furthermore, the definition of commercial income would generally be expected to include income arising from the carrying on of a business or as part of a profit making scheme. The area of law (predominantly case law) in relation to when an entity is carrying on a business is notoriously difficult to apply and therefore does not create any certainty as to what income constitutes commercial or active income. It is noted that this uncertainty is inherent in the current administrative practice as outlined in ATOID 2002/45.

As the Commissioner stated in ATO ID 2002/45:

> In relation to a holding of shares in a company, there would be instances where the extent of the holding gives rise to questions as to whether it constitutes a passive investment or the carrying on of a business, but this would depend on the particular circumstances. A portfolio holding in a company (i.e., a holding of 10 per cent or less of the equity in a company) will generally be accepted as a non-commercial activity and any dividends received from such a holding would be exempt from tax.

This ATOID attempts to provide guidance in relation to a portfolio holding in a company but qualifies this by stating that whether or not such a holding is passive would depend on the particular circumstances.

The problem envisaged with the third alternative, namely to positively define both non-commercial and commercial is the possibility that certain types of income may not fit squarely within either term and therefore result in uncertainty.

In summary we submit that the preferred design approach is the first one on the basis that this design approach would give greater certainty to foreign investors.

3.2.2 How should non-commercial or passive income be defined and what should it entail?

Recommendation

NSW Young Lawyers recommends that the definition of passive income in s446 of the Income Tax Assessment Act 1936 be used. We recommend that only passive income within this definition be subject to the sovereign immunity exemption.

If the definition of passive income is rewritten or altered after the CFC rules are moved to the Income Tax Assessment Act 1997, we would support the new definition being used for the purposes of the sovereign immunity legislation.

Analysis

NSW Young Lawyers recommends that, where possible, the same definitions should be used consistently throughout the tax law.

The CFC rules provide an ideal definition due to the intended scope of their application. The CFC rules were designed to capture income from passive activities that could otherwise easily have been derived in Australia. Without the CFC rules, the investor would derive income offshore, generally without conducting genuine commercial activity, and would only be taxed when that income was repatriated to Australia. This resulted in a tax deferral.

This is the exact type of income that sovereign immunity seeks to exempt – income that is derived in absence of any genuine commercial activity. Further, the CFC rules have been amended over time to deal with developments as they arise. This means that they already, to some extent, reflect existing commercial practices.

Another advantage of using s446 is it creates a natural balance in the tax law. Whereas the natural incentive in the case of the CFC rules may be to argue positions which restrict the definition of passive income, the natural incentive in the case of sovereign immunity would be to expand the definition of passive income. This would help create a natural balance in the application of the definition, ensuring it would neither be too narrowly nor too broadly applied.

3.2.3 How should active or commercial income be defined and what should it entail?

Recommendation

NSW Young Lawyers recommends that if a definition for 'commercial income' is required, then the definition of commercial income should be defined as anything that is not passive income.

3.2.4 Are there any alternatives to these terms that should be considered?

An alternative that could be considered is the concept of the "likelihood that the immunity would unfairly disadvantage another Australian business". This idea stems from the policy that no investor should be able to carry on business in competition with other businesses that are subject to full tax thereby creating an uneven playing field. Accordingly, the idea is that where the investment by the foreign sovereign would not otherwise disadvantage (or unlikely to disadvantage) another Australian business then the immunity may be granted. For this purposes, perhaps, concepts can be extracted from competition laws or foreign investment laws such as those administered by the Foreign Investment Review Board (FIRB).

It is acknowledged that this alternative proposal lacks the requisite certainty that the codification of the doctrine of sovereign immunity in relation to taxation is attempting to provide. However, it may be useful criteria to apply to borderline or novel investments.

3.2.5 Should a widely held concept be incorporated into the rules?

NSW Young Lawyers provides no submissions in relation to this question.

3.2.6 If so, what should the concept be based on?

NSW Young Lawyers provides no submissions in relation to this question.

3.3 IMPACT OF DERIVING ACTIVE INCOME – 'TAINTING'

3.3.1 Which of the above options is the preferred option?

Recommendation

NSW Young Lawyers recommends that the concept of "controlled commercial entity" in the US sovereign immunity rules is not considered by Treasury. Further, NSW Young Lawyers recommends adopting the current Australian practice of a "bright-line" beneficial interest test (eg portfolio/non-portfolio interests).

Analysis

US Foreign Government Exemption

Under section 892 of the Internal Revenue Code of 1986, foreign governments are generally not subject to US tax on portfolio income that they derive from US sources.

Such income includes dividends, interest, royalties and gains from sales or dispositions of stock. However, this exemption from US tax does not extend to income from a "commercial activity" including income earned : (i) directly or indirectly through or from a US trade or business (including gains from dispositions of certain US real property interests); (ii) through a partnership that is engaged in a US trade or business (or from the disposition of a partnership interest); or (iii) from a US controlled entity that is engaged in a trade or business, i.e., a controlled commercial entity.

For these purposes, a controlled commercial entity is any corporation engaged in commercial activities where the foreign government holds either a direct or indirect voting or value interest of at least 50 percent (or any other interest which would constitute effective practical control).

For US purposes, commercial activity is broadly defined as activities (whether conducted within or outside the United States) which are ordinarily conducted by the taxpayer or by other persons with a view towards the current or future production of income or gain.

Such activity will taint the entire income of the entity, including otherwise exempt passive income, making it all subject to Australian income tax. For example, if a controlled entity invests billions of dollars in Australian equities and also owns an Airport Duty-free store in its country of incorporation, that commercial activity will preclude any Australian tax benefit under an Australian version of section 892.

The logic underlying this loss of all tax benefits because of an activity without any Australian nexus is difficult to justify. A sovereign entity may have a mix of investments around the world, including both commercial activity and specified exempt passive investments, and the specified passive investments in Australia will still retain the "Australian Section 892" exemption benefit. However, a controlled entity with that same mix of investments would not retain the benefit of the "Australian Section 892" and would be taxed on all its Australian investment income, including income otherwise specifically exempt.

The only difference between the two scenarios is the entity making the investment, not the source of the money or the beneficiary. (It is all still the same foreign government money.) A foreign government may have many valid non-tax reasons to structure its investments through a controlled entity, including ease of administration and more efficient business structure; however, the government may be punished under the Australian "Section 892" for that structure.

NSW Young Lawyers recommends that Treasury does not adopt this distinction which would otherwise discourage more investment in the Australia by those SWFs. Adopting the US approach with respect to a controlled commercial entity will encourage SWFs to apply a more structured approach to inbound investment into Australia.

It should not be incumbent on the foreign government to segregate any potential commercial activity into a separate entity. For example, a foreign government might create three (or more) investment entities. The first entity would only make investments that definitely qualify for the "Australian Section 892" exemption, the second entity would only make investments that clearly do not qualify for the "Australian Section 892 exemption", and the remaining entity(ies) would make investments whose status under the "Australian Section 892" is questionable.

That last entity may still be able to derive the benefit of the Australian "Section 892", but even if it is unable to qualify, the lost benefit will only affect those investments held in that entity. The first entity with the definitely-qualifying investments would retain its tax-favourable status and remain unaffected by the other entities' disqualifying income.

Bright-line test

The adoption of a bright-line beneficial ownership interests in the underlying investment will provide greater certainty with respect to the investments of sovereign wealth in Australia. The relevant beneficial ownership interest percentage, which when exceed would result in a conclusion that the investment is commercial, should be set having regard to the nature of the investment and income.

NSW Young Lawyers does not recommend the adoption of a single bright line beneficial ownership percentage for all types of investments and income. For example, there will be some forms of investments and activities undertaken by sovereign wealth which may be considered to be non-commercial regardless of the beneficial ownership percentage held by the sovereign wealth. In particular, there will be activities that are not customarily attributable to or carried on by private enterprises for profit (i.e., non-profit activities) which should always be considered to be not commercial activities. Additionally, any legislative reform should expressly include a list of Governmental functions which will never be regarded as commercial activities. As in the use, these should be defined using local standards, generally including activities performed for the general public with respect to the common welfare or which relate to the administration of some phase of government.

A bright line test of greater than 10% should be considered for assets which are inherently passive and involve mobile capital. For example, investments in Commonwealth bonds (which are already subject to withholding tax exemption), loans; investments in financial instruments held in the execution of governmental financial or monetary policy; the holding of net leases on real property or land which is not producing income (other than on its sale or from an investment in net leases on real property); and the holding of bank deposits in banks. Further, NSW Young Lawyers recommends that an activity should not cease to be an passive investment solely because of the volume of transactions of that activity or because of other unrelated activities (i.e. the sovereign immunity exemption should be considered on an investment by investment basis).

A bright line test of 10% may be more relevant for investments in entities which carry on commercial entities. For example, investments in stocks, the holding of net leases on real property or land which is producing income.

3.3.2 Are there other alternatives that should be considered?

NSW Young Lawyers provides no submissions in relation to this question.

3.4 INCOME TAX AND WITHHHOLDING TAXES ONLY TO BE AFFECTED

3.4.1 Is there a case for extending the exemption to other forms of taxation? If so, which ones?

In addition to the withholding and primary tax liabilities which may arise a, the SWF may nonetheless continue to be subject to TFN withholding. There is an exemption from the TFN quotation rules where the relevant investment body is required to withhold tax from the relevant interests or dividend payments. However, such an exemption for the TFN quotation rules may not apply where sovereign immunity or the above withholding tax exemptions apply. These TFN withholding requirements should apply in limited circumstances and determined by the nature of the investments made by the SWF such as shares in a “public” company, treasury bonds, debentures and money market securities. NSW Young Lawyers recommends that legislation is provided clarifying that

where a sovereign immunity exemption is available, there should be no TFN withholding obligation.

3.5 INTEGRITY RULES

3.5.1 Is a governmental functions test necessary?

Recommendation

NSW Young Lawyers recommends the inclusion of an "inurement" test in accordance with paragraph (b) of section 3.5.

Analysis

Reasons for not recommending a "governmental functions test".

A "governmental functions test" necessarily entails determining what is and what is not a "governmental function". Such an exercise would result in a rigid and prescriptive legislative regime that would not be capable of adapting to the fluid and changing role of sovereign governments in the Australian and international economies. As a result, the Commonwealth Government would likely be required to implement ongoing amendments that would reduce the investment certainty likely to be required by sovereign governments.

In addition, NSW Young Lawyers is concerned that having a special definition of "governmental function" may result in an inconsistent application of the taxation law where, for example, another division relies on the "exempt foreign government" definition in the 1997 Act.

Reasons for recommending an "inurement test"

NSW Young Lawyers submits that the "inurement test" is an effective and conceptually simple method of determining whether an entity is a sovereign government by negatively defining it as an entity which does not benefit a person acting in a private capacity. Although this test may need to include specific provisions in relation to certain monarchies, it submitted that in the vast majority of cases it would function as intended.

In addition, the "inurement" test removes the need to exhaustively define what is and what is not a sovereign government. As such, this will provide investment certainty to sovereign governments considering investing in Australia.

We specifically note that this type "tracing" methodology has been successfully implemented in, for example, the Trust and Taxable Australian Property provisions of the taxation legislation.

Interaction with existing provisions

NSW Young Lawyers recommends that there should be a single definition of "foreign government" for the entire tax legislation. This will avoid the possible inconsistent application of various provisions which rely on a different definition of "foreign government" (e.g., exempt foreign government).

With respect to sovereign immunity, immunity should be based on the "inurement" test, and on an investment by investment basis.

3.5.2 If a governmental functions test is included, what kind of activities should it entail?

Please refer to our comments provided above in relation to question 3.5.1. In addition to those comments, NSW Young Lawyers provides the following examples of investments which may fall with governmental functions.

Infrastructure investments of a Public Service Pension Fund

The ownership of interests in infrastructure assets or infrastructure owning companies may be a non-commercial activity where they are undertaken in:

- securing a relatively defined long term income stream which fund the public sector service obligations and payments of the Pension Fund (such as the Future Fund); or
- investing in Australian dollar denominated assets to defray foreign exchange impacts on the pension assets of the a public service pension fund.

Australian banking operations of a Central Bank

The banking operations of a foreign central bank may be non-commercial activities for the purposes of sovereign immunity and such activities may include:

- holding of Australian currency reserves to manage the monetary policy of the central government; or
- holding of Australian issued debt and equity securities for the purposes of managing the treasury functions of the central Government.

Ownership of mining interests

The ownership of interests in mining tenements, licences or mining companies could be held for the purposes of a non-commercial activity, such as:

- securing commodities for use in the construction of infrastructure in the home jurisdiction; or
- securing commodities for the continued supply of government services in the home jurisdiction such as power utilities and transport services.

Ownership of real property for Agricultural purposes

The ownership of interests in pastoral leases, or land owning companies could be held for non-commercial activities such as:

- securing livestock to maintain or supplement government agricultural programmes; or
- securing crops which are to be used in the supply of medical services in the home jurisdiction.

3.5.3 Are there other integrity rules that the Government should consider?

NSW Young Lawyers provides no submissions in relation to this question.