



Australian Government

The Treasury

SUMMARY OF CONSULTATION PROCESS OUTCOMES

The Government announced on 25 October 2022 (as part of the October 2022-23 Budget) a Multinational Tax Integrity Package, which would:

- strengthen Australia's thin capitalisation rules to address risks to the corporate tax base arising from the use of excessive debt deductions;
- introduce an anti-avoidance rule to deny deductions for payments made to related parties in relation to intangible assets connected with low- or no-tax jurisdictions; and
- introduce reporting requirements for relevant companies to enhance the tax information they disclose to the public.

Stakeholders have been consulted throughout the development of the measures to inform their design and implementation. The below summarises key issues raised in public consultation on exposure draft legislation for the measures.

Summary of key issues - Treasury Laws Amendment (Making Multinationals Pay Their Fair Share: Integrity and Transparency) Bill 2023

Schedule 1 - Multinational tax transparency – Corporate subsidiary disclosures

The exposure draft received minimal stakeholder feedback, focusing only on minor technical drafting suggestions, such as clarifying wording, and aligning definitions/concepts contained in the Corporations Act.

Schedule 2 - Amending Australia's interest limitation (thin capitalisation) rules

The introduction of a 30 per cent earnings-based (interest limitation) rule received broad support, generally, with refinements suggested to improve the operability of the legislation focusing mostly on technical (definitional) changes. Property and infrastructure stakeholders sought a carve out from the new rules, noting that changes to the arm's length debt test could have adverse effects for asset-intensive entities' third-party (arm's length) debt deductions.

As a result of consultation, the changes to section 25-90 were removed from the Bill, the third-party debt test conditions were adjusted to accommodate an appropriate range of financing arrangements for greenfield/construction projects, technical changes were adopted to better reflect the arrangements within trusts and non-consolidated groups, the business continuity test was adopted as a more suitable approach for allowing the carry-forward of previously disallowed debt deductions, the 'depreciation' component of EBITDA was broadened and the definitions of 'debt deduction' and 'net debt deduction' were clarified and revised to be more closely aligned, intended to ensure a broader range of financing arrangements were not adversely affected. Targeted debt creation rules were included to support the policy intent.



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Treasury continued to engage with targeted stakeholders after the public consultation closed, focused on the property and infrastructures sectors, to refine the legislative text to address unintended consequences identified through the consultation process.

Summary of key issues – other elements

Multinational tax transparency – public country-by-country reporting (tax changes)

The focus of stakeholder feedback was that the data labels being proposed were in addition to what is required under the EU approach and the existing OECD BEPS 13 Action – namely, listing and valuing of intangible assets, related party expenses and an effective tax rate calculation in line with the Pillar Two solution. Concerns focused on timing and confidentiality issues, noting these labels were a departure from the general multilateral consensus on Country-by-Country reporting. Some stakeholders noted these additional disclosures could detract from compliance with the Country-by-Country policy more broadly.

Corporate stakeholders noted the “standard” data labels required for disclosure (i.e. those already reported under existing tax transparency rules), although they had concerns that these would need to be disclosed globally, on a fully disaggregated basis. Stakeholders noted the EU, for example, only requires that level of disclosure for EU member states and certain EU defined non-cooperative jurisdictions.

To better align the Government’s proposed Country-by-Country reporting requirements with the commencement of the EU’s reporting directive, the Government will defer the application date by 12 months to 1 July 2024 and consult further on the appropriate level of disaggregated reporting.

Deductions for payments relating to intangible assets connected with low corporate tax jurisdictions

Stakeholders noted concerns with relying on a headline corporate tax rate to identify a low- or no-tax jurisdiction and that taxes such as subnational taxes, foreign and Australian controlled foreign company taxes and royalty withholding taxes were not taken account of. Stakeholders also queried interactions between the exposure draft legislation and the OECD Pillar Two global minimum tax and domestic minimum tax.

The Government has made changes to better achieve the policy intent. These changes are reflected in a revised Bill and explanatory memorandum. These are available on the Treasury website to provide stakeholders with certainty.

The Government is further considering interactions of the intangibles measure with global minimum taxes and domestic minimum taxes. The Government announced Australia’s implementation of a 15 per cent global minimum tax and domestic minimum tax in the 2023-24 Budget, joining a growing number of jurisdictions implementing a global minimum tax from 2024.