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Dear Kathryn,

Addressing the tax challenges arising from the digitalisation of the economy - Pillars One and Two

The Corporate Tax Association (**CTA**) is the key representative body representing 150 major companies in Australia on corporate tax issues advocating for a simple and efficient corporate tax system. Further information about the CTA can be found on our website at www.corptax.com.au.

We welcome the opportunity to make a submission on the consultation paper titled *Global agreement on corporate taxation: Addressing the tax challenges arising from the digitalisation of the economy* (**CP**) seeking comments on Australia's implementation of the two-pillar solution.

In what follows we have addressed the key questions in the CP, focussing on six key themes as suggested by Treasury.

1. Impacts on stakeholders – costs, behavioural responses, impacts on investment (questions 3-8)
2. Timing of Pillar Two, given Pillar One is delayed (questions 18-19)
3. Taxpayer readiness – systems, data collection etc (questions 20-22)
4. Administration – machinery provisions, domestic implementation (question 26)
5. Domestic minimum tax – questions 35-39
6. Domestic interaction – questions 31-34

We have also provided comments on questions that we consider important in the context of addressing issues raised in the CP at section 7 of this submission.

1 Impacts on stakeholders – costs, behavioural responses, impacts on investment (questions 3-8)

Q3 – What costs and benefits do you see in Australia adopting the two-pillar multilateral solution?

Apart from being part of the global multilateral solution for reallocating taxing rights and increasing some government revenues for certain developing countries in particular, the benefit to Australia possibly lies in a small proportion of any reallocated tax under Pillar One (**P1**) marginally improving government revenues, assuming that the extractives carve out remains effective (see discussion further below).

We would not expect any (or minimal) Pillar Two (**P2**) tax revenue (or any Domestic Minimum Tax revenue) to be generated in Australia, given the nature of Australia's outward investment profile (mostly to higher tax jurisdictions and in mining and financial services) and Australia's 30% headline rate and wide tax base.[1] This needs to be taken into account when considering the compliance burden that will be placed on Australian companies and the ATO – absent meaningful safe harbours and simplifications, the compliance burden and cost will far outweigh revenue collections.

Benefits

Whilst Australia has the 11th highest per capita consumption expenditure in the world, we represent only a small component of global consumption expenditure. Any reallocation of the estimated US$125 billion of Amount A profit under P1 to Australia is likely to be relatively small. Consequently, the benefit to revenue in Australia is likely to be relatively insignificant from such a small reallocation.

Where the majority of countries proceed with implementing the two-pillar solution, a benefit will be the provision of some degree of global certainty, rather than potentially a host of unilateral measures by individual countries arising that would give rise to uncertainty.

Costs

P2 reduces the ability of Australia (and other countries) offering income tax-based incentives to attract investment in certain industries such as green energy and decarbonisation, if the Australian entity is a member of an MNE Group that meets the P2 threshold).

The P2 rules are biased toward tangible asset business models compared to intangible asset models and could cause top-up tax if significant permanent income tax incentives regarding green energy for example are introduced. Further, if the tax incentives are timing in nature, and the Australian operations of the MNE are in tax losses or utilising tax losses (common in early-stage capital intensive projects such

[1] Australian foreign direct investment abroad is concentrated in 5 countries with high headline corporate tax rates, US (21%, 25% with state taxes), UK (19%), NZ (28%), Japan (29%) and Canada (26%) and heavily weighted to mining and financial services (both excluded from P1). See Australian industries and foreign direct investment | Australian Government Department of Foreign Affairs and Trade (dfat.gov.au)

as green energy projects), any timing difference-based tax incentives such as the Temporary Full Expensing measure and upfront tax deductions related to "green" intangible assets may be subject to top-up tax under the P2 rules.

Any Australian implementation of the Model rules must be balanced and designed so as not to be overly complex and compliance heavy. Significant and unwarranted compliance costs will arise without a strong focus on these objectives. Meaningful safe harbours and simplifications that eliminate the need for Australian businesses that are highly taxed from undertaking additional complex calculations will be crucial in this regard. Possible examples include:

- A safe harbour based on CbC reporting
- A bilateral ruling process to exempt an MNE from P2 in jurisdictions where the MNE operations are subject to a high tax rate, broad tax rate and permanent tax benefits are not available or not accessed.

From an Australian tax perspective, it should not be necessary for every Australian-headquartered company that qualifies as a Significant Global Entity (SGE) to prepare calculations and returns, where the SGE has a minor foreign footprint in high tax jurisdictions or is covered by de minimis rules under Article 5.5 of the Model rules. Consideration should be given to local de minimis filing rules to reduce compliance costs for both taxpayers and the ATO. Given Australia's high 30% tax rate, broad tax base and the existing CFC regime, a suitable de minimis or safe harbour solution for Australia is required.

Finally, the Australian implementation process should be, to the extent possible, undertaken in unison with rules around the world. Aligning Australia's implementation with other jurisdictions will mitigate against the need to rework already complex rules, which will be an inevitable consequence of being an 'early adopter'.

Q4 – What second round global tax system effects might arise, in regard to actions other countries may take that may impact Australian interests?

Second round effects may occur in Australia where the Australian rules are not coordinated with the Model rules in terms of technical detail and timing. The main risk of course if P1 is not agreed to soon (or ever) is the spectre of foreign digital services taxes applying to Australian sourced profits, or should Australia implement a DST, retaliatory excise duties or trade actions applying as has been threatened (and is in abeyance) by the US.[2]

Where higher foreign domestic taxes are imposed in a host jurisdiction (as is the expected behavioural response with the introduction of minimum tax regimes), investment decisions may be impacted (especially for otherwise marginal projects) and profits that would otherwise be subject to attribution under Australian CFC rules will impact the level of Australian tax paid on such income.

[2] See Joint_statement.pdf (publishing.service.gov.uk)

Q5 - What are the major areas of Pillars One and Two that are likely to generate uncertainty for your business? How could that uncertainty be best addressed?

Areas of major uncertainty include (in no particular order):

1. The disclosures required for year-end reporting and the treatment of P2 taxes under International Accounting Standard (**IAS**) 12 (Income Taxes) are still being considered by accounting standards bodies. Substantive enactment will trigger reporting requirements from that date – Australia should be mindful of this when passing legislation.
2. How to track the unwinding of non-qualifying Deferred Tax Liabilities, and more generally, systems required to manage the calculations (including issues such as materiality when using group reporting numbers).
3. Where a country implements the P2 Model rules and Implementation Framework either immediately or over time in a manner that departs from the global standard language, commentary and framework.
4. Domestic minimum taxes, for example the US alternative minimum tax, and the treatment of timing differences.
5. Difference in tax and reporting functional currency.
6. The operational definition of extractive industries under P1, particularly for downstream processes activity, and ancillary activities such as marketing.
7. The application of the Book Minimum Tax (BMT) newly introduced under the *Inflation Reduction Act* and the GILTI under US tax rules. Otherwise, double taxation may potentially arise.
8. Timing of implementation of the rules – a co-ordinated approach is imperative, and this includes a one-year deferral of the commencement of the Undertaxed Payment Rule (**UTPR**) after the income inclusion rule (**IIR**).
9. P2 administrative guidance and safe harbours – companies are attempting to undertake systems and process changes for implementation absent this guidance from the OECD and guidance and the ATO's approach to the administration of the rules
10. The lack of a dispute resolution mechanism where P2 rules are not fully aligned between countries.
11. The need for clarity on how to allocate CFC taxes – the rules for this should be easily administrable.

Many of these may require solutions at the Inclusive Framework level, but what is crucial from an Australian perspective is aligning domestic implementation and timing with the globally accepted norm and the administration of the rules consistently with global norms.

Q6 - How do you think Pillars One and Two may impact investment decisions in Australia relative to the rest of the world?

P1 by its nature is a reallocation of taxing rights to market jurisdictions and depending on the tax rate in the host country the taxing right is moved from (mostly the US at 21%) to Australia at 30%. In theory, this will have a reduced post-tax rate of return for investment in Australia. Whether the reduced rate of return impacts existing and future investment in Australia is hard to gauge.

P2 is more complex. The OECD indicates overall a reduced level of investment may occur but could be counteracted by increased tax certainty. Although a 15% minimum tax on its face would not seem problematic, a critical issue for MNE investment into Australia will be the design of any minimum tax and the impact it may have on timing differences. Ensuring that P1 proposals effectively eliminate double taxation is key to ensuring companies are not adversely impacted when they invest in Australia. Any perceived risk of double taxation will be factored into investment decisions.

In relation to Australian investment abroad, it may impact investment in developing countries with lower effective tax rates, due to the removal of incentives that have been in place in those countries to attract investment given the high-risk nature of such investments. It shouldn't be assumed investment would necessarily then be switched to Australian opportunities.

Q7 - Do you envision Pillars One and Two incentivising any behavioural changes and/or business restructures over the medium to long term?

Possibly. Compressing global tax rates may lessen the incentive to profit shift, but in our view, this is not a significant factor in the Australian context given our existing suite of integrity rules and ATO compliance activity over a number of years in dealing with transfer pricing matters.

There doesn't appear to be any real evidence of BEPS activity by SGEs in Australia from the latest findings in the ATO's Reportable Tax Positions Finding Reports which would indicate little need for business restructures under P1 and/or P2. As the ATO note:

> "The data shows that high-risk or arrangements of concern aren't prevalent among large public and multinational businesses. This finding is consistent with our view that most large businesses do the right thing and are paying the right amount of tax. It is also reflected in our estimate of the large corporate groups income tax gap."[3]

This reality should be borne in mind in any law and administrative design of the rules.

Q8 - Do you agree with the assumption that no Australian headquartered multinational will be in the scope of Amount A, given the current proposed thresholds and exclusions?

No. Under the core rules, it is possible that Australian headquartered MNEs will be in scope of Amount A including those in the extractive industry due to some downstream processing, and marketing activity possibly being outside the scope of the extractives exclusion. This likelihood will of course increase as the thresholds reduce and where the size of an Australian headquartered MNE increases over time (for those groups not within the exclusions).

[3] See Findings report Reportable tax position schedule Category C disclosures | Australian Taxation Office (ato.gov.au)

Crucial to ensuring that P1 does not have unintended consequences for extractive MNEs is the availability of the shortcut methods proposed under P1 rules.

2 Timing of Pillar Two, given Pillar One is delayed (questions 18-19)

Q18 - Do you agree that the GloBE Model Rules should apply in Australia for fiscal years commencing on or after a specific date?

Australia should follow the implementation date of key jurisdictions such as the UK and have the rules commence for the first full fiscal year commencing on or after 1 January 2024 at the earliest.[4] It is important that no part year calculations are required in the first year of implementation since this causes unnecessary complexity for MNEs. As noted above, Australia should follow the OECD's original recommendation that the UTPR commences 12 months after the IIR – otherwise significant complexities will arise for MNEs.

Q19 - Do you have any comments on Australia's timing of adoption of the GloBE Model Rules, including any advantages or disadvantages of being an early/late adopter? What challenges do you foresee if the GloBE Model Rules were to commence in 2023 as proposed under the OECD timeline?

Adoption no earlier than in 2024 is essential. A 2023 start date is disadvantageous because the OECD has not yet released guidance on critical P2 matters such as safe harbours. If Australia adopts P2 early and implements legislation before the OECD has released the full Implementation Framework (this includes amended commentary, simplifications, safe harbours, GloBE information return disclosures etc), Australia will be in a cycle of releasing legislative amendments for years to come to amend the rules. There is no advantage to Australia adopting early.

In addition, the International Accounting Standards Board is yet to issue guidance on how P2 will be treated under International Accounting Standard IAS 12 (Income Taxes), specifically whether deferred tax accounting applies in financial statements. The amount of work associated with year-end disclosures in financial statements once P2 is substantively enacted in Australia and the year prior to P2 should not be underestimated.

Should adoption occur in 2024, given the complexity of administering and complying with these rules, a substantial transitional period is also recommended to ensure requisite time is allowed to properly bed down the local rules and work through the issues that will inevitably arise. This will also ensure that, for example, penalties will not apply for some time until the rules have been bedded down.

It should also be borne in mind the same entities impacted by the P1 and P2 rules are also to be subject to other MNE measures announced by the government including interest limitation rules, intangibles, and tax transparency changes with implementation dates of 1 July 2023. We note it is not at all clear how the proposed

[4] Some CTA members have suggested a 1 January 2025 start date is more realistic given timeframes for system configurations.

non-deductible intangible payment rules announced in the October Budget will interact with P2 rules.

Similar timing and implementation constraints presumably exist for the ATO and Treasury.

3 Taxpayer readiness for implementation – systems, data collection etc (Questions 20-22)

Consistent with the process when major legislative tax changes occur, MNEs need sufficient lead time to enable amendments to existing accounting and IT systems to be put in place so they are in a position to capture relevant data from their accounts for the purpose of complying with the new rules.

The rules for P2 are complex, in particular, the interaction with income tax accounting and the tracking of Deferred Tax Liability reversals. This requires deep tax effect accounting and accounting standards knowledge. Significant specialist training is required. Some MNEs have already created specialist project teams for implementation.

We have been advised by some members that current ERP systems are not yet capable of calculating minimum tax liabilities. In particular, the complex calculations for tracking and recasting Deferred Tax Liabilities would require additional systems to be developed or added on. At this stage, we understand that no existing vendor solutions are available to bolt onto existing commercial packages. It is not clear when such packages may be available, or the cost and time for testing and implementing them.

Even if vendor solutions can be developed to perform the GloBE calculations, the main issue is accessing the very granular data required to perform the calculations. The GloBE calculations must be based on consolidated accounts, the purpose of which is to complete consolidated financial accounts to be released to external stakeholders. These have a materiality threshold. Consolidated accounting systems contain aggregated data which are many levels above the very detailed sub-ledgers and fixed asset registers that GloBE calculations require to be analysed. These data access issues arise even before considering the Deferred Tax Liability recapture rule that not only requires analysis of a Deferred Tax Liability account, but the thousands of individual transactions and contractual arrangements that comprise the account. This type of information is not captured in accounting systems and requires manual intervention and judgement to be applied.

Further, the accounting standard for accounting for the minimum tax has not yet been developed, and this may have a bearing on whether any Qualified Domestic Minimum Tax overseas could be counted as current tax.

For MNEs with operations in multiple jurisdictions, this could be a major investment as different systems may be used in different countries for tax effect accounting, and there would be requirements for system or data alignments. This is particularly the case where accounting systems are managed in joint ventures.

Separately, to build systems or system add-ons to cope with the granular detail and complexity of the P2 rules, IT specialists and accounting consolidation specialist knowledge is needed as well as general tax knowledge. Obtaining sufficient resourcing is currently a challenge. This challenge will be replicated at the revenue authority level as well.

In this regard, MNEs will require a minimum of 12-18 months to implement new system changes to be ready to comply with the new rules when they begin. Accordingly, draft legislation will be required at least 12-18 months prior to the intended start date of the new rules to allow sufficient time for MNEs to make system changes.

4 Administration – machinery provisions, domestic implementation (question 26)

Q26 - Are there any particular issues which should be considered in developing the necessary administrative or 'machinery' provisions in Australia's domestic implementation of the GloBE Model Rules?

Avoid "Australianising" the rules

Australia should not go down the complex path as adopted in the UK - with an over -domestication of the rules. It is imperative that the rules are the same (or as similar as possible) for all implementation countries to minimise the chance of dispute and double taxation (or non-taxation), as different rules or interpretations could result in different rules for calculating the income inclusion rule for Australia and different rules for calculating Qualifying Domestic Minimum Top-up Taxes (**QDMTT**) in other jurisdictions. MNEs will be dealing with these rules in many jurisdictions. A common approach to the rules is therefore required unless some form of multilateral dispute resolution is agreed.

Given a dispute resolution process may be difficult to agree upon, we suggest that the implementation could use a path similar to that used for the Common Reporting Regime, where the rules are as per the OECD agreement and the commentary and the Model Rules, safe harbours, commentary and implementation plan are incorporated into Australian rules similar to how the OECD commentary is incorporated under Division 815 of the I*ncome Tax Assessment Act 1997* and reporting requirements for CbC reporting in Subdiv 815E which reference OECD documentation standards. This would ensure that the rules and their interpretation are consistent with other countries and are up to date (as domestic law cannot accommodate any updating readily).

Foreign Exchange

One of the more computationally intense and potentially material issues for some companies to navigate will be the treatment of foreign exchange and Article 3.2.1 of the Model rules. Guidance from the OECD on foreign currency translation will be required.

We consider that it will be important that the scope and application of "Asymmetric foreign currency gains or losses" be tested and explained clearly through examples in the Australian domestic implementation and integrated with Australia's functional currency rules (e.g., the calculation of the ETR in the currency of the local entity and then translated at the relevant rate of the ultimate parent).

5 Domestic interaction (Questions 31-34)

A few observations follow in relation Questions 31-34 and the interaction with Australia's CFC and franking rules.

a. TOFA FX Hedging election – *FX hedging impacts on Net Investments in Foreign Operations for taxpayers that have made TOFA hedging elections*

The GloBE rules require a taxpayer to identify the Financial Accounting Net Income or loss based on the standalone accounts (before making any consolidation adjustments) for Constituent Entities. They are then adjusted for a number of items to arrive at the GloBE income or loss. Allowable adjustments include certain consolidation adjustments that are required to be made for the purposes of preparing the group consolidated accounts of which the Constituent Entity is part. The OECD commentary provides guidance as to what consolidation adjustments may be excluded from the reflection of GloBE income (including amounts taken to OCI on consolidation, stock-based compensation) and a statement is made that a consolidation adjustment may only be made *"to the extent they can be reliably and consistently traced to the relevant entity"*.

Where a multinational has arrangements that are designated hedges of foreign currency retranslation risk in respect of Net Investments in Foreign Operations (**NIFO**) for accounting purposes, a scenario may arise whereby the FX retranslation gains/losses of the NIFO hedges are included in the profit and loss of the standalone account of the Constituent Entity but on consolidation these NIFO hedge gains/losses are instead taken to a foreign currency retranslation reserve (**FCTR**). This can be illustrated below where the amount ringed in blue in the example below is the P&L impact at the standalone accounting level of the "Parent" Constituent Entity, but the consolidation adjustment (ringed in red) ensures that the NIFO hedge gain/loss is taken to FCTR in the group consolidated accounts rather than through the income statement.

For Australian tax purposes, where the relevant taxpayer has made a TOFA hedging election, the NIFO hedging gain/loss is treated as an exempt gain/loss so there is no tax impact (either on a current or deferred basis) associated with the FX P&L arising in the standalone accounts. Consequently, if the calculation of the GloBE income or loss amount for the parent Constituent Entity does not allow for the consolidation adjustment to be considered relating to the NIFO hedge accounting, it will give rise to anomalous outcomes when calculating the ETR (the Australian jurisdictional ETR will be volatile with change FX rates).

The OECD commentary indicates that this scenario is being considered in paragraph 57 where it states *"MNE Groups commonly hedge foreign currency movements in Ownership Interest in Constituent Entities. The GloBE Implementation Framework*

will consider providing Agreed Administrative Guidance on the extent to which such gains and losses may be treated as Excluded Equity Gains or Losses."

Treasury should endeavour to remove what appears to be an anomalous outcome either via its Inclusive Framework negotiations or in its domestic implementation or administration of the rules.

Scenario

- USD $1m assets, funded by USD
- Day 1: 1 USD = 1 AUD
- Day 2: 1 USD = 1.1 AUD

Structure Diagram

USD $1m external borrowings

Parent
AUD

USD$1m Equity

Subsidiary
USD

USD $1m NIFO Assets

Trial Balance (AUD)

Entity	GL Account	Borrowings and Investment	FX (10%)	NIFO Hedge Accounting	Closing
Parent Standalone accounts	Assets and Liabilities				
	Investment in sub	1,000,000			1,000,000
	Borrowings	-1,000,000	-100,000		-1,100,000
	Net Assets	0	-100,000	0	-100,000
	Equity and Reserves				
	FX P&L		100,000		100,000
	Total Equity	0	100,000	0	100,000
Parent - elim	Equity and Reserves				
	FX P&L			-100,000	-100,000
	FCTR			100,000	100,000
	Total Equity	0	0	0	100,000
USD Sub	Assets and Liabilities				
	NIFO assets	1,000,000	100,000		1,100,000
	Net Assets	1,000,000	100,000	0	1,100,000
	Equity and Reserves				
	Equity	-1,000,000			-1,000,000
	FCTR		-100,000		-100,000
	Total Equity	-1,000,000	-100,000	0	-1,100,000

b. *Interaction of Globe rules with Australian CFC rules*

The Model rules in clause 4.3(c) contemplate the allocation of CFC taxes to the entity which derives the income rather than the entity that pays the tax, but this allocation is subject to the limitation in Article 4.3.3. In relation to Passive Income, Article 4.3.3 limits the allocation of the CFC tax to only Passive Income as defined within the Model rules and an interaction issue arises between this definition and the scope of income subject to CFC tax under Australia's domestic rules. In particular, it is not clear if Passive Income under the Model rules is broad enough to catch Tainted Service Income or Tainted Sales Income which would be subject to tax under the Australian CFC rules. This may create both anomalous policy outcomes (e.g. tainted services income in a jurisdiction with a rate less than 15% subject to 30% tax under Australian CFC rules could still be subject to a top-up tax as the CFC tax will not be taken into account in the GloBE ETR of the jurisdiction the income is derived even though it is subject to tax at a rate significantly in excess of 15%). It may also create a large compliance burden for Australian corporates, requiring them to bifurcate all their CFC calculations solely for the purposes of GloBE.

We recommend that either it is agreed and made clearer at the BEPS Inclusive level that all domestic CFC taxes can be allocated under Article 4.3, or an amendment is made to Australia's CFC rules to align the definitions.

c. *Frankability of tax paid under IIR*

In relation to the frankability of any tax paid under the IIR, while we understand the rationale of not providing relief at the shareholder level for tax that could be argued is attributable to the foreign jurisdiction, in our view such tax should be frankable

along similar lines as any tax paid under CFC rules is frankable. Both are integrity rules, ensuring tax is paid on lower taxed income.

This should not impact the qualifying nature of any Australian IIR. In our view, it creates the added incentive for the expected behavioural response by the home jurisdiction to increase its underlying tax rate and thus tax paid in the home jurisdiction of low taxed profits.

6 Australian domestic minimum tax (Questions 35-39)

In our view, the policy basis for an Australian domestic minimum tax (**DMT**) is weak. It is not apparent to us why Australia would need a DMT given our high corporate tax rate and broad tax base with minimal concessions (which are generally targeted to small business).

If a DMT is considered desirable politically, there would be concerns with any DMT design unless it adequately dealt with timing differences, entities in start-up mode and those with carry forward losses. Without such rules, domestic timing differences can result in a permanent tax cost. As an absolute minimum, any DMT imposed must be fully refundable when timing differences reverse.

We note the definition of qualifying domestic minimum top-up tax in Article 10 of the Model rules talk of **equivalence** (not "consistent with" – as mentioned in the CP) to the GloBE rules. Consistency comes in the administration of the rules, not their design under Article 10.

If introduced, any DMT rules should only apply to those MNEs subject to P2 rules and that DMT due is paid by the Australian parent entity (not the underlying subsidiaries) and be fully frankable.

7 Other comments

Q25 - Joint and several liability

We consider that joint and several liability for the top-up tax should not apply but rather the top-up tax should be borne by the Australian Constituent Entity which is the Australian parent entity for each separate group of Australian entities an MNE may have in Australia according to its economic interest in the group. Otherwise, it is unclear how the top-up tax would sensibly and cost-effectively be allocated among the Australian Constituent Entities, particularly if there are exits from a controlled group or economic ownership is different.

Requiring joint and several liability for the top-up tax would need to be supported by potentially complex tax sharing and funding agreements, a significant and unnecessary compliance cost that could be avoided simply by allocating the liability to the Australian parent entity.

Q27 - Do you see any issues with a GloBE Information Return that requires disclosure of detailed information supporting the calculation of these steps?

Disclosures should be jurisdictional disclosures rather than by each Constituent Entity (CE). Disclosures on a CE-by-CE basis are only relevant if the jurisdiction is in a P2 top-up tax payable position.

Also, there must be international consensus on the level of disclosures. There must be a balance between the level of detail and the compliance burden this creates versus the tax authority's desire for information and system-build requirements.

Q28 - Do you have any additional feedback on how the GloBE Information Return could be designed (including on content, filing, and exchange of information requirements)?

On exchange of information, we suggest there is a Part A and Part B to the GloBE Information Return. For example, Part A could be general information (such as a table of group structure) that will be shared more broadly with countries that have an Exchange of Information Agreement. Part B could provide more detail such as jurisdictional effective tax rates (ETRs) that is only shared with the UPE, POPE or more broadly if UTPR is applicable. That is, Part B will only be shared with countries that have a possibility of collecting top-up tax.

Q29 - Do you have any comments on possible scope, design, and conditions of access to a safe harbour?

A meaningful safe harbour should exempt an MNE from having to do P2 calculations in a country where the tax base is very broad, and the headline tax rate is well above 15%. We understand that at the Global level the administrative guidance safe harbour that would have offered this is not an option. However, we suggest there is an advanced ruling process that an MNE can apply for this (or similar) to prevent MNEs and tax authorities spending time, money and resources on compliance for a tax that they simply will never pay in certain countries.

Also, consideration should be given to developing a "white-list" of countries that have high headline tax rates and offer minimal tax incentives to be excluded from the rules.

Q30 - Do you have any views on a Country-by-Country Reporting-based safe harbour, how it should be designed, and what adjustments would need to be made to the reported amounts?

We understand that there may be some concerns about the integrity of the CbCR data - this could be addressed through some form of third-party verification. A CbCR Safe Harbour could be developed by modifying current CbC reports to take into account material timing differences. This is particularly relevant for long lead time offshore investments, most notably in mining, green technology, and infrastructure.

8 Future consultation is critical

It is acknowledged we are at the beginning stages of Treasury's formal consultation on the implementation of the Pillars. A critical component of the development of the rules will be a simple, ongoing consultative pathway for impacted taxpayers as the rules continue to evolve, and as administrative safe harbours are developed. We encourage Treasury to continue its open dialogue in real-time as the implementation process becomes clearer.

Should you have any questions in relation to the above, please do not hesitate to contact me on 0402 471 973 or Paul Suppree on 0408 185 050.

Yours sincerely,

Michelle de Niese
Executive Director