The Tax Institute

16 November 2022

Assistant Secretary
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: contact.internationaltax@treasury.gov.au

Dear Assistant Secretary

Global agreement on corporate taxation: Addressing the tax challenges arising from the digitalisation of the economy

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the *Global agreement on corporate taxation: Addressing the tax challenges arising from the digitalisation of the economy Consultation Paper* (**the Consultation Paper**).

In the development of this submission, we have closely consulted with our National Large Business and International Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

The two-pillar approach (**Pillar One** and **Pillar Two**) announced as part of the Inclusive Framework on Base Erosion and Profit Shifting (the **Inclusive Framework**) by the Organisation for Economic Co-operation and Development (**OECD**) represents a fundamental shift in the way large businesses and multinational corporations (**MNEs**) will be required to report and pay their taxation obligations. The adoption of Pillar One and Pillar Two will present many compliance challenges and practical difficulties for affected businesses. The challenges stem from the fundamental changes in the nature of an MNE's taxation obligations and the significant increase in associated reporting requirements. It is important to ensure that Australia's implementation and administration of the Inclusive Framework recognises and, where possible, mitigates these excessive burdens.

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It is also important to ensure that Australia's implementation of the Inclusive Framework and Global Anti-Base Erosion Model Rules (the **Model Rules**) are not prematurely introduced. There are several outstanding issues and interactional concerns that require revised guidance from the OECD. These include, but are not limited to, the interaction between Pillar Two and core accounting and taxation principles, the need for safe harbours, and simplified compliance approaches to reduce the compliance burden on taxpayers. If the Inclusive Framework and Model Rules are adopted in Australia before these issues are addressed, it is likely that any enacting legislation will need to be frequently amended. Frequent changes to the rules will significantly and inequitably increase the compliance pressures on businesses.

The Tax Institute recommends that the adoption of the Inclusive Framework and Model Rules should remain consistent with the OECD's intended outcome and the approach adopted by Australia's major trading partners. We note that several key jurisdictions such as the European Union (**EU**) and United States of America (**US**) have expressed continued concerns regarding the uncertainty on how Pillar One and Pillar Two will be implemented. If the rules are applied inconsistently between jurisdictions, businesses will struggle to meet the differing compliance and reporting requirement. This represents an unfair outcome as, in our view, the adoption of the Inclusive Framework and Model Rules is unlikely to raise significant revenue for Australia. The increase in compliance costs for businesses is likely to notably outweigh the potential revenue collected, resulting in an inequitable outcome and potentially disincentivise Australian headquartered MNEs and overseas businesses operating in Australia. To ensure a consistent implementation of Pillar One and Pillar Two, we consider that Australia should work with key overseas jurisdictions to resolve outstanding issues and confirm a mutually agreed implementation approach.

Our detailed response is contained in **Appendix A**.

We would be please to continue to work with the Treasury through further consultations and discussions on the implementation of the OECD's Pillar One and Pillar Two frameworks to ensure they achieve the intended policy outcomes, while balancing the needed certainty and equity for taxpayers.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

If you would like to discuss any of the above, please contact The Tax Institute's Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,

Jerome Tse

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration. Our comments broadly follow the outline in the Consultation Paper. We have limited our responses to the questions that our members consider to be the most relevant and crucial.

OECD Pillar One and Pillar Two

1, What are your views on the challenges facing the international tax system and what role do you see for the two-pillar multilateral solution to the tax challenges arising from digitalisation

Historically, and from a global perspective, some MNEs have structured their affairs to record a significant amount of their taxable income in low or zero taxed jurisdictions. The reasons for doing so may vary from being commercial in nature to an intention of tax minimisation. This has arguably disadvantaged jurisdictions where MNEs have substantial tangible assets and activities, supporting the introduction of measures to deter these types of arrangements. However, the complex compliance requirements of Pillar One and Pillar Two will affect all MNEs above the threshold, including many who do not engage in arrangements of concern. As noted below, we consider that there will be a significant and disproportionate increase in the compliance costs for all taxpayers. It is important to ensure that the adoption of Pillar One and Pillar Two contains safe harbours and simplified compliance measures to reduce these burdens while achieving the necessary integrity in the operation of the rules. This will result in a more equitable outcome, especially for MNEs who do not engage in arrangements of concern.

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

From a revenue perspective, the OECD has previously noted that the adoption of Pillar One and Pillar Two may lead to reduced profit shifting behaviours by MNEs, potentially increasing the revenue being collected by jurisdictions.[1] The OECD estimates that global tax collections will increase by $100 billion, representing an increase of 4% for all jurisdictions.[2] The latest available data for large corporate taxpayers shows that the revenue collected from such taxpayers in the 2019–20 income year was $59.355 billion.[3] If the OECD's estimates are accurate, this would imply that Australia's additional revenue collected would be approximately $2.374 billion.[4]

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1 See Organisation for Economic Co-operation and Development, *Tax challenges Arising from the digitalisation of the economy: Update on the economic analysis& impact assessment* (13 February 2020), 5–6.

2 Ibid, 6.

3 Australian Taxation Office, *Large corporate taxpayers tax gap: Trends and latest findings* (Web Page, 31 October 2022) < https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Large-corporate-groups-income-tax-gap/?anchor=Trendsandlatestfindings1#Trendsandlatestfindings1>.

4 Calculated as 4% of the total tax paid during the 2019–20 income year ($59.355 billion).

However, there are concerns as to whether the OECD's forecasted increase in global revenue collections will accurately reflect the experiences of all jurisdictions. In their estimates, the OECD conceded that the reliability of its data is limited '[d]ue to gaps in coverage and time lags and the methodology inevitably involves simplifying assumptions'.[5] It was also noted that the resultant behaviour of global groups was difficult to predict, requiring further assumptions in the modelling.[6]

The resultant behavioural shifts from the introduction of the Inclusive Framework may result in MNEs changing their global corporate structure and operation model to ensure that they are compliant with the requirements of Pillar One and Pillar Two. In this regard, the Inclusive Framework has the potential to primarily act as a deterrent measure that limits base erosion and profit shifting (**BEPS**) related activities rather than acting as a revenue raising measure.

We also note that the OECD's primary data source for the modelling above is likely to be based on country-by-country reports from member countries, with the latest available data at the time being from 2016.[7] The global economic landscape has changed significantly since 2016, as well as the proliferation of tax laws in a large number of countries that target BEPS activities. As such, the level of profit shifting and potential revenue available to governments and revenue authorities is likely smaller than the OECD's estimated figure of $100 billion.[8] In the context of Australia, the following regimes targeting BEPS activities have been implemented since 2016:

- the Diverted Profits Tax Regime contained in Part IVA of the *Income Tax Assessment Act 1936* (**ITAA 1936**);[9] and
- the Hybrid mismatch rules contained in Division 832 of the *Income Tax Assessment Act 1997* (**ITAA 1997**).[10]

Since the release of the original estimates, we consider that large corporate taxpayers and MNEs that operate in Australia would likely have significantly reduced the amount and extent of any activities that may fall within the scope of BEPS. Feedback from our members suggests that it is unlikely many Australian headquartered MNEs will fall within the scope of the Inclusive Framework, as they operate predominantly in high-tax jurisdictions and are likely to remain compliant with their tax obligations. As a result of this, any hypothetical increase in Australia's tax revenue from such MNEs is likely to be significantly lower than the OECD's estimated 4%.

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5 OECD, above (n 1), 9.

6 Ibid.

7 Gary Sprague, 'OECD Provides Status Report on Pillars 1 and 2 Impact Assessment: Where Is the Money Coming From?' International Tax Management International Journal (2020) ISSN 0090-4600:1–4, 3.

8 Ibid.

9 This measure was introduced in the *Diverted Profits Tax Act 2017* which was enacted on 4 April 2017 as Act No. 21 of 2017.

10 These measures were introduced by the *Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Act 2018* which was enacted on 24 August 2018 as Act No. 84 of 2018.

From a revenue perspective, there are significant concerns regarding the cost of the additional compliance burden that MNEs will incur by complying with the Inclusive Framework. The challenges of the compliance burden are detailed in our submission below under the relevant sections. Broadly, feedback from our members suggests that the increase in compliance costs for businesses is likely to be substantial, requiring the need for meaningful safe harbours and simplified methods to facilitate compliance more readily. In addition, the quantum of the compliance costs created by the proposed measures will likely be disproportionately higher to the amount of additional revenue to be raised in respect of Australian operations.

Our members have also observed that the Pillar Two rules may prevent countries from offering tax incentives to attract investment in certain industries, including green energy and de-carbonisation, where the taxpayer is part of a global group that meets the Pillar Two threshold.[11] There is a risk of such tax incentives inadvertently triggering a 'top-up' tax under Pillar Two. Such an approach potentially runs contrary to Australia's commitment to encourage investment in renewable and green energy.[12]

Green energy and other capital-intensive projects often result in tax losses in the first few years while under development. Where tax incentives represent permanent differences and the taxpayer is in tax losses, or utilising tax losses brought forward from prior years, these tax incentives may cause the affected taxpayers to be subject to top-up tax under the Pillar Two rules. This could have the effect of disincentivising large corporate taxpayers from investing in green energy and similar projects if the Pillar Two rules are adopted in their current form, and the Government utilises tax incentives as a policy lever to bolster investment in such technology.

As noted above, Australia has also introduced several tax measures targeted at MNEs entering into arrangements that raise BEPS concerns. The adoption of Pillar Two may result in policy overlap and increase compliance costs for impacted taxpayers by imposing different requirements for substantially the same measure. In these instances, we consider that potential policy duplications are identified and removed, ensuring more streamlined and efficient compliance and reporting processes for MNEs. It may be possible to undertake this review as a post implementation review.

5. 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?

Our members have shared that there are uncertainties regarding how amounts subject to Pillar One and Pillar Two should be treated and disclosed for year-end reporting purposes. There are also concerns that jurisdictions will apply Pillar One and Pillar Two inconsistently, resulting in significant compliance costs for businesses.

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[11] OECD Inclusive Framework on BEPS, *Tax Challenges Arising from the Digitalisation of the Economy –Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)* (2022), 64.

[12] See, for example, The Hon Anthony Albanese MP and The Hon Chris Bowen MP, *Stronger action on climate change* (Media Release, 16 June 2022) < https://www.pm.gov.au/media/stronger-action-climate-change>.

It is likely that OECD member countries will deviate from the Model Rules and Inclusive Framework, either upon implementation or over time. For example, there has been ongoing debate and disagreement between the European Union (**EU**) members on the timing and implementation of the Pillar One and Pillar Two rules. Currently, Poland and Hungary have expressed concerns and dissatisfaction with the proposed measures.[13] This may signal the likelihood of the approach taken between EU member states departing from the Model Rules and Inclusive Framework as time passes, primarily due to domestic politics and geopolitical issues. Outside of the EU, some jurisdictions may adopt alternative approaches to dispute resolution processes for the Pillar One and Pillar Two rules due to the lack of a central arbiter and decision-making body analogous to the EU and European Commission. The disparate approaches on a country-by-country basis makes it very difficult for taxpayers to understand and comply with the large number of varying and potentially inconsistent rules.

Further, we understand that the effective implementation of the Pillar Two rules has also stalled in the US, being contingent on the enactment of amendments to the tax on global intangible low-taxed income (**GILTI**). Broadly, GILTI imposes a tax that applies to Controlled Foreign Corporations (**CFCs**) of US entities based on taxable income using adjusted US tax rules. The proposed amendments to GILTI better align it more to the rules in Pillar 2, however this is still potentially subject to change. We note that the OECD intends to release guidance on whether the GILTI regime is a qualified Income Inclusion Rule (**IIR**). Noting the work still to be done, it is unlikely that the US will be able to implement an effective regime before the end of 2023. Until this is finalised, many businesses will face a significant degree of uncertainty about their taxation obligations.

The International Accounting Standards Board (**IASB**) is yet to provide guidance on how Pillar Two amounts are to be treated for the purposes under *IAS 12 Income Taxes*[14] (**IAS 12**). We consider that waiting for the IASB to make a determination on the accounting treatment of Pillar Two amounts will greatly assist taxpayers in managing their tax and accounting reporting in preparation for the implementation of the rules in Australia. We also consider that, to the extent possible, Australia's implementation of the Inclusive Framework should remain consistent with the approach adopted by our major trading partners. This will minimise the resulting compliance costs for Australian headquartered MNEs, and businesses operating in Australia. For this to occur, it is important to that the Government works closely with the relevant jurisdictions to agree upon the design and implementation of the Inclusive Framework and Model Rules.

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[13] Forbes, Pillar One Tax Reform: *Will The EU Go It Alone?* (We Page, 5 July 2022) <https://www.forbes.com/sites/taxnotes/2022/07/05/pillar-1-tax-reform-will-the-eu-go-it-alone/?sh=3c12fe5821bf>.

[14] The Australian equivalent is *AASB 112 Income Taxes*.

8. 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?

Amount A will be implemented through a Multilateral Convention (**MLC**) with subsequent changes to domestic legislation where required.[15] The substantive rules for determining whether an entity is covered by Amount A of Pillar One are contained across 7 Titles and 10 Schedules in the MLC.[16] We also note that an inherent feature of the MLC allows jurisdictions to customise, to an extent, some of the Articles in the MLC. This approach highlights the fundamental complexity with the scope and determination of Amount A.

Broadly, an MNE will fall within the scope of Amount A if the following conditions are met:

- the MNE will need to exceed the scope thresholds of EUR 20 billion in Revenues and have profitability exceeding 10%;[17] or
- where the MNE does not meet these thresholds, but one of its Disclosed Segments does on a standalone basis, this Disclosed Segment will be subject to Amount A;[18] and
- revenues and profits related to Extractives and Regulated Financial Services will be excluded.[19]

We consider that under the definition above, it is possible that Australian headquartered MNEs may fall within the scope of Amount A. Even if no Australian headquartered MNEs can be identified at the present time, it is possible that businesses will meet this definition in the future. This will likely be based on a range of factors such as the demand for Australian resources and services, or highly sought-after innovation by Australian headquartered MNEs.

We understand that the OECD is currently in the process of developing shortcut methods to assist MNEs determine if they fall within the scope of Amount A. It is currently unknown how these potential shortcut methods will be worded and whether they will impact the scope of which MNEs fall within the scope of Amount A. It is crucial to ensure that the adoption of Pillar One and Amount A does not have unintended future consequences. We consider that Australia should wait for the release of further information and details of the shortcut methods to ensure the totality of the impact of Amount A is better understood by the Government and impacted taxpayers.

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[15] OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, 8 October 2021, available at: https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm.

[16] OECD, Fact Sheet Amount A: Progress Report on Amount A of Pillar One, available at: https://www.oecd.org/tax/beps/pillar-one-amount-a-fact-sheet.pdf.

[17] Article 1(2) of the MLC.

[18] Refer to Schedule D of Article 1 of the MLC.

[19] Refer 2 Schedules B and C of the MLC.

We note the adoption of Amount A is likely to have impacts on MNEs that operate in Australia but are headquartered in overseas jurisdictions. Australia is heavily reliant on these businesses for a range of goods and services. There is a potential risk that a premature adoption of Pillar One or Amount A may disincentivise overseas headquartered MNEs from undertaking business in Australia. The follow-on impact to Australian consumers and the economy is likely to outweigh any potential benefits for revenue that is expected to be collected.

9. What challenges do you foresee with the OECD timelines, which have Pillar Two coming into effect in 2023 and Pillar One coming into effect in 2024?

Our members have raised concerns that the proposed timelines are difficult to achieve given the relatively slow uptake by other OECD members and the lack of key guidance yet to be published by the OECD. We understand that other members of the OECD are implementing the Pillar One and Pillar Two measures at a slower pace compared to what was contemplated by the OECD. For example, the United Kingdom has planned for their IIR to take effect from 1 April 2023, with the Undertaxed Payments Rule (**UTPR**) to be introduced from 1 April 2024 at the earliest.[20]

However, on 14 June 2022 the UK Government announced that it would be deferring the start date for its domestic Pillar Two rules to accounting periods starting on or after 31 December 2023.[21] The UK Government made the following observations regarding feedback received during its public consultation[22] on the Pillar Two legislation:[23]

> '[R]espondents noted that seeking to implement the rules from Spring 2023, ahead of the likely implementation date in other countries, would compromise the long-term success and sustainability of the regime and put UK businesses at a competitive and administrative disadvantage.'

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[20] KPMG, *UK: Implementation of Pillar Two delayed* (Web Page, 14 June 2022) <https://home.kpmg/us/en/home/insights/2022/06/tnf-uk-implementation-pillar-two-delated-31-december-2023.html>.

[21] UK Government, *Letter from the Financial Secretary to respondents of the OECD Pillar 2 implementation consultation* (Web Page, 14 June 2022) <https://www.gov.uk/government/consultations/oecd-pillar-2-consultation-on-implementation/letter-from-the-financial-secretary-to-respondents-of-the-oecd-pillar-2-implementation-consultation>.

[22] See UK Government, *OECD Pillar 2 – Consultation on Implementation* (Web Page, 11 January 2022) <https://www.gov.uk/government/consultations/oecd-pillar-2-consultation-on-implementation>.

[23] Ibid.

Further, the process of adopting and implementing the Pillar Two rules have been met with delays and objections in the EU, where the relevant rules require member states to unanimously agree to the adoption of tax-related measures. Opposition by Poland initially prevented the measures from proceeding.[24] Although Poland's concerns with the implementation of the rules have since been addressed, Hungary has now opposed compromised measures that provide for the rules to take effect for accounting periods on or after 31 December 2023. The current opposition will further stall the implementation process of Pillar Two in the EU.[25]

The OECD is also yet to release guidance and other explanatory materials supporting the domestic implementation of Pillar One and Pillar Two. These items include the:[26]

- report on outstanding work on Amount A of Pillar One;
- public consultation document on Pillar One Amount B, which was due to be released by mid-2022;
- implementation framework for the Model Rules, which includes important safe harbour provisions and are due to be released by the end of 2022; and
- model treaty and multilateral convention for the Subject to Tax Rule, which were due in April 2022.

Noting the amount of outstanding work to be completed by the OECD in relation to Pillar One and Pillar Two, combined with the likely delays across other jurisdictions, we consider it prudent for the Government to wait until the appropriate time to adopt the Inclusive Framework and Model Rules. This involves waiting until:

- the OECD has released the further and necessary guidance on the Inclusive Framework and Model Rules; and
- other key jurisdictions have made further progress in the implementation of the Inclusive Framework and Model Rules.

This approach will ensure that Australia does not prematurely implement rules that are ill-suited to achieving the desired policy outcomes or require continuous amendments to be consistent with the OECD recommendations. The approach will also prevent the adoption of rules that are inconsistent with the laws and administration policies adopted by other jurisdictions and key trading partners.

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[24] Grant Thornton, *Key jurisdictions delay implementation of Pillar 2* (Web Page, 5 July 2022) <https://www.grantthornton.com/insights/newsletters/tax/2022/hot-topics/jul-05/key-jurisdictions-delay-implementation-of-pillar-2>.

[25] Ibid.

[26] See Wolters Kluwer, *Status of OECD's Two-Pillar Solution for international taxation* (BEPS 2.0) (Web Page, 15 July 2022) <https://www.wolterskluwer.com/en-au/expert-insights/status-of-oecd-two-pillar-solution>.

10. What design features would you like to see within the existing Pillar One and Two frameworks? For example, are there any approaches to implementation which may mitigate implementation challenges?

Pillar Two contains significant complexity and potentially unintended interactions with existing domestic laws for MNEs, requiring considerable investment and resources by businesses to ensure they comply with the outcomes. As noted above, the expected revenue gain from the implementation of Pillar Two is likely to be small for most MNEs that operate in Australia.

The Tax Institute recommends the introduction of a dual faceted safe harbour to simplify the operation of Pillar Two and reduce the compliance burden on businesses, allowing them to utilise the resources on business activities that generate value. The safe harbour should include:

- The introduction of a broad-based blanket safe harbour approach for jurisdictions with high tax rates and broad tax base. We recommend utilising the model referred to as the administrative guidance in the OECD's Pillar Two Blueprint.
- A simplification rule that streamlines the operation of Article 4.1.5 of the Model Rules to reduce the compliance costs for MNEs. For example, a simplified method could be introduced whereby Article 4.1.5 will not apply if an MNE agrees to remove any permanent tax benefits from a deferred tax asset or carry forward tax loss for the purposes of the Model Rules.

11. What interaction issues could arise between Pillar One and Pillar Two, and other Australian or foreign tax laws? How should these interactions influence the way Australia implements the two-pillar multilateral agreement?

Noting the complexity of the Inclusive Framework and Model Rules, it is highly likely that many unforeseen or unintended interactional issues that may arise. Managing the complexity will greatly benefit from a coordinated approach to issue resolution. We note that recent experiences in the US with the GILTI, and necessary amendments that are still to be introduced, is a key example of how complex issues may take significant time and resources to resolve at a later date, if not identified earlier.

The Tax Institute is of the view that a working group should be created to consider, consult on and resolve arising issues in a timely manner. The working group would ideally consist of ATO, Treasury, subject matter experts, professional bodies and industry.

13. What changes (e.g. to processes or systems) do you anticipate that businesses may be required to make in order to comply with Pillar Two?

Feedback from our members highlights that many MNEs utilise accounting software that uses data which is predominately prepared with the purposes of reporting at certain materiality thresholds. In particular, the currently available financial data is taken from accounting consolidation systems used to prepare group accounts that only identify data if it is above a certain threshold.

However, reporting for Pillar Two is likely to require data at a more granular level below such materiality thresholds. In practice, this would require MNEs to drill down into multitudes of sub-ledgers, fixed asset registers and underlying contracts for transactions comprising a deferred tax liability balance. MNEs would potentially need to analyse and evaluate thousands of line items for covered tax adjustments that are not present in the accounting consolidation systems. This presents a key issue for businesses who will be required to adapt or change their accounting systems to be compliant with the requirements for Pillar Two. Where companies are unable to update their accounting systems in time, they may need to undertake this process manually, leading to significant time costs and increase the potential for human error.

We understand that business will generally have a variety of options to achieve this. This will range from attempting to automate as many data inputs as possible, to undertaking the cost of manually inserting and confirming the data entry. In either case, it is unlikely that all of the data input is able to be automated in a low-cost environment in the short- or medium-term. Feedback from our members suggest that, even in the longer term, many data points will not be capable of automation and instead require businesses to increase their compliance costs through manual checks and inputs. We consider that the Government should recognise the impact of the increased compliance cost for businesses and the limitations of digital adoption.

To minimise the impacts, the design and implementation process should require the Australian Taxation Office (**ATO**) to work with affected taxpayers to identify the reasonable granularity of data needed to satisfy the requirements of Pillar Two. Alternatively, the information requirements should be simplified into a standard format and derived from existing reporting requirements that business can readily source from in a timely and lower cost manner. We also recommend the adoption of a safe harbour for minor errors below a certain materiality threshold to alleviate the potential consequences for the likely minor errors that will arise.

14. Do you have any suggestions relating to the implementation of Pillar Two that could help minimise your compliance costs?

The Tax Institute is of the view that it is important to ensure that there is international consistency and coordination in the design and implementation of the Pillar Two rules and GloBE Information Return Disclosures. As jurisdictions begin to depart from the Model Rules, or practically implement and enforce the guidance in different ways, there is a significant increase in the compliance challenges and associated costs for MNEs. Consistency is more likely to be achieved if jurisdictions implement the Model Rules after reaching consensus on the design and implementing them at or around the same time.

There is also a need to ensure that the ATO works with regulators in other jurisdictions on an ongoing basis to ensure that the rules are administered consistently. This may require funding for a dedicated area or team in the ATO. As noted throughout our submission, there is a need for meaningful safe harbours and simplifications to the complicated areas to minimise the compliance costs for taxpayers.

To the extent possible, and noting our comments above about removing multiple taxation regimes that have the same outcome, it is also important for Australia's adoption of Pillar Two to have consistency with domestic rules as well as consistency with international jurisdictions. This includes consistency with the existing regimes for the research and development (**R&D**) tax incentive, taxation of CFCs and the hybrid mismatch rules. However, these two aims may result in conflicting priorities, especially if other jurisdictions are seeking consistency with their respective taxation regimes. This may require a consideration of the appropriate trade-off between international and domestic consistency. In these instances, The Tax Institute recommends that public consultation is undertaken to ensure that Government has access to the most relevant information and is better able to understand the practical impact on MNEs before committing to a choice.

15. Would a Domestic Minimum Tax in Australia add to, or alternatively, mitigate the compliance costs of implementing Pillar Two?

It is difficult to accurately assess and quantify the potential compliance impacts if Australia adopts a Domestic Minimum Tax (**DMT**) regime. This is largely due to the further guidance that the OECD is expected to release in relation to Pillar Two, the most important of which are noted in our response to Question 22 below.

We understand that the OECD's unreleased documents may contain guidance on the potential interactions between the DMT and calculation requirements under Pillar Two, including details regarding a safe harbour for jurisdictions that adopt a DMT. If released, the safe harbour may significantly reduce the potential compliance costs associated with a DMT. We therefore recommend that the Government wait for additional guidance to be released before calculating the likely compliance costs savings of an Australian DMT.

16. If any of your related companies is a resident in a jurisdiction that does adopt the Global anti-Base Erosion (GloBE) Model Rules, do you consider that your compliance burden will be largely the same whether or not Australia adopts these rules?

Feedback from our members suggests that the response to this question will likely differ depending on the location of the ultimate parent entity (**UPE**) and overall group structure of the MNE. As a broad proposition, we understand that if Australia does not adopt the Model Rules, there is a likelihood that the UTPR may apply to Australian headquartered MNEs. The application of the UTPR is likely to significantly increase compliance costs for the company, who will be required to calculate the amount of under-payment of tax in accordance with the range of substance-based factors that can potentially differ between jurisdictions.

Global anti-Base Erosion Model Rules

17. Do you have any comments on how Australia should implement the GloBE Model Rules into domestic law?

The Model Rules have been substantially extended and modified by Pillar Two commentary released by the OECD. The Tax Institute is of the view that the critical aspects of the Model Rules, as amended by the commentary, should be integrated into Australian domestic taxation law to ensure that taxpayers are provided with certainty. Certainty for taxpayers is essential, especially in the context of resolving potential disputes that may arise with the ATO. An example of a similar integration process was undertaken when the OECD's transfer pricing guidelines were incorporated into Division 815 of the *Income Tax Assessment Act 1997* (**ITAA 1997**).

We consider it important to ensure that the implantation of the Model Rules should not fundamentally change the rules and definitions unless key overseas jurisdictions are also making the same changes. In this regard, the United Kingdom's (**UK's**) adoption of the Model Rules[27] may not be an approach that Australia wants to follow. The UK's approach has, in practice, re-written core aspects of the Model Rules. This is likely to result in increased compliance costs for all MNEs operating in the UK, and introduce administrative difficulty in compliance activities undertaken by non-UK taxation authorities for MNEs headquartered in the UK. Consistency with the Model Rules and associated commentary, and agreement from other jurisdictions that the same, or substantially similar terms will be adopted, will likely minimise compliance costs for MNEs and administration costs for administrators.

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

The Tax Institute agrees that the Model Rules should apply in Australia for fiscal years commencing on or after a specific date. We consider that the commencement date should be consistent with those adopted across most jurisdictions. We note that the United Kingdom has proposed and adopted an implementation date commencing on or after 1 January 2024.

Importantly, if the commencement date occurs between an income tax year, we consider it important that taxpayers are not required to undertake part year calculations. Requiring MNEs to undertake part year calculations would result in significant complexity which, in the longer term, may not be material or key to the implementation of the Model Rules.

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[27] See UK Government, *Introduction of the new multinational top-up tax* (Web Page, 20 July 2022) <https://www.gov.uk/government/publications/introduction-of-the-new-multinational-top-up-tax>.

19. 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?

The Tax Institute considers that there are limited advantages to Australia being an early adopter of Pillar Two. Early adoption is likely to lead to future challenges during the design and implementation of the enabling legislation. The OECD has not yet released its complete guidance and commentary concerning Pillar Two. This includes the need for simplification measures, safe harbours, amended commentary, guidance concerning the GloBE Information Return Disclosures and interaction between Pillar Two and IAS 12. There is also an extensive list of issues that requires further clarification, as noted in our response to Question 22 below.

Further, Pillar Two creates significant year end reporting and disclosure requirements for businesses which are likely to drastically increase compliance costs. As noted above, these costs may not be capable of being readily mitigated through the use of technology.

A commencement date in 2023 will not provide businesses operating in Australia with sufficient time to prepare the necessary systems and personnel required to complete this reporting. The complexities for businesses will be further exacerbated if the reporting requirements or enabling legislation are subject to constant amendments to account for changes to the OECD position. It is likely that attempts to implement Pillar Two before the guidance is released and issues are addressed will result in frequent amendments to the enacting legislation or ATO's administrative practices to account for likely future changes. Constantly changing rules will further exacerbate the compliance costs and burdens for impacted taxpayers.

For these reasons, we recommend that Australia should adopt the Pillar Two rules at a later stage. This may, for example, be during the 2024 calendar year. An important factor to consider when choosing an adoption time is the date Australia's major trading partners (such as the US, EU, and Japan) will implement the Model Rules. The early adoption of Pillar Two when Australia's major trading partners are not ready will significantly disadvantage Australian headquartered MNEs and disincentivise overseas based MNEs from operating in Australia.

20. We would like to understand your readiness for complying with the GloBE Model Rules. Do you have any comments on the skills and capabilities of your responsible staff and advisers in undertaking the calculations and applying the GloBE Model Rules?

Feedback from our members indicates that the ability and readiness to comply with the requirements of the Model Rules is a major issue for many MNEs. The ability for businesses to comply requires specialist training and project teams that will oversee the implementation. Broadly, Pillar Two seeks to apply a tax to accounting profits, a unique concept which is a fundamentally different approach to the current approach of applying tax to taxation specific definitions of income and capital. The Pillar Two approach requires detailed knowledge of both taxation and accounting standards, and the how the different concepts interact with each other.

MNEs are also likely to face significant challenges in building new IT systems, or adapting existing IT systems, to provide the level of detail that Pillar Two and the Model Rules require. From a practical perspective, this requires the involvement of individuals specialising in system software, taxation, accounting standards and the specifics of Pillar Two. Noting the relative recency of the Model Rules, and the ongoing skilled labour shortage in Australia, there is likely to be limited availability of experts with the relevant skills and experiences to achieve this.

21. Do you have any comments on the timeframes that may be required to implement the required system and reporting changes for your business in undertaking the calculations and applying the GloBE Model Rules?

Feedback from our members indicates that it will be difficult to provide a reasonable answer to this question at this stage. This is largely due to the uncertainty surrounding the details of Pillar Two. As noted above, this uncertainty stems from the:

- inability of existing processes and IT systems to provide the granularity of data required under the Model Rules; and
- unresolved international issues and unreleased guidance

Depending on the outcomes to these unresolved issues, businesses may need two years, or more, after guidance is finalised to ensure they are able to comply with the Model Rules. We recommend that the potential implementation date of Pillar Two take this time period into account and ensure that businesses are provided with a sufficient leeway to prepare for the changes.

22. Are there any remaining uncertainties or issues regarding Australia's adoption of the GloBE Model Rules, including but not limited to the computation of GloBE income, adjusted covered taxes, and the transitional rules, which require further clarification?

Feedback from our members indicates that there are numerous ongoing uncertainties and issues regarding the scope and implementation of Pillar Two. These include critical issues that, if not resolved, are likely to result in businesses being unable to appropriately apply the Model Rules. We have listed below some of these critical issues:

- There is significant uncertainty about how the IIR, UTPR and potential DMT will become qualified. It is unknown whether this will occur through a peer review process.
- The OECD has indicated that a country may introduce a Qualified Domestic Minimum Tax (**QDMT**) without adopting the Model Rules.[28] However, it is unclear how closely the QDMT will need to align with the IIR in order to qualify as an acceptable alternative to implementing the Model Rules as set out by the Inclusive Framework.
- The need for simplification and safe harbours, as noted throughout our submission, to ensure that taxpayers:
  - are not subject to excessive administrative and compliance costs borne; and

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[28] Organisation for Economic Co-operation and Development, *Global Anti-Base Erosion Model Rules (Pillar 2): Frequently asked questions* (2022) <*https://www.oecd.org/tax/beps/pillar-two-model-GloBE-rules-faqs.pdf*>, *6.*

- can more easily navigate and apply the complex set of rules from both a domestic and international perspective.

- Clarification on the information required in the GloBE Information reports.
- The interaction between Pillar Two, GILTI and US Alternative Minimum Tax.
- Appropriate solutions for some inequitable outcomes created by Article 4.1.5 of the Model Rules, including:
    - a Pillar Two 'top-up' tax potentially applying in instances where there is no economic profit and the MNE has not 'used' a tax benefit; and
    - Article 4.1.5 applying to deferred tax liabilities (**DTLs**) recaptures and unclaimed accruals that may arguably be contrary to the underlying policy intent of Pillar Two.
- Confirmation on the accepted mechanism for dispute resolution and prevention of double taxation. If the mechanism is not undertaken through the MLC, there are uncertainties regarding the most appropriate mechanism.
- Confirmation of the appropriate tax treatment for structures that are frequently used in one jurisdiction but not others. For example, feedback from our members indicates that certain corporate structures, such as stapled vehicles, are utilised in Australia but not in other key jurisdictions such as the US. Pillar Two does not currently provide adequate guidance about how these structures are intended to be treated.

There are also other ongoing issues that require clarification from the OECD. These include:

- How certain cross border taxes, such as those under a CFC or permanent establishment regime, are allocated to Constituent Entitles (**CEs**).
- What currency a UPE uses to calculate and disclose a Pillar Two liability, especially when multiple currencies are utilised by the MNE.
- The interaction between the transitional rules in Articles 9.1.1 and 9.1.2 and paragraph (e) in Article 4.4.1 of the Model Rules.
- The interaction between Article 9.1.3 of the Model Rules and:
    - deferred tax balances;
    - instances where the seller is taxed at 15% or more on a transfer; and
    - transactions akin to intragroup transfers that are not technically a disposal (such as those involving perpetual Intellectual Property rights).
- Which deferred tax balances are eligible for the transitional rule treatment in the Model Rules.
- Precise scope of the rule concerning qualified refundable tax credits.
- The application of the substance-based income exclusion (**SBIE**) for mobile assets and employees.
- The mechanics of the election under Article 3.2.5 of the Model Rules to ignore impairments and allowed adjustments that arise in fair value accounting (such as flow on adjustments to depreciation).
- Guidance on how the Model Rules apply to joint ventures, minority owned constituent entities, and Partially Owned Parent Entity's (**POPE's**).

- How under- or over- differences between taxes reported in group accounts and lodged income tax returns are dealt with. It is currently unclear whether post-filing adjustments are captured by Article 4.6 of the Model Rules.

We consider that it is important to ensure that these uncertainties are resolved before is the Model Rules are implemented in Australia.

23. If the UTPR is implemented by way of a denial of deductions or other alternative methods, including deemed income, do you have any views on how to allocate a UTPR Top-up Tax liability amongst Australian Constituent Entities?

We note that the UTPR would apply a 'top-up' tax to the liable Australian entity. The 'top-up' tax is not necessarily based on the UPE's, or POPE's, direct or indirect share of the Australian entity and operation. Rather, the UTPR is a liability to 100% of the 'top-up' tax. Australian liable entities to the UTPR may not always have an economic ownership in the entity (or entities) that resulted in the imposition of the UTPR. As a result, any allocation between the Australian CE may be arbitrary in nature.

We consider that the UTPR should be allocated based on the proportion of GloBE income in accordance with the Model Rules. As noted throughout our submission, it is important to ensure that the Model Rules are implemented and administered consistently between the jurisdictions to ensure parity and simplify the compliance requirements for MNEs.

24. Do you have any views or comments on how the adjustments should apply in years where Constituent Entities are in losses or have insufficient deductions?

We consider that if a CE is in a position of an overall GloBE loss, the CE and parent MNE should be able to utilise a simplified reporting method that requires less disclosure than currently required under Pillar Two. During periods of losses, it may be inequitable to require businesses to incur extra and significant compliance costs if no tax liability would ultimately arise. We note that integrity provisions may be needed in such a simplified or shortcut reporting rule to ensure that there is no departure from the policy concerns highlighted in Article 4.1.5 of the Model Rules. An appropriate mechanism may be to only allow MNEs access to the simplified reporting to the extent that the MNE group agrees to remove any permanent tax benefits that arise (if any arise) from the deferred tax asset loss for GloBE purposes.

25. Do you have any concerns if the Top-up Tax liability was to be joint and several amongst Australian Constituent Entities, whether under the IIR or the UTPR (if implemented by way of a separate tax charge)?

The Tax Institute has concerns with a proposed approach that would seek to apply a joint and several liability approach for the UTPR and IIR to Australian CEs. The approach of joint and several liability is likely to raise significant implementation concerns. For example, it is unclear how joint and several liability would apply to existing Australian tax consolidated groups. In particular, complexities will arise when allocating the appropriate liability for corporate groups that have majority owned companies that are not part of the tax consolidated group.

There are also concerns about whether equitable treatment will arise for subsidiaries of MNEs that undertake separate business activities. For example, it is not uncommon for subsidiaries of MNEs with a 49% minority interest held by independent and unrelated third parties that undertake a substantially different and unrelated activity to the UPE or POPE. It should be questioned whether applying a joint and several liability to the subsidiary in this instance is an equitable outcome for the largely independent subsidiary.

From a mechanical perspective, Pillar Two applies a 'top-up' tax in a manner that results in non-wholly owned entities bearing the tax burden to correct the perceived 'economic' misalignment in the total tax paid, a result of jurisdictional blending. The application of joint and several liability in this framework raises issues of groups entering into tax sharing arrangements to, effectively, fund tax liabilities that may arise. The adoption of a joint and several approach may also require rules that address the taxation issues arising with the sale, acquisition or warranties provided under such agreements. This would introduce significant additional complexity to an already complicated regime.

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

The implementation of the rules surrounding the disclosure of calculations seeks to balance compliance burdens with the potential risk. Feedback from our members supports the notion that the likelihood of an Australian Headquartered MNE being subject to a 'top-up' tax under Pillar Two is currently low. This is likely to be a similar position for most MNEs that are based in countries with sufficiently high rates of tax that apply to a broad base and limit the availability of permanent tax concessions.

For this reason, we consider that disclosures should generally be on a jurisdictional basis rather than on a CE-by-CE basis. Disclosures on a CE-by-CE basis are only likely to be relevant if the jurisdiction is position where a 'top-up' tax under Pillar Two is payable. If most MNEs operating in Australia will not be subject to a Pillar Two 'top-up' tax, it would be an unfair burden to require them to undertake the compliance costs and burdens of providing the relevant information. We also consider that disclosure requirements should be similar across jurisdictions to minimise the compliance costs for MNEs.

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

We recommend that the sharing of taxpayer data with other jurisdictions occurs in a way that is efficient and ensures that data is only being utilised for the purposes of ensuring that a Pillar Two 'top-up' tax is (or is not) payable. This may be achieved by breaking up the taxpayer information in the GloBE information Return into two separate schedules. The first schedule could contain general information, such as the group structure and operations, which is capable of being shared more broadly countries that Australia has an information sharing agreement with.

The second schedule could contain data that is more specific to Pillar Two, containing information such as the jurisdictional effective tax rate (**ETR**). The data in this schedule would be more appropriate to share with countries where the UPE, or POPE, is headquartered, or countries where a tax liability under Pillar Two is payable. Under this model, the information sharing process will streamline the data which goes to different jurisdictions for the most relevant purpose. It would also be beneficial to enter into agreements with other jurisdictions to undertake a similar process, to encourage the efficient sharing of relevant data between taxation authorities.

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

In addition to the safe harbours mentioned throughout our submission, we consider that a safe harbour for operations and tax paid in 'low-risk' jurisdiction should be introduced. The potential safe harbour would exempt MNEs from undertaking Pillar Two calculations in jurisdictions where the following conditions are met:

- the jurisdiction has an appropriately broad tax base;
- permanent tax concessions are limited in availability and amount; and
- the jurisdiction's rate of taxation is above the 15% global minimum.

These criteria would limit the safe harbour to countries where the likelihood of a Pillar Two 'top-up' tax arising is remote.

We also consider that the creation of an efficient and effective ruling process to provide comfort over the tax paid may assist in reducing the administration costs for taxation authorities. A process which allows a tax authority to certify that the MNE has met the requirements of the safe harbour, or paid the minimum tax rate, may allow all jurisdictions to reduce their compliance activities by relying on the certification. This approach may require the implementation of information sharing protocols, as highlighted in our response to Question 28 above.

30. 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?

Feedback from our members indicates that there may be concerns regarding whether the current data collected under the Country-by-Country reporting (**CBCR**) regime is suitable to be used for the purposes of Pillar Two. CBCR is used as a tool to highlight, at a high level, the tax performance of MNEs across jurisdictions. However, it may not provide the level of detail that is required under Pillar Two. Changes to CBCR may be needed to ensure the relevant information is captured, though the potential changes should not impose an unreasonable increase in compliance burden for businesses. We recommend that any proposed amendments to the CBCR requirements should be subject to further public consultation.

A CBCR safe harbour could take the form of an ETR with an added buffer. The calculation under this methodology would be undertaken by dividing the CBCR current tax paid by the CBCR accounting profit before tax. Under this method, MNEs with large, deferred tax adjustments will likely not be able to make use of this safe harbour (as their deferred tax amounts will not be considered). Adjusting the formula to factor in deferred tax amounts will increase the equity of a potential safe harbour at the cost of additional complexity.

31. Do you have any specific concerns on potential interactions with integrity provisions of the Australian tax law, such as the controlled foreign company (CFC) rules and the hybrid mismatch rules, and any uncertainties which may arise from their interaction with the GloBE Model Rules?

Interaction with the Controlled Foreign Corporation regime

Australia's CFC rules does not generally attributes 'active income' of the CFC to its Australian owners. We note that there are certain exceptions for some related party sales and services income from Australia. The 'active income' calculation is very different to the Pillar Two SBIE. This is likely to result in additional tax being imposed on the Australian owners of the CFC and additional compliance costs in determining the CFC attribution and whether a 'top-up' tax is payable.

The SBIE attempts to provide an exclusion from a Pillar Two 'top-up' tax in relation to the profits that are earned from the utilisation of local employees or contractors and local tangible assets. This is achieved by excluding part of this income from the effective tax rate calculation. However, this exclusion is based on the assumption of a 5% return on local 'payroll' and local tangible assets. We understand that the 5% return on investment in payroll and tangible assets in the Pillar Two calculation appears to be based on a modified cost-plus approach. This a very rough analogy to the substantive active businesses being carried on in a relevant country and does not account for the value contribution made by the people and tangible assets present in the location of the CE. In effect, this outcome may penalise successful local management of its local employees and local tangible assets.

Interaction with the Hybrid Mismatch rules

The Pillar Two calculation of covered taxes includes tax on income allocated to the owner of a CE under the Hybrid Mismatch rules.[29] However, the Model Rules are not clear about whether the covered taxes of a hybrid entity will include an amount that has been denied a tax deduction to an Australian entity under the Hybrid Mismatch rules. This is because the receipt is not taxed in a foreign jurisdiction. We consider that this point requires further clarification.

Interaction with the Research & Development tax offset

The Australian R&D tax offsets may result in many eligible entities having an effective tax rate of less than 15%. In many cases, eligible entities may have an effective tax rate of nil, even after applying the SBIE. We understand that the SBIE will only exclude income to the extent of 5% of the payroll and tangible assets of the relevant entity from the effective tax rate calculation. The assumed 5% return on payroll and tangible assets in the SBIE is a relatively low return on investment and applying it to a company that has tax concessions, such as the R&D tax offset, could result in the being subject to a Pillar 2 'top-up' tax applying and reducing the benefit of the R&D tax offsets. We consider that eligible entities should not be subject to a 'top-up' tax in these instances.

[29] See Article 4.3.2 of the Model Rules.

34. Do you have any views on whether any Top-up Tax paid by an Australian Constituent Entity under the GloBE Model Rules should give rise to franking credits?

The Tax Institute is of the view that any 'top-up' tax paid by and Australian CE should give rise to a franking credit. The additional tax will still fundamentally be an income tax that is levied on the business based on its global profits and tax paid. Not providing a franking credit in this instance is likely to result in shareholders being 'double-taxed' on their share of the overall profits of the company that are distributed to them.

35. Do you have any comments on whether or not Australia should adopt a Domestic Minimum Tax in conjunction with the implementation of the GloBE Model Rules?

The primary purpose of a DMT is to protect the tax base of the relevant jurisdiction by ensuring that domiciled MNEs are paying a sufficient level of taxation. As noted above, we consider that Australia headquartered MNEs are unlikely to be captured by a Pillar Two 'top-up' tax. The instances may be limited to scenarios where the entity is utilising tax losses and there is also a significant difference in the timing of the tax liability, or a permanent difference in the entity's tax liability. From this perspective, a DMT may not benefit Australia.

However, the introduction of a QDMT allows Australia the flexibility of offering a SBIE. The SBIE reduces the exposure to the QDMT and is calculated as a percentage mark-up on tangible assets and payroll costs. If implemented, an SBIE may assist Australian Headquartered MNEs by providing them a credit in another jurisdiction where a Pillar Two tax liability may arise.

36. Do you agree that a Domestic Minimum Tax in Australia should only apply to multinationals in the scope of Pillar Two (for example, not applying to businesses that only operate in Australia)?

We note that this question fundamentally concerns whether there should be an equal playing field between international business and large domestic businesses. From a compliance perspective, we consider that requiring large domestic businesses to be subject to a DMT will significantly increase compliance costs without raising additional revenue. In this regard, any benefits of a DMT for wholly domestic purposes are limited.

We recommend that the Australian adoption of Pillar Two should be consistent with the Model Rules, as amended by commentary, and the approach adopted by other overseas jurisdictions. As such, a DMT for Australian domestic businesses will not add significant value and should not be implemented.

37. If Australia were to adopt a Domestic Minimum Tax, do you have any views on its design as a Qualified Domestic Minimum Tax (that is, on the Domestic Minimum Tax being consistent with the outcomes under the GloBE Model Rules)?

If an Australian DMT is adopted, The Tax Institute supports a design that is consistent with the QDMT in the Model Rules. We note that there may be a significant compliance saving for MNEs if the OECD release a jurisdictional safe harbour based around the tax paid under a QDMT.

38. If a Domestic Minimum Tax were to be implemented, do you have any views as to whether there should be a separate return (that is, in addition to the GloBE Information Return and any potential local GloBE Tax Return), and do you have any additional feedback on this return? Would there be any particular issues if a Domestic Minimum Tax Return were to be due earlier than the GloBE Information Return?

Our members have provided feedback that the disclosures required under a QDMT return should have the same disclosure requirements as the GloBE information return. If the information disclosures differed between the two types of returns, MNEs would need to further change their accounting and reporting systems to provide the necessary details for the disclosures and returns in order to comply with Pillar Two. This would create a significant and unnecessary additional compliance burden for impacted taxpayers. Compliance costs may be streamlined if the disclosures could be aligned between the QDMT and GloBE information returns.

Further, our members have recommended that a potential QDMT return should be due at the same time as the GLOBE information return. This would ensure that companies have sufficient time to prepare and verify the accuracy of such returns. If the two disclosures are similar, any errors or adjustments in one return will likely be required in the other. Ensuring that the QDMT and GloBE information are due at the same time, in conjunction with a streamlined method to correct both simultaneously, will minimise the costs associated with amendments.

39. If a Domestic Minimum Tax is implemented, how should the relevant liability be allocated amongst Australian Constituent Entities? Should the liability be joint and several amongst Australian Constituent Entities?

The implementation of a potential DMT should be consistent with the approach recommended in the Model Rules, as amended by subsequent commentary and OECD guidance. Consideration should be given to the approach adopted by Australia’s major trading partners to ensure consistency with the potential adoption of the rules across key jurisdictions. We refer to our response to Question 25 above for detail regarding the potential shortcomings and issues with an approach that introduces joint and several liability.

40. Do you have any views on whether tax paid in Australia under a Domestic Minimum Tax should give rise to franking credits?

The Tax Institute is of the view that tax paid under a DMT should give rise to franking credits. For further information about the need for franking credits, please refer to our response to Question 34 above.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government, and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge, and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships, and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic, and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.