Australian Banking Association

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

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on Treasury's consultation on the global agreement on corporate taxation.

The ABA advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

Our view

Australian Banks support the intent of this global agreement to address the risks and leverage the opportunities arising from the digitalisation of the global and domestic economy. Pillar One recommendations to address taxing rights to the countries of consumption provide for more equitable taxation to support the principle that consumption taxes should be imposed at the point of consumption.

We note that Pillar Two provides for a global minimum tax to ensure an equitable approach to corporate tax. We support this change and note that it provides for fairer global tax outcomes.

While both changes have minimal impacts for Australian banks, the ABA makes comments focussing on Pillar Two to ensure an efficient and effective implementation of these measures in Australia that delivers outcomes for businesses in Australia seeking to compete with businesses offshore while minimising regulatory burdens.

Pillar One

As noted above, the impacts of Pillar One for the financial services sector is limited given the types of activities undertaken by banks. The Pillar One exclusion for Regulated Financial Services therefore is appropriate and the ABA supports this.

We note that this exclusion should be adopted in Australia under Pillar One rules and should mirror the OECD Model exclusion. The exclusion reflects the specific nature of banking activities and that the Pillar One rules are not targeted at those types of activities. We would be happy to engage with Treasury on any aspects of this exclusion if required.

Pillar Two

Given the complexity contained within the Pillar Two rules, in our view there are key aspects to avoid unnecessary and disproportionate compliance burden for groups that may not have significant amounts of additional tax to pay. Some of the key observations and considerations are set out below.

Timing

We recommend the rules be implemented from 1 July 2024 at the earliest to ensure industry has sufficient time to undertake systems and process changes. We expect that most countries will be implementing from 2024 at the earliest, and we see benefit in Australia aligning with other jurisdictions.

We note that a start date earlier than 2024 would be difficult to comply with due to the extent of systems and administrative changes required and may reduce time for the ATO to have reporting processes in place to analyse and share information.

Simplicity and safe harbors

The ABA considers there are likely to be substantial compliance costs for taxpayers and governments in implementing the OECD Pillar Two rules. For this reason, we support simplifying measures to reduce these costs. These measures should be practical and leverage existing reporting requirements. To the extent existing tax and accounting concepts are leveraged, we recommend the rules be as consistent as possible with existing methods and definitions.

We note that a mechanism through which these simplified standards can be implemented is through a safe harbour. We understand that there is ongoing work being undertaken by the OECD Secretariat to define appropriate safe harbours. From ABA member perspectives, we have set out below some observations.

Country-by-Country (CbCR)

To the extent a CbCR safe harbour is available, this may be achieved through:

- Amending the CbCR when used for Pillar Two purposes to align with the Global Anti-Base Erosion Model (**GloBE**) rules to account for timing differences and aligning the definitions of profits and covered taxes, or
- uplifting the minimum required effective tax rate (ETR) to create a buffer that accounts for those differences.

We recommend a system that is closely modelled on the existing CbCR regime. Such alignment ensures taxpayers are dealing with a process they are already familiar with and can rely on existing calculations where possible.

Avoiding duplication with domestic minimum tax

In implementing Pillar Two, the rules should seek to eliminate scenarios where taxpayers need to make more than one calculation of ETR/top up tax due and minimise administrative burdens. We understand that the OECD rules still seek to have each jurisdiction undertake its own calculation. However, to the extent possible this can be eliminated, it should be explored.

Elimination of “double compliance” might be achieved via administration or guidance. For example, Australia may bilaterally or multilaterally recognise that, to the extent a subsidiary or branch is tax resident in a jurisdiction with an effective qualified domestic minimum top up tax, no calculation is required at the headquarter level under GloBE for Australia.

Safe harbours should be on a permanent basis rather than a transitional basis and should not seek to exclude specific types of entities from a jurisdiction GloBE calculation (by requiring separate calculations by entity), to ensure simplicity objectives are achieved.

Compliance activities and certainty

Some anticipated compliance activities for industry include:

- Resources and project teams to interpret and apply rules to the group initially as well as ongoing calculations and adjustments as rules evolve.
- Modifying existing tax calculations where required (e.g. with regard to other integrity or tax assessments provisions).

- Establishing governance and process around compliance with global obligations.
- Implementing technology solutions to meet reporting requirements at head office and for offshore entities.
- Interactions with local regulators and compliance activities.
- Engagement with offshore revenue authorities and dispute resolution.

Pillar Two rules can reduce compliance burdens and increase certainty by being straightforward in its application, making it easy for both taxpayers to comply with and tax authorities to administer.

A large component of this is ensuring that the Australian rules are consistent with the OECD to enable effective and efficient compliance at a global level. If Australia is not consistent with international standards on technical interpretation of the rules, there will be uncertainty and additional regulatory burdens. For example, there has been some adverse experience by taxpayers in applying the hybrid mismatch rules in Australia.[1]

Franking

There should be recognition of tax paid in Australia under GloBE, and any tax paid should result in franking credits for Australian taxpayers. This is the case for both top up taxes and any domestic minimum taxes.

Branches and capital

A group's consolidated financial statements should be the starting point for the calculation. However, there can be significant complexity with branches which specifically impact multinational banking groups. This complexity arises, for example, with attribution of profits and capital to bank branches which are legally part of an Australian head office but need to be calculated for GloBE purposes.

While audited accounts may be a good starting position, due to global differences in recognition of adjustments that are required under the GloBE calculation, the ABA recommends that Australia's rules be consistent with global approaches to the extent possible.

Interaction with Controlled Foreign Company rules

The ABA recommends the definition of Controlled Foreign Company (**CFC**) under the GloBE and domestic tax rules be aligned. The current definition of "Passive Income" in the model rules is not broad enough to catch Tainted Services Income or Tainted Sales Income which would be subject to tax under the Australian CFC rules. This could create a situation where tainted sales / services income is subject to CFC top up tax and is not counted towards the GloBE effective tax rates which could result in top up taxation under Pillar 2.

Offshore Banking Units

The previous Government announced on 12 March 2021 the ending of the Offshore Banking Unit (**OBU**) regime in response to concerns raised by the OECD that the regime acted as a 'harmful tax practice'. Legislation to implement this decision became law on 13 September 2021, with the concessional tax treatment of income derived by an OBU to cease at the end of the 2023 income year and the interest withholding tax exemption for interest paid by an OBU to cease on 31 December 2023.

The then Government also stated it would consult on "alternative measures to support the industry and ensure activity remains in Australia once the two-year grandfathering period ends". Some consultation has occurred on alternative measures to replace the OBU regime, however no announcements were made and the commitment to implement 'alternative measures' remains unresolved.

If nothing is done, it is likely that substantial financial services activity will leave Australia when the OBU regime comes to an end. For example, Australian companies that are currently undertaking transactions with or providing services to offshore counterparties through Australia's OBU regime may

[1] Notwithstanding that these rules are based off the OECD agreed action on hybrid mismatches, the application of the Australian rules can result in complex and unintended consequences.

consider performing such activities from other jurisdictions in the future, resulting in a loss of jobs and tax revenues to Australia.

Treasury has provided support for this conclusion by forecasting that the ending of the OBU regime will result in a reduction in tax receipts of $160m by 2024–25. To address this, we recommend the Government consult on a replacement to the OBU regime when designing Australia's Pillar II rules. We believe the introduction of a global minimum tax will substantively address many of the concerns raised by the OECD and ensure that Australian businesses conducting activities offshore can benefit from the use of an OBU. This supports Australian businesses and also ensures revenue is caught domestically.

Treatment of US minimum tax

As part of the Inflation Reduction Act, the United States of America (USA) introduced a book minimum tax (**BMT**). The design of the BMT shares some of the overall design features of qualified domestic minimum tax (**QDMT**).

To provide taxpayers with operations in the USA with certainty in respect of their GloBE liabilities, the ABA recommends the government consider whether BMT qualifies as QDMT (and whether domestic minimum taxes in or countries as well), rather than leaving this as an interpretational issue for the ATO.

Qualified tax credits

We understand there is an ongoing discussion on certain tax credits (qualified refundable and non-refundable tax credits), particularly those for social welfare and similar projects, and how these credits interplay with the effective tax rate calculation under GloBE. As an issue relevant to some banks and jurisdictions, we encourage the government to consider this when designing domestic Pillar Two rules.

Thank you for the opportunity to provide feedback.

Yours sincerely,

Associate Policy Director,
Australian Banking
Association