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Dear Rob

## **Implications of the Modern Global Economy for the Taxation of Multinational Enterprises**

We refer to the issues paper released on 3 May 2013 titled “Implications of the Modern Global Economy for the Taxation of Multinational Enterprises” (Issues Paper). We welcome the opportunity to provide input for the purposes of finalising the Treasury Scoping Paper (TSP) scheduled to be released in June 2013. We commend Treasury for seeking to address this issue from an Australian tax perspective in advance of the proposals anticipated from the OECD later this year and for seeking comments in advance of finalising the TSP.

We highlight below key issues we believe Treasury should address in preparing the TSP.

### **1. Evidence of Base Erosion and Profit Shifting (BEPS) as a “Problem” in Australia**

The difficulties associated with evidencing the apparently obvious “problem” of Base Erosion and Profit Shifting (BEPS) in Australia are highlighted throughout the Issues Paper. We note the difficulties in seeking to identify evidence of BEPS particularly given the impact of exchange rates, terms of trade, changes in the composition of the economy and profitability on traditional measures associated with GOS and GDP.

However, in analysing whatever evidence is gathered by Treasury, we think it is important to also recognise that any international studies must be viewed in the context of the Australian tax system which already has comprehensive transfer pricing and general anti-avoidance rules as well as a full dividend imputation system. In our experience, these rules largely curtail the BEPS “problem” in Australia and we note that Treasury has recently acted to make the transfer pricing and general anti-avoidance rules more robust.

We also submit that isolated examples such as the so-called “Double Irish Dutch Sandwich” are not evidence of widespread BEPS. In particular, we don’t see how this example suggests that BEPS is a problem in Australia.

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In summary, our view is that the TSP must provide clear evidence of a “problem” before suggestions can be made in relation to any possible reforms.

Our point of view is that Treasury’s concern in relation to the sustainability of the tax base in Australia must be addressed by looking more broadly and boldly at tax reform. As you will be aware, PwC will be publishing a thought leadership report on this topic later this calendar year.

## **2. *Broader Australian implications***

The focus of the Issues Paper appears to be on BEPS by foreign MNEs. However, we think the TSP must also canvass broader issues. For example, the potential revenue downside for Australian MNEs (as well as the Federal Budget) associated with BEPS leading to higher foreign taxes on the operations of Australian MNEs. In this context, it should be self-evident that Australian MNEs, particularly given the role of the dividend imputation system which is unique to Australia, would sensibly consider strategies to mitigate foreign taxes and these strategies may be considered BEPS by our trading partners.

A more recent example is the decision to repeal section 25-90 as an apparent reaction to certain planning techniques identified by the ATO and Treasury as BEPS. In our view, this decision is an ill-founded and short-sighted over-reaction which has broader ramifications not properly considered by Treasury or the Government. For example, this proposed change does not address the impact such a restriction will have on the global competitiveness of Australian MNEs investing offshore or the flow-through franking and CGT ramifications.

There are many other examples of the “bigger picture” which should be addressed in the TSP.

## **3. *Resources Devoted to Tax Law Design***

We submit that the corporate tax system is a very important asset of this country. However, we also feel that there has been an under-investment in this key asset. For example:

- The inability of Treasury to estimate “the extent and nature of the problem” is something that should be addressed in the TSP. Many of the identified potential shortcomings in Australia’s tax system have (or should have been) evident to Treasury (perhaps with the assistance of the ATO) and remedied long ago.
- There are many examples of tax law design being poorly implemented. The most recent and obvious example was the need to retrospectively change the tax consolidation rules. Our strong expectation is that similar difficulties will regularly emerge if more resources are not devoted to maintaining the tax system.

In this context, we feel that it would be a poor investment choice to devote substantial resources to “Australian BEPS tax reforms” before the OECD has set out its plan in relation to BEPS.



#### **4. Global Operations**

In our view, the Australian Government should not be concerned by other countries not exercising a right to tax income. However, we should certainly continue to monitor the integrity of the Australian tax system.

We also believe that there will always be examples of double non-taxation and double taxation. This is an inevitable consequence of each country having a right to design their own tax systems. In this regard, we highlight that there are various other laws (e.g. competition, corporate, labour, foreign investment) where rules differ from country to country. In other words, such global mismatches are not confined to taxation.

We look forward to providing more detailed comments in relation to the TSP later this year. However, in the meantime, we would be please to meet to discuss our observations above in more detail if you would find this helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Collins', with a long, sweeping underline.

Peter Collins  
Partner  
Leader - International Tax Services