Australian Banking Association

8 September 2022

Director
International Tax Branch
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

By email: MNETaxIntegrity@treasury.gov.au

Dear Ms Ram and Mr Hawkins

Multinational Tax Integrity and Tax Transparency

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on Treasury's consultation on measures to address multinational tax integrity and tax transparency.

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

The ABA supports the policy objective of ensuring that multinational enterprises (MNEs) pay their fair share of tax and that key to that objective is through strengthening tax integrity and ensuring the transparency of taxation arrangements.

In this submission, we make some high-level observations on each of the three parts of the paper.

Interest limitation rules

The ABA notes the proposed adoption of a fixed ratio rule to improve the efficacy of Australia's thin capitalisation rules is consistent with the OECD's approach as outlined in its Action Item 4. Also consistent with this approach is the acknowledgment that the fixed ratio rule is unlikely to be effective for financial institutions as they are typically net lenders.

Consequently, it is appropriate to exempt financial institutions from the fixed ratio rules. The ABA also notes that banking regulation and capital adequacy rules act as an effective restraint on excessive leverage for banks. Also, there has been an increasing trend globally for banks to hold more capital and, in particular, APRA has required large banks to hold significant capital buffers. On this basis, we agree that it is not necessary to apply these rules to banks.

We note that the discussion paper asks whether there should be any changes to the existing thin capitalisation rules applicable to financial entities and authorised deposit-taking institutions (**ADIs**).

In response, we recommend no change to the methodology for outward investing ADIs, which currently aligns with minimum capital requirements measured as a percentage of risk-weighted assets (**RWAs**). Currently the tax law prescribes a minimum level of 6 per cent of RWA, which we consider appropriate. If the Government were to consider changes to this calculation, they should be minimal and consistent with Basel III and APRAs minimum capital requirements and we would request Treasury to consult with banks prior to making changes.

Other rules

The ABA makes some brief observations on the other proposed rules under the interest limitation rules:

- The proposed Earnings Before Interest, Taxes, Depreciation, and Amortisation (**EBITDA**) safe harbour measure will not impact on banks' thin cap calculations directly. However, it will likely impact on banks' clients which are general entities, and their thin cap positions.
- The ABA supports retaining the arm's length debt test (**ALDT**) as proposed. This test is increasingly relied upon by project finance entities that banks lend to (usually as part of a syndicate of lenders). While the ALDT already has substantial compliance requirements it is possible that the test may be bolstered/further integrity rules introduced to discourage taxpayers attempting to adopt it in place of the safe harbour or proposed fixed ratio rules.
- Whilst the Special Purpose Vehicle (**SPV**) thin cap exemption is not discussed in the paper, the ABA supports these to be maintained as they account for the special nature of securitisation vehicles which are tax neutral.

Royalties and intangibles

The ABA observes the proposed measures under Part 2 of the paper on royalties and intangibles appear to penalise Australian companies rather than offshore MNEs. We note that Australian payers may not be in a position to renegotiate terms with offshore-based large MNEs, and these measures could disadvantage Australian companies.

If these rules are adopted, the ATO should provide clear guidance on how the rules are to be applied and the rationale in having one set of rules for SGEs and other taxpayers. We note that if the rules are applicable to all taxpayers there is likely more change of influencing behaviour of offshore multinationals.

Tax Transparency

We support public disclosure of tax transparency data, but it needs to be simple and meaningful. The reason is that each of the suggested models provide another view of tax information that can create the risk of undermining public confidence in the published data as it will provide a different outcome that does not align to with other published tax information. Disclosure needs to be simple, meaningful and provide multinationals with the opportunity to explain the information.

Some immediate issues that need to be thought through include how banks currently report (including in relation to intragroup transactions with branches that are not reported) for CbC, and whether this can align with additional reporting requirements whilst aiming to limit undue compliance burdens.

Thank you for the opportunity to provide feedback. If you have any queries, please contact me at Prashant.ramkumar@ausbanking.org.au

Yours sincerely,

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