



16 April 2024

Pillar Two Unit  
Corporate & International Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [contact.internationaltax@treasury.gov.au](mailto:contact.internationaltax@treasury.gov.au)

Dear Treasury

### **Global & Domestic Minimum Tax Primary Legislation**

The Australian Financial Markets Association (**AFMA**) represents the interests of over 125 participants in Australia's financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. AFMA's members are the major providers of wholesale banking and financial market services to Australian businesses and investors.

We are pleased to lodge a submission on the Exposure Draft and draft Explanatory Memorandum for the primary legislation to give effect to Australia's commitment to impose a Global Minimum Tax under the OECD's Pillar Two.

#### **General Policy Approach**

AFMA's membership includes a number of institutions that operate in multiple jurisdictions and will be implementing global minimum taxes in each jurisdiction in which they operate. From an AFMA perspective, the most important policy approach in respect of both the primary and secondary legislation is alignment with OECD Model Rules and Guidance. In this regard, AFMA endorses the ambulatory statutory approach adopted by the Government in the Exposure Draft whereby OECD Rules may be incorporated into the Australian legislative framework by way of Minister Rules and that the Australian legislation is to be interpreted in accordance with the OECD guidance.

#### **Treatment of Branches**

Many AFMA members that are Authorised Deposit-Taking Institutions (**ADIs**) operate in Australia through a branch where those ADIs only conduct wholesale business. Given Australia

taxes branches differently to most other jurisdictions, particularly the majority of jurisdictions where the ADIs are headquartered, this results in significant tax asymmetry and the potential for double taxation, even in circumstances where there is a concluded Double Tax Agreement in place between Australia and the head office jurisdiction.

The issues arise due to Australia not adopting the latest Authorised OECD Approach (**AOA**) that taxes permanent establishments as functionally separate entities, as opposed to the Australian approach which looks to ascertain the profits of the enterprise as a whole and then attribute a proportion of that profit to Australia.

AFMA notes that the approach in the primary legislation is aligned to the AOA. At paragraph 2.19 of the draft Explanatory Memorandum, it states that “if an Entity is a Main Entity in relation to one or more Permanent Establishments located in a different jurisdiction, the Main Entity is taken to be separate from each of its Permanent Establishments for the purposes of this Bill and is taken to hold a Controlling Interest in each of its Permanent Establishments.” That is, the permanent establishment is deemed to be a separate entity and head office is deemed to hold the ownership interests in the permanent establishment.

AFMA has long-supported the adoption by Australia of the AOA and recommends that the adoption of the Pillar Two Global Minimum Tax should be the catalyst for the Government revisiting its approach to branch taxation and ensuring consistency between Australia’s approach to Pillar Two and the remainder of the domestic taxation legislation.

### **Discussion Paper Questions**

***Do you agree with the proposed policy positions? If not, please propose an alternative and the reasons why.***

AFMA has two concerns in relation to the proposed policy positions as articulated in the Discussion Paper.

Firstly, the proposed interaction between the hybrid mismatch rules and a foreign jurisdiction’s global or domestic minimum taxes gives rise to the potential for double taxation where the hybrid rules operate to neutralise a mismatch that also gives rise to a minimum tax liability. AFMA’s view is that, given this possibility, the foreign jurisdiction’s qualifying or domestic minimum tax should operate with priority to Australia’s hybrid mismatch rules.

Secondly, while AFMA agrees that a foreign income tax offset should be available for top-up tax imposed under a foreign jurisdiction’s qualifying domestic minimum tax, it will be necessary that Division 770 is amended to ensure that a foreign income tax offset is available in circumstances where the minimum tax liability is paid at a time subsequent to the end of the relevant income year.

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Thank you for the opportunity to provide a submission in relation to the Exposure Draft. Please contact me on (02) 9776 7996 or at [rcolquhoun@afma.com.au](mailto:rcolquhoun@afma.com.au) to discuss any of the matters that we have raised in this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rob Colquhoun', written in a cursive style.

Rob Colquhoun  
Director, Policy