16/04/2024

Pillar Two Unit
Corporate and International Taxation Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: **contact.internationaltax@treasury.gov.au**

Dear Treasury,

Submission to International Taxation – Global and Domestic Minimum Tax – Primary Legislation consultation

AustralianSuper welcomes the opportunity to provide a submission in response to the release of exposure draft legislation *Taxation (Multinational - Global and Domestic Minimum Tax) Bill 2024* ("Exposure Draft").

AustralianSuper is Australia's leading superannuation fund and is run only to benefit members. AustralianSuper manages over $315 billion on behalf of over 3.3 million members. Our purpose is to help members achieve their best financial position in retirement.

AustralianSuper strongly supports the overarching policy intent of the proposed reforms and the OECD's Inclusive Framework, being to prevent multinational entities from engaging in base erosion and profit shifting practices in a digital economy and taking advantage of low or no tax jurisdictions to minimise overall tax liabilities.

Our submission makes two recommendations to the Exposure Draft to ensure that the domestic implementation of the proposed reform does not have unintended consequences for Australian superannuation funds, which may negatively affect investment returns for Australian superannuation fund members. In particular:

- We are strongly supportive of the "pension funds" exemption within the Exposure Draft. This is consistent with the "pension funds" exemption within the "excluded entities" definition of the OECD's Pillar Two rules, and our submission to Treasury dated 27 October 2022. We include a minor suggestion below to ensure this amendment achieves its intent into the future.

- We also recommend an amendment to the foreign income tax offset ("FITO") rules to ensure that a FITO will be available for a qualified domestic minimum top-up tax ("QDMT") to address any potential double taxation consequences which may otherwise arise.

Pension fund exemption

We strongly support the inclusion of the "pension fund" exemption within the "excluded entity" definition of the Exposure Draft and note that this definition is consistent with the OECD's Pillar Two Framework. The imposition of an effective minimum tax of 15% under the Pillar Two rules could jeopardise the current taxation framework for Australian superannuation funds. This is because the existing 15% tax rate applicable to Australian superannuation funds may be reduced to 10% or 0% under the *Income Tax Assessment Act 1997* (ITAA 1997), where it is an eligible discounted capital gain or the income is attributable to pension phase members, respectively.

The definition of "pension fund" requires, among other things, that the entity is '*established and operated exclusively or almost exclusively for the purpose of administering or providing retirement benefits and ancillary or incidental benefits*'. Whilst we consider that complying superannuation funds would satisfy the test, for the sake of clarity we recommend specifically including 'complying superannuation fund' within the definition. We expect that this is consistent with the intention of the legislation.

Foreign Income Tax Offset (FITO) availability for Qualified Domestic Minimum Top-up Tax (QDMT)

The FITO regime operates to alleviate the double taxation consequences of certain foreign taxes. This is a critical regime for Australian superannuation funds to mitigate double taxation outcomes in the context of increasing global investment.

We strongly support the intention for FITOs to be available for taxes imposed under a foreign QDMT and welcome this acknowledgement within the Consultation Paper that was released alongside the Exposure Draft. However, we note the potential variability as to how different jurisdictions may introduce a QDMT. Given the need to ensure that the FITO regime operates as intended and there is no uncertainty with the FITO eligibility of foreign QDMT, we recommend that amendments are made to Division 770 of the ITAA 1997 to specifically provide that foreign QDMT is an eligible “foreign income tax”.

Conclusion

Thank you for the opportunity to comment on these important policy reforms. AustralianSuper strongly supports reform to prevent multinational entities from engaging in base erosion and profit shifting practices. We believe that the proposed amendments will address the unintended consequences of the Exposure Draft that may otherwise erode the returns of Australian superannuation fund members.

We look forward to working with you to find solutions that are consistent with the policy intention of the proposed reforms and we would be happy to make available our internal tax experts. If you have any questions or would like to arrange a discussion, please contact Nick Coates, Head of Government Relations & Public Policy at **ncoates@australiansuper.com**.

Yours sincerely

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