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Marty Robinson
First Assistant Secretary
Corporate and International Tax Division
The Treasury
Langton Crescent
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Via email: contact.internationaltax@treasury.gov.au

Dear Marty,

Global and Domestic Minimum Taxes – Primary Legislation and Explanatory Materials

As a representative of over 150 large corporates that operate across 22 industries, the Corporate Tax Association (**CTA**) welcomes the release of the Exposure Draft Legislation, Draft Rules, and the accompanying Explanatory Materials for consultation.

The CTA acknowledges the work of Treasury in ensuring that the OECD Pillar Two Model Rules and associated commentary are appropriately designed to fit within Australia's statutory framework. We have made some observations and recommendations in our submission contained in **Attachment A** to this letter that require further consideration.

In our view, our recommendations strike an appropriate balance between ensuring Australia's regime is a qualifying regime and that ATO and taxpayer resourcing and compliance costs are not disproportionate to the revenue that this measure is expected to raise. This approach is reflective of Treasury's Impact Analysis which estimated that 97% of companies will be required to incur significant implementation compliance costs but not pay any extra tax under this regime.

Our submission also contains preliminary comments in relation to the Subordinate Legislation and Explanatory Statement. Further detailed information on these matters will follow as part of our submission to the Subordinate Legislation consultation process.

Should you have any questions or if you wish to discuss this matter, please do not hesitate to contact Simon Staples at sstaples@corptax.com.au or Stephanie Caredes at scaredes@corptax.com.au.

Yours sincerely,

Simon Staples
Assistant Director

Attachment A –

Corporate Tax Association Submission: Global and Domestic Minimum Taxes – Primary Legislation and Explanatory Materials

Commonly used terms in this submission

Abbreviation	Refers to
The **Imposition Bill**	Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024.
The **Assessment Bill**	Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024.
The **Consequential Bill**	Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Bill 2024.
The **Explanatory Materials**	Exposure Draft Explanatory Materials for the Imposition Bill, Assessment Bill and Consequential Bill.
The **Rules**	Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024.
The **Explanatory Statement**	Explanatory Statement for the Rules.
The **Australian Rules**	Imposition Bill, Assessment Bill, Consequential Bill, Explanatory Materials, Rules and Explanatory Statement.
The **Model Rules**	OECD Global Anti-Base Erosion Model Rules (Pillar Two), administrative guidance, and associated commentary.
The **ITAA 1936**	Income Tax Assessment Act 1936.
The **ITAA 1997**	Income Tax Assessment Act 1997.
The **TAA 1953**	Tax Administration Act 1953.

General Observations and Recommendations

Comparative table between Model Rules and the Australian Rules

Recommendation:
Treasury provides a comparison table that indicates alterations in language, divergences from the Model Rules, and reasoning as to why divergences in defining terms or legislative structure have occurred in the Australian Rules.

Given that the Model Rules, Commentary, and Agreed Administrative Guidance have been effectively replicated across three Bills and one Legislative Instrument, Treasury should provide a comparison table that compares the Articles from the Model Rules to the provisions in the Australian Rules. A table of this nature would support constructive engagement on the Australian Rules by indicating alterations in language, divergences from the Model Rules, and reasoning as to why divergences in defining terms or legislative structure have occurred.

We understand that such an exercise would likely be required for the Australian Rules to be considered a qualifying regime by the OECD so that it can be assured that the Articles from the Model Rules are appropriately reflected in the Australian Rules. This document would also be critical in providing comfort to external auditors in completing their review of the Financial Statement Disclosures that will be required by corporates (see below) for their year-end reporting, particularly for those with a 31 December 2024 year-end.

Summary of definitions

Recommendation:
A summary of all definitions relevant to the Australian Rules is included at the end of the Explanatory Materials and Explanatory Statement.

Given the design of the Australian Rules, we recommend that all defined terms be summarised and included at the end of the Explanatory Materials and Explanatory Statement. This will serve as a useful reference for stakeholders and taxpayers who will be applying the legislation given that defined terms in the Australian Rules are located across three separate Bills and one Legislative Instrument.

References to Fiscal Year

We observe that the start date reference to Fiscal Year in both section 4(3) of the Assessment Bill and item 18, subsection 127-5(3)(b) in Schedule 1 to the TAA 1953 in the Consequential Bill are unclear and do not align. The wording used in the provisions of the Assessment Bill and Consequential Bill does not have the same effect as the regime starting on accounting periods on or after 1 January 2024 for all in-scope entities depending on the entity's particular reporting dates.

We note that this issue seems to be well understood by Treasury given the detailed explanation in the Explanatory Materials. Some consideration should be given to inserting a note into the relevant legislation to improve the alignment between the Bills and the Explanatory Materials.

MEC Groups should be incorporated into the Australian Rules

Recommendation:
The Australian Rules must appropriately address MEC Groups in an Australian Context.

Subdivision 127-C GloBE Consolidated Groups in the Consequential Bill provides an administrative collection mechanism for the collection of the GloBE Top-Up Tax amount and the Domestic Top-Up Tax amount imposing the obligation on the Head Company of the 'consolidated group' which is deemed a GloBE Consolidated Group. The term 'consolidated group' takes its meaning from the ITAA 1997. As a priority, it is important that Treasury clearly outline how the Australian Rules will apply to a MEC group which is different to a consolidated group.

We suggest that the administrative collection mechanism be made available to a MEC group as well.

Forms for lodgement

Recommendation:
The ATO as soon as practicable, provide a copy (in draft) of the approved forms that impacted taxpayers will be required to lodge for the Global Information Return (**GIR**), the Australian Global Information Return (**Australian GIR**) and the Domestic Minimum Tax (**DMT**) Return.

With the Australian Rules applying retrospectively for income years starting from 1 January 2024, it is recommended that the ATO provide a draft of all approved forms so that taxpayers can understand what information will be required in parallel with readying themselves for compliance with the Australian Rules.

This is especially relevant for the DMT Return which will be an Australian-specific return. At this stage, it is unclear as to whether each Australian entity and/or subsidiary within an Australian Tax Consolidated Group (both dormant and active) would be required to lodge an individual DMT Return (see below).

Incomplete Drafting in the Australian Rules

Recommendation:
Treasury should ensure all legislatively important terms are appropriately defined where used and all referencing and cross-referencing should be included in the Bills, Rules, Explanatory Materials and Explanatory Statement where required.

We observe that many aspects of the Assessment Bill, Consequential Bill and Explanatory Materials appear incomplete or have incorrect references. Whilst we acknowledge that Treasury continues to work on these matters in parallel with the current consultation, some items are highlighted below:

1. *Appropriately defining IIR, DMT and UTPR*

The acronyms IIR, DMT and UTPR are used interchangeably throughout the Assessment Bill (and other areas of the Australian Rules), however they are not adequately defined in it. In our view,

familiarity should not be assumed, and these terms should still be defined in the context of the Assessment Bill or the Rules as a reference point. The Explanatory Materials should not be relied upon to define legislatively important terms.

2. Explaining how to quantify amounts in Euros

We observe that as a result of replicating the Model Rules in Australian Legislation, there are various references to 'Euros' throughout the Australian Rules. This is evident in the threshold at which the Australian Rules will apply set out in subsection 12(3) of the Assessment Bill and the definition of 'Material Competitive Distortion' in section 27 of the Assessment Bill (amongst others) and the various Euro amounts noted throughout the Rules.

The Explanatory Statement to the Rules explains how currency translation should occur in paragraphs 3.8 to 3.14. While the commentary also covers the amounts in the Assessment Bill, similar commentary should be included in the Explanatory Materials for the Bills. While we appreciate the interdependence of the Bills, Rules, Explanatory Materials and Explanatory Statement, each should also be able to stand on its own or should be appropriately cross-referenced. A suitable explanation regarding currency translation or cross-reference to the Explanatory Statement should be included in the Explanatory Materials.

3. Definition of Excluded Entity

Subsection 16(d) of the Assessment Bill lists a Pension Fund as an excluded entity. Whilst we note that a Pension Fund is broadly defined in section 27 of the Assessment Bill, we seek confirmation from Treasury that an Australian superannuation fund will meet the definition of a Pension Fund and that a minor amendment should be made to the Explanatory Materials to make this clear.

4. Tax sharing agreements and the GIR

Noting that any entity can lodge the GIR so long as it is a designated filing entity, further consideration should be given to the Australian drafting to ensure who can lodge a GIR and pay GloBE amounts is not limited. Clarity should also be provided regarding precisely how related parties can be held liable for the payment of other related parties' GloBE amounts (e.g. joint and several liability). This includes making a consequential amendment to Division 721 of the ITAA 1997, specifically the table in section 721-10(2), to reflect whether or not a GloBE amount (within the meaning of the Assessment Bill) is considered a group liability. If Treasury intends that GloBE amounts be excluded from tax sharing agreements, we suggest that a drafting note be added to section 721-10(2) to explicitly state this exclusion from the table of tax-related liabilities.

Any inclusion of GloBE amounts within Division 721 of the ITAA 1997 are limited to the members constituting a consolidated group or MEC group, as tax sharing agreements cannot be validly extended to related non-members of those groups.

Financial Statement Disclosures and Substantive Enactment

Recommendation:
A meeting between Treasury, stakeholders, and the Australian Accounting Standards Board (AASB) be convened so that transparent and timely guidance can be provided on disclosures relating to the Australian Rules in the Australian Financial Statements.

We note that amendments have been made to existing tax accounting standards IFRS IAS 12/AASB 112 and AASB 1060 requiring new financial reporting disclosures in respect of Pillar Two, including for the periods in which Pillar Two legislation is enacted, or substantially enacted but not yet in effect.

Whilst AASB 112 does not specify the conditions for substantive enactment, guidance can be taken from the now-withdrawn Interpretation 1039 – Substantive Enactment of Major Tax Bills in Australia which outlined the consensus view that:

> *Substantive enactment of a tax Bill shall be taken to have occurred once the Bill has been tabled in the Parliament and there is majority support for the passage of the Bill through both Houses of Parliament.*

We note there are different views on what, if any, disclosures are required for half and full-year reporting. Given the uncertain current legislative environment, we request that Treasury coordinate a meeting between itself, Stakeholders and the AASB so that guidance on financial statement disclosures can be provided.

Paragraphs from the Explanatory Materials

<u>*Paragraph 3.33 – Commissioner requiring GIR to be lodged with the ATO*</u>

Recommendation:
Paragraph 3.33 be removed from the Explanatory Materials or redrafted in a manner that is consistent with current OECD guidance.

Paragraph 3.33 of the Explanatory Materials appears to be at odds with Article 8.1.2 of the Model Rules. Our view is supported by the commentary in the OECD GloBE Information Return guidance which provides:[1]

> *Jurisdictions with taxing rights under the GloBE Rules are provided with the sections of the GIR that relate to the ETR and Top-up Tax computation, allocation and attribution for those jurisdictions in respect of which they have taxing rights.*
> *…*
> *The tax administration with which the GIR is filed centrally will use the MNE Group's designations as the basis for disseminating the GIR information. However, the MNE Group may also opt for the whole GIR to be exchanged with all implementing jurisdictions where it has CEs.*
> *…*
> *[T]he requirement for each CE to file a GIR with each tax administration is removed when the UPE or a Designated Filing Entity files the GIR with the tax administration of the jurisdiction where it is located and there is a Qualifying Competent Authority Agreement in effect by the filing deadline to exchange GloBE information with the jurisdiction of the CE.*

It is unclear what paragraph 3.33 of the Explanatory Materials is seeking to address. If this paragraph is simply seeking to provide the ATO with legislative powers through the Explanatory Materials, then we do not see the legal basis for which the Commissioner has the power to determine that the GIR has not been provided by a foreign government agency within the time period specified in the Qualifying Competent Authority and to then compel a Constituent Entity to lodge the GIR in full in Australia within 21 days where it has already been lodged in another jurisdiction.

A taxpayer in Australia should not be held responsible for interaction failings between administrators from various offshore jurisdictions nor should they be subject to penalties and interest for failing to comply with an order that has no legislative basis. In our view, this is both administratively burdensome and unfair. We also observe that Australia is only entitled to obtain sections of the GIR relevant to Effective Tax Rate and DMT calculations where Australia may have a taxing right.[2] The Model Rules, associated commentary, and administrative guidance currently published do not give the Commissioner the power to override the Inclusive Framework. We also struggle to see a legislative basis for the Commissioner to impose penalties and interest for the lodgement of a form that is not legislatively required to be lodged in Australia.

If this paragraph relates to the Parent Entity being located in a non-implementing country, we understand that the OECD is giving further consideration to this matter and that administrative guidance will follow. As such, this paragraph should be removed pending further guidance from the OECD.

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[1] Paragraphs 19 to 21, and paragraph 32, OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris, www.oecd.org/tax/beps/globe-information-return-pillar-two.pdf.
[2] Ibid.

Paragraph 3.41 – When a DMT Return might not be warranted

Recommendation:
One DMT return form should be lodged by the Designated Local Entity that covers all Constituent Entities in Australia.

The CTA welcomes Treasury's consideration of looking at ways to simplify the lodgement of the DMT Return in Australia. This is especially relevant for Australian tax consolidated groups (including MEC groups) that contain both dormant and active entities.

Paragraph 3.43 of the Explanatory Materials indicates that an entity is allowed to elect a Designated Local Entity that may be appointed by all Constituent Entities to lodge the DMT Return on their behalf. We would appreciate some clarity as to whether this means that the Designated Local Entity would lodge one DMT Return that cumulatively covers all relevant Constituent Entities, or whether this just means that the Designated Local Entity is authorised to lodge a DMT Return for each Constituent Entity.

Our strong preference would be for one DMT Return (if required) that covers all Constituent Entities to be lodged by the Designated Local Entity. This approach would be consistent with current filing obligations in Australia and avoid duplication where a group operates with more than one entry point or other like structures, minimising any additional resourcing pressures to meet new compliance requirements.

Further, we understand that a DMT liability must first be calculated on an Australian group basis before any liability can be allocated to any individual Constituent Entity. Given the likelihood that for the vast majority of Australian groups there will be no DMT liability with no subsequent allocation to all entities, consideration must be given to providing for this likely outcome by permitting nil returns be made for each entity where there is a nil liability at a group level.

This approach along with having an exclusion for dormant entities which have no activity would provide significant administrative savings.

With respect to Joint Ventures (**JV**), further clarification is sought from Treasury on the purpose of the proposed amendments to the TAA 1953 by subsection 127-15(6) of the Consequential Bill. There is no equivalent subsection in 125-5 or 127-10 regarding lodgements of the Australian GloBE Return, or the GIR. We understand the reason for this to be that unincorporated JV partners will be required to lodge separate DMT Returns rather than the relevant Designated Local Entity lodging a DMT Return for the applicable MNE Group of which the JV is a member for GloBE purposes. This may be problematic as JV groups are not normally subject to Australian Rules in their own capacity, and so all reporting obligations will be ceded up to the Ultimate Parent Entity's tax team. It follows that the Designated Local Entity for the main group should have the option of lodging the DMT Return on behalf of the JV, along with all the other returns.

Consultation Questions from the Treasury Discussion Paper

Division 832 - Hybrid mismatch rules

Recommendation:
Treasury give further consideration to the interaction with the hybrid mismatch rules once the OECD anti-arbitrage guidance for the main Pillar Two Rules is released to ensure that inequitable outcomes are mitigated such as double tax for having to back out deductions.

The OECD has publicly announced[3] that it will develop administrative guidance on hybrids that will ultimately form part of the Australian Rules as a result of subsections 3(1) and (4) of the Assessment Act. For example, the anti-arbitrage rules outlined in the December 2023 Administrative Guidance are broader than the Australian anti-hybrid law in some cases. This includes specific scenarios where a lender has carried forward tax losses and these losses are utilised through interest income earned from a related party borrower.

As such, further and more detailed consideration needs to be given to the interaction with Australia's hybrid mismatch rules once this OECD anti-arbitrage guidance for the main Pillar Two Rules is released to ensure that inequitable outcomes are mitigated such as double tax for having to back out deductions.

That said, at present, we are concerned with the conceptual approach Treasury is taking in the Discussion Paper that Australia's hybrid mismatch rules will continue operating even if a foreign jurisdiction imposes global or domestic minimum taxes. This is because it will give rise to an inequitable outcome for taxpayers in the form of double taxation or, in certain circumstances, excessive taxation.

This is highlighted by examples where a deduction for a payment is incurred in Australia and in the recipient jurisdiction the income is not subject to tax under its ordinary domestic provisions but is taxed under an IIR or QDMTT at 15%. In these circumstances, notwithstanding the income is subject to a 15% tax, Treasury is proposing to still enliven Australia's anti-hybrid rules by denying a deduction for the payment in Australia. This would lead to double tax or tax being suffered on the arrangement at 45%. This seems extremely inappropriate.

For example, an Australian resident company Parent Co has two subsidiaries. Sub A is located in Australia (the same as Parent Co) and Sub B is located in Jurisdiction B. Jurisdiction B is a low-taxed jurisdiction. Sub A and Sub B enter into a financial instrument. The financial instrument is treated as debt for Australian tax purposes and equity in Jurisdiction B. The payment of interest on the debt is deductible in Australia and is not included in the foreign recipient's income, giving rise to a hybrid financial instrument mismatch. Under the Australian hybrid mismatch rules, the Australian payment will not be deductible to the extent that the paid amount is not included in the non-resident recipient's income. Given Jurisdiction B is also a low-taxed jurisdiction under the Pillar Two rules, top-up tax will be payable by Parent Co under Australia's IIR. As such, the same payment will effectively be taxed twice – both under the hybrid mismatch rules (in the form of deduction denial) and under Pillar Two (in the form of top-up tax).

[3] See Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), December 2023 page 19, paragraph 33.

Division 830 – Foreign hybrids

The CTA supports the approach outlined in the Discussion Paper with respect to the interaction of the Australian Rules with Division 830 of the ITAA 1997.

Division 770 – Foreign income tax offsets

A foreign jurisdiction QDMTT is a foreign tax for the CFC regime per the current rules of Division 770 of the ITAA 1997 and taxpayers will be entitled to a credit when determining their Australian tax liabilities should the necessary tests be satisfied. In our view, the Explanatory Materials should make it clear that a foreign income tax offset (FITO) should be available with respect to QDMTT tax paid that is referable to the attributable profits of a CFC no matter which entity is liable to pay or actually pays the QDMTT tax.

We also observe that further consideration needs to be given to timing issues associated with the levying of a QDMTT sometime after the relevant income year and the legislative drafting of Division 770 which provides that a FITO is only available if foreign tax has been 'paid'. Foreign jurisdiction QDMTT liability may not be payable until sometime after the relevant income year, unlike general corporate taxes which may be paid in instalments throughout a year. For example, in Vietnam, the QDMTT is payable nine months after year-end.

Division 770 should be amended to ensure that a foreign income tax offset is available in circumstances where the minimum tax liability is paid at a time after the end of the relevant income year. Consideration should also be given to the circular impact of needing to amend income tax returns to take the FITO arising from QDMTT payments into account.

Foreign income paid by CFCs

We understand Treasury's position put forward in the discussion paper that an amendment is not required to expressly allow a foreign jurisdiction's QDMTT to be treated as a notional allowable deduction for the purposes of Part X of the ITAA 1936. Whilst we agree that a 'natural reading' of section 393 of the ITAA 1936 should allow such a tax to be claimed as a notional deduction, we observe that a note should be included in the legislation to make it clear that this is the case.

Other matters that require further consideration

Concessions for Consolidated Groups including MEC Groups

Australian Treasury will need to work with the OECD to make amendments to the administrative concessions for tax consolidated groups because there are currently fundamental flaws in the OECD guidance. For example, administrative guidance on the GIR provides an administrative concession of tax consolidated groups enabling such groups to be treated as a single constituent entity for GloBE purposes.[4]

However, there are fundamental flaws in this administrative concession for Australian tax consolidated groups.

Firstly, Australian tax consolidated groups use consolidated tax calculations and consolidated accounting profit before tax calculations (the concession requires a distinctly different aggregation). Secondly, the concession does not apply to Australian MEC Groups since it requires "all consolidated entities are wholly owned by the consolidating entity". In MEC Groups, all of the entities may not be wholly owned by the consolidating entity (the entity reporting the consolidated tax position) but rather, by a foreign entity that may indirectly own members of the MEC Group through different ownership chains.

Treasury to work with OECD to develop meaningful safe harbours

As we have recognised previously, striking a balance between ensuring Australia's regime is a qualifying regime and that ATO and taxpayer resourcing and compliance costs are not disproportionate to the revenue that this measure is expected to raise is essential given it is estimated that 97% of companies will be required to incur significant implementation compliance costs but not pay any extra tax under this regime. As such, we recommend that Treasury work with the OECD to develop meaningful permanent safe harbours so that Australian operations have minimal compliance obligations given that the likelihood of top-up tax for such operations is remote.

Foreign currency translation

Given the complexities involved in the application of the foreign currency translation provisions, examples should be provided to explain the application of "Asymmetric Foreign Currency Gains or Losses" in the Explanatory Statement. As part of these examples, we think that it would also be beneficial if Treasury (and the ATO) indicate that where unintended permanent differences arise as a result of top-up tax being paid under the QDMTT, these permanent differences should be disregarded.

We note that the July 2023 Tranche of administrative guidance provides some commentary on foreign currency translation and that more guidance is expected. Further consideration should also be given to the administrative impacts of adjustments that may need to be made after an impacted entity has lodged an Australian GIR, DMT Return and where relevant, a GIR, prior to updated OECD administrative guidance being released.

[4] Page 25, OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris, www.oecd.org/tax/beps/globe-information-return-pillar-two.pdf.

Use of local financial accounts

The Domestic Top-up Tax refers to the use of local financial accounting standards (section 2-35 of the Rules) and local currency (section 2-40 of the Rules). It is unclear whether the Rules are intended to apply with a strict interpretation of the exposure draft such that each and every Constituent Entity must have individual financial accounts (section 2-35(1)(a)) that are externally audited (section 2-35(c)(ii)), or it is the intent of the rules to assume that a set(s) of consolidated accounts covering all CE's that are audited on a consolidated basis would be sufficient (under section 2-35) to require the use of Australian financial accounts for the purposes of domestic top-up tax.

We recommend that taxpayers should be able to use the Ultimate Parent Entity's financial statements and currency under the QDMTT. This will ensure consistency with paragraph 3.4 of the Explanatory Statement.

Exits from the GloBE Consolidated Group

The drafting note to Subdivision 127-C states that "An entity remains a member of the GloBE Consolidated Group even if the entity later leaves the consolidated group." Treasury should provide more detail on how that is expected to work, including examples of the impact on a leaving entity. The statement as drafted is ambiguous and could be read as including disposed of or divested Tax Consolidate Group entities within the GloBE Consolidated Group even after they are owned by an unrelated third party.

Elections

Recommendation:
The Australian Rules should facilitate the 3-year election based on a 'once out always out' basis under the Transitional Safe Harbours.

The Transitional Safe Harbours should apply based on a 'once out always out' basis and apply for 3 years. The Australian Rules currently only facilitate annual and five-year elections.

DMT Interaction with ATO Corporate Residency Guidance

Recommendation:
Treasury confirm that the DMT will only apply to Australian operations and not in instances where a foreign entity with foreign operations is deemed to be an Australian resident by virtue of the ATO's *Practical Compliance Guideline PCG 2018/9 Central management and control test of residency: identifying where a company's central management and control is located.*

The Explanatory Materials provide that the Assessment Bill implements Domestic top-up tax with respect to "Australian entities". The drafting in subsection 7(1) applies to Domestic Top-up Tax Amounts payable by an "Entity" which is defined in section 13 to include legal persons, trusts, partnerships and so forth but does not specify or limit the application of the Australian Domestic rules to Australian entities.

The Rules then clarify that the Domestic Top-up Tax Amount is payable to a Low-Taxed Constituent Entity (section 3-180 of the Rules) 'located in Australia' or created in Australia (section 2-25 of the Rules). We understand that the DMT will only be levied on Australian residents with Australian operations.

We are seeking confirmation that the DMT will not apply where a foreign entity with foreign operations is deemed to be an Australian resident for tax purposes by virtue of the ATO's corporate residency guidance[5]. That is, the foreign entity with foreign operations will be subject to Pillar Two in the place of its incorporation rather than being required to compute DMT in Australia and lodge DMT returns. In our view, this approach is consistent with an Australian-incorporated entity with foreign branches or subsidiaries.

Filing obligations for entities not in scope

Further clarification is sought from the ATO as to whether a taxpayer will need to notify the ATO if they are outside the scope of the Australian Rules. For example, a taxpayer does not meet the definition of an MNE Group (i.e., A Group operates in one jurisdiction only). Please confirm if an additional notification will be included in the information section of the Company Income Tax Return Form C to identify that they will be subject to the Australian Rules.

[5] Practical Compliance Guideline PCG 2018/9 Central management and control test of residency: identifying where a company's central management and control is located