



International Tax Branch
Corporate and International Taxation Division
The Treasury
Langton Crescent
PARKES ACT 2600

16 April 2024

By email: contact.internationaltax@treasury.gov.au

Attention: Assistant Secretary

Dear Sir / Madam

Consultation: Global and Domestic Minimum Taxes

Thank you for the opportunity to provide feedback on the Exposure Draft Explanatory Materials (**Draft EM**) and Consultation Paper *Global and domestic minimum taxes: Interactions with other Australian tax laws*, both of which were released on 21 March 2024.

Wesfarmers is a major diversified Australian public company that is headquartered in Perth. Our businesses span home improvement; general merchandise and apparel; office and technology products; health, beauty and wellbeing products and services; manufacturing and distribution of chemicals and fertilisers; development of an integrated lithium project; industrial and safety products; and gas processing and distribution.

Wesfarmers will fall within the scope of the new proposed *Global and Domestic Minimum Tax Bill 2024* due to our sourcing subsidiaries in various offshore jurisdictions as well as our New Zealand retail and B2B business. In this submission, we address two issues identified in the Draft EM and associated legislation that are of particular concern to Wesfarmers, as a major Australian outbound corporate taxpayer that will be subject to these rules.

1. Clarity around the requirements to lodge a Domestic Minimum Tax (DMT) Return

The Draft EM sets out the details in relation to the DMT Return between paragraphs 3.39 to 3.44. We direct particular reference to paragraph 3.41, where Treasury is seeking stakeholder comment on “*whether there are circumstances in which lodgement of the DMT Return by a constituent entity might not be warranted*” and note our comments below.

The DMT Return is Australian-specific and is required to be lodged by all constituent entities of an applicable MNE Group (such as Wesfarmers), even if the domestic top-up tax liability is nil. An applicable MNE Group is allowed to select a Designated Local Entity, which can be appointed by all constituent entities who have an obligation to lodge a DMT return, to

lodge the DMT Return on their behalf (provided that the Designated Local Entity is not a permanent establishment).

We welcome the proposal to allow a Designated Local Entity to lodge a DMT Return on behalf of all constituent entities. However, we urge Treasury to provide further guidance on the requirements and effects of electing a Designated Local Entity. We note that the draft EM remains silent on whether this means that the Designated Local Entity is:

- a. meant to lodge one DMT Return that covers all relevant constituent entities, or
- b. if they are supposed to lodge a DMT Return for each constituent entity instead.

The latter outcome would put undue resourcing burden on Wesfarmers and other corporates that have a significant number of constituent entities in Australia who might be obligated to lodge DMT Returns. Specifically, the Wesfarmers Group will have over 100 constituent entities that will be required to lodge a DMT Return if this approach is taken. Along with the amount of work and resourcing that goes into the annual income tax return, this outcome would be onerous for the immaterial amount of tax involved.

Noting that the effective tax rate is calculated on a jurisdictional level, our view is that the first option above should be introduced. Treasury should provide clarity to express that a Designated Local Entity is allowed to lodge one DMT Return on behalf of all constituent entities to meet filing requirements. This would mirror the impact of entities being part of a tax consolidated group, whereby only one consolidated income tax return is required to be lodged each financial year. It would also assist to alleviate timing and resourcing pressures of having to effectively prepare three new tax returns to meet compliance requirements (i.e. the GloBE Information Return, Australian GloBE Return and DMT Return).

We also suggest that Treasury provide guidance in the Draft EM to exclude the requirement to lodge a DMT Return for dormant entities. There is currently no exclusion for this and given there is no activity in dormant entities, our view is that requiring lodgement of a DMT Return will be an unnecessary compliance burden. For reference, Wesfarmers has over 94 Australian dormant entities for various business reasons that would be required to lodge a DMT Return if there is no exclusion for this.

2. Proposed starting application date of the *Global and Domestic Minimum Tax Bill 2024*

We also want to draw attention to the application start date of the *Global and Domestic Minimum Tax Bill 2024* as noted in the Draft EM. Per paragraph 1.6 of the Draft EM, domestic top-up tax and Income Inclusion Rule (IIR) top-up tax is applicable for Fiscal Years commencing on or after 1 January 2024, and Undertaxed Payments rule (UTPR) top-up tax is applicable for Fiscal Years commencing on or after 1 January 2025.

Wesfarmers has a 30 June year end which means that under the current proposal in the Draft EM, the first year of application will be from 1 July 2024 to 30 June 2025 for the domestic and IIR top-up tax. Given the Draft EM and associated legislation was just released in March 2024 and that there is no Australian guidance currently available, we suggest that Treasury reconsider the start date and provide a deferral of 12 months so that the domestic top-up tax and IIR top-up tax is applicable commencing on or after 1 January 2025, and UTPR top-up tax is applicable commencing on or after 1 January 2026. We provide the below reasons to consider this:

- a. A number of countries have publicly acknowledged the short lead time for commencement of the wider Pillar Two rules and have consequently deferred the start date by 12 months to allow affected entities time to establish systems required for compliance. These countries include Singapore, Hong Kong and

New Zealand, which have deferred the start date for the IIR and domestic top-up tax to 1 January 2025 and the UTPR to 1 January 2026.

- b. At a recent information session with Treasury and the Australian Taxation Office (ATO), the ATO advised that they have had discussions with various tax technology solution providers about the requirements for Pillar Two. The ATO did not have an appreciation of the amount of work that was required for technology solution providers to create a viable software until these discussions were held and was surprised that it was not more simple.
 - i. The ATO itself also appeared to be in an early stage of preparing for the incoming new law and acknowledged that taxpayers have provided feedback that a 1 January 2024 start date provides limited time to prepare.
 - ii. The ATO is yet to prepare and develop the relevant Australian domestic tax returns – being the Australian Globe and DMT Return. Given that the law would already be in application, it would make sense to defer the start date until these returns can be reviewed by those impacted.
- c. There has not been any domestic guidance released on how affected taxpayers should be preparing for Pillar Two, either from the ATO or Treasury. Until technical guidance is provided to those impacted, we suggest deferring the start date until there is a common level of familiarity with the new law and any nuances in it – for example, calculating what is included in GLoBE income or covered taxes.
- d. Finally, the amount of tax revenue that Australia is expected to collect from Pillar Two is insignificant. In fact, the May 2023 Federal Budget had noted \$160 million expected collections in 2025-2026 against funding to the ATO of \$110.5 million. Wesfarmers itself will likely have no Pillar Two tax liability. Given the relatively low tax revenue, it would make sense to give affected entities more time to prepare and publish public guidance to assist in compliance going forward.

Once again, we thank Treasury for the opportunity to comment on the Draft EM. We believe that the above, if adopted, will ensure that the *Global and Domestic Minimum Tax Bill 2024* is effective in achieving its objectives and provide more clarity to impacted taxpayers.

Should you have any questions or wish to discuss the above, please do not hesitate to contact me on (08) 9327 4421.

Yours sincerely,



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