

11 April 2023

International Tax Unit
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

By email: MNETaxIntegrity@treasury.gov.au

Dear Sir/Madam

Proposal to repeal Section 25-90 of the Income Tax Assessment Act 1997

I am writing on behalf of CSL Limited in response to Exposure Draft and consultation process on Multinational Tax Integrity – Thin Capitalisation.

CSL is an Australian-based, multinational biopharmaceutical company. We have significant, specialist advanced manufacturing and R&D capability in Australia and operate two large scale, export focussed manufacturing facilities in Australia.

CSL considers that the Government's proposal to repeal Section 25-90 of the Income Tax Assessment Act 1997 should be reconsidered, and be subject to a separate and thorough consultation process to that in respect of the proposed changes to thin capitalisation.

Given that the proposed change was unexpected, and goes well beyond the election commitments made by the Government in this space it is imperative that Treasury ensures there is sufficient time to engage with Australian business to understand the impacts of the repeal of Section 25-90.

The proposed thin capitalisation changes implement the OECD's recommended approach under Action 4 of the OECD's Base Erosion and Profit Shifting and limit interest deductions to a Fixed Ratio. This change should be sufficient, regardless of whether the interest is deductible under sections 8-1 or 25-90.

It will potentially be very difficult for companies to objectively demonstrate the purpose of existing debt borrowings. Given the existence of section 25-90 companies have not to date, been required to trace debt. Practically, cash is fungible, and it may now be a somewhat arbitrary exercise to allocate debt to the domestic or foreign business, where borrowings have not been for a specific purpose. The repeal of section 25-90 would force companies to artificially tracing their debt to support debt deductions for working capital/domestic business requirements.

In 2013, the then government similarly looked to repeal section 25-90. Following consultation, this repeal was not implemented. At the time it was

recognised that the proposed change would reintroduce tracing as a means to claim debt deductions, and as such, there was no upside to repealing the legislation.

Section 25-90 has long been part of Australia's policy settings and the stability and surety of policy is important for Australian companies in order to plan our business operations.

The repeal of this does not make objective sense from a policy perspective, and unfairly targets Australian outbound multinationals (MNCs), like CSL. Given Australia's relatively small domestic market, policy settings within Australia should be looking to support the growth of domestic outbound companies.

CSL is one of Australia's most successful outbound companies, having grown through a series of foreign acquisitions and via accessing overseas markets. Where a domestic company is initially looking to grow its offshore footprint, it will need to fund that growth through its Australian business – be that through the capital markets or debt funding. It would put Australian MNC's at a disadvantage (relative to their global peers) to not be able to borrow to support this growth. Other OECD countries, such as the UK, Germany, France, permit an interest deduction on borrowings to fund offshore acquisitions, subject to their earnings based interest limitation rules.

The exclusion of non assessable, non exempt (NANE) dividends from foreign subsidiaries in the calculation of Tax EBITDA for the purposes of determining the debt capacity, already appropriately ensures that the Australian group is not increasing its debt capacity through the inclusion of NANE income. There should be no further requirement to exclude interest on borrowings that foreign investment.

The proposed approach on interest capping limits debt deductions to an appropriate level of Australian earnings, and debt loading is not actually possible.

In the long term, profits from overseas are repatriated to Australia via NANE dividend distributions. These dividends can then be distributed to shareholders, but without franking credits. The income is then subject to the shareholders marginal rate of tax on receipt of distribution of what is essentially NANE foreign sourced income. This is different to how funds might flow through a foreign controlled entity

CSL is seeking an opportunity to discuss this matter directly with you and input to formal industry consultation which is necessary. I am contactable at Aoife.deane@csl.com.au or 0423 1266 71.



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CSL.com
CSLBehring.com
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Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Aoife Deane', on a light-colored rectangular background.

Ms Aoife Deane
Head, Global Taxation