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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 deny deductions for payments related to intangible assets

CSL Limited welcomes the opportunity to make a submission in response to Exposure Draft and consultation process on Multinational Tax Integrity – denying deductions for payments relating to intangible assets connected with low corporate tax jurisdictions.

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 also has a significant offshore manufacturing and R&D footprint, with key R&D and manufacturing sites in Germany, Switzerland, the UK and the US.

CSL is a company that has grown through acquisition, and consequently, has significant substance, and significant intellectual property (IP) in each of these locations. The global nature of CSL's business has been critical to our success and has also enabled CSL to bring innovative medicines to Australia.

While we recognise the challenges facing the Australian economy and the need to raise additional revenue, this policy will have several unintended consequences and instead of helping the economy could harm it.

This policy is likely to directly impact those industries that rely heavily on research and development and intellectual property, such as biopharmaceuticals. These are industries that are high-growth and generate highly skilled jobs.



The changes as currently proposed, go far beyond what was articulated in the Government's election commitment. Whilst that commitment was "*to limit the ability of companies to abuse tax treaties when holding intellectual property in tax havens*" this legislation treats any country as a 'tax haven' if the federal level of corporate tax is less than 15% (regardless of whether there are additional state taxes, or specific incentives contributing to that rate), and also brings ordinary commercial arrangements into its remit.

If Australia implements the legislation as written it will almost certainly have a direct negative effect on foreign investment, innovation, productivity, economic growth, tax revenue and create an excessive administrative burden.

CSL's specific and significant concerns with the legislation include;

1. The legislation is purported to be anti-avoidance legislation. However the proposed legislation lacks a "purpose test", and as a result, will impact genuine arm's length commercial arrangements. Additionally, the tracing requirements will impose a significant compliance burden on taxpayers. If the government has particular concerns in this space, the pertinent issue needs to be more clearly articulated, and any resulting legislation targeted to these issues, rather than the current broad brush approach. **At a minimum, the proposed rules should include a purpose test.**
2. Under the proposal, a low corporate tax jurisdiction is one where the lowest corporate income tax rate is less than 15%. Only national level corporate tax is relevant for determining whether a foreign country is a low corporate tax jurisdiction. By only including national level corporate tax, the laws fail to recognise the true corporate income tax impost in a country and will result in the inclusion of countries with a headline rate above 15%, and is not consistent with election commitment that the measure would apply only to "tax havens". Countries such as Germany, Italy and Switzerland have both a Federal and a Municipal/Cantonal tax system. Both levels of tax are relevant for the BEPS Pillar Two approach to calculating the country level effective tax rate. **Pillar Two 'Covered Taxes' should be taken into account when determining the rate of income tax in country.**



3. The proposal should align Australia's tax policy with other countries to ensure Australia remains competitive as an attractive place to invest. The proposal is completely out of step with the global approach to international tax matters. Australia already has an extensive set of anti-avoidance rules, including transfer pricing requirements, Part IVA, DPT, MAAL and CFC rules that would capture any transactions that may be a cause of concern. This proposal would effectively introduce the OECD Pillar Two 'backstop undertaxed payments' rule early to Australia, and result in this applying before the income inclusion rule has been introduced globally. From a corporate compliance perspective, a globally consistent approach to such matters under the OECD approach is critically important. The compliance burden of dealing with a series of unilateral measures that is out of step with the global community should not be underestimated. The proposal also goes beyond the reach of what other countries such as the UK and Germany have implemented in this space. **This proposal should be repealed with the introduction of the Pillar Two measures, or deferred until the introduction of Pillar Two to ascertain if there is any tax 'mischief' that still warrants such rules.**
4. The rules do not discuss the interaction with other aspects of the tax law. As currently drafted, it would seem entirely possible that a payment could be non deductible in Australia; subject to Australian royalty withholding tax; subject to tax in a country like Switzerland at a tax rate over 15% and also subject to top up tax in Australia under the CFC rules. Previous anti-avoidance rules have, appropriately, targeted situations where there was a double deduction, or a non inclusion of income. This proposal could potentially result in the opposite outcome, with no deduction, but the income still taxed at a high rate. It is also not clear how the Treaty provisions would interact in such a situation. **The interaction of various tax provisions needs to be appropriately considered in the legislation to ensure there is not double taxation.**
5. The rules as drafted are extremely broad and will be very difficult to apply practically. For example, the broad use of terms such as 'exploit' the attempt to capture payments 'to the extent' they relate to intangibles, will in practice be very difficult to implement in a sensible and meaningful way without additional guidance on what is required and intended as this could be quite a subjective determination.



CSL is urgently 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.

Yours faithfully,

DocuSigned by:
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Ms Aoife Deane
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