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Pillar Two Unit
Corporate and International Tax Division
Treasury
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via email: contact.internationaltax@treasury.gov.au

Global and Domestic Minimum Tax – primary legislation

We thank Treasury for the opportunity to provide a submission as part of consultation on implementing Pillar 2 of the OECD/G20 global agreement on minimum tax.

The FSC is a peak body which sets mandatory standards and develops policy for more than 100 member companies in the financial services industry. Our full members represent Australia's retail and wholesale funds management businesses, superannuation funds, investment platforms and financial advice licensees. The industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians.

This submission provides initial impressions of the primary legislation. Due to the complexity of these rules and potential interaction between exposure drafts for this legislation and the subordinate legislation being considered in a concurrent consultation process, there may be additional comment to provide when considering the proposals holistically.

Hybrid mismatch rules

We recommend that the Australian hybrid mismatch rules should not continue to operate without amendments being made to account for the payment of global and domestic minimum taxes imposed in foreign jurisdictions.

For example, in a scenario where a qualifying foreign hybrid entity that has non-deductible expenses in Australia must pay a top-up tax on non-assessable income in a low-tax offshore jurisdiction, the adjusted tax payable should be taken into consideration for the purposes of Australian tax treatment.

In addition, as the integrity goals of the current hybrid mismatch rules are substantively supported by the new global and domestic minimum tax policy in ensuring different tax treatment does not result in underpayment of taxes, we recommend a review be undertaken to determine whether these rules continue to be appropriate.

Foreign income tax offsets

The FSC agrees with the appropriateness of ensuring foreign income tax offsets (**FITOs**) are consistent with the intent of avoiding circularity in application of domestic minimum tax measures. In addition, we agree that FITOs should be available to Australian taxpayers in relation to taxes imposed under a foreign Qualified Domestic Minimum Tax (**QDMT**).

Further review is recommended on how the conditions in Division 770 of the *Income Tax Assessment Act 1997* will apply where a foreign QDMT is imposed, to determine any consequential amendments that may be required in order to ensure FITOs are eligible to be claimed for these measures and meet the requirements of the legislation.

Controlled Foreign Company rules

We agree with the approach proposed by Treasury to include Controlled Foreign Company taxes in the jurisdictional effective tax rate for the offshore jurisdiction in which the entity or its subsidiary is located. Similarly, we support deductions being available for top-up tax payable on imposition of a foreign QDMT. This methodology is a reasonable means of ensuring there is no circularity in the provisions in the same way proposed for application to FITOs.

Timing

While recognising that the Pillar 2 rules are intended to comply concurrently with other jurisdictions as part of a global policy initiative, the retrospective nature of these complex measures may give rise to implementation challenges. While some of the work required to develop systems to comply with the framework may be able to commence on the basis of the exposure draft legislation, clear requirements are essential for effective implementation.

The FSC has previously recommended that the Pillar 2 rules should be implemented at least one year after legislation is passed by the Parliament. This would allow for the development and publication of relevant guidance materials before the provisions are to commence and provide sufficient time for taxpayers to develop, test and implement required changes to systems.

If you would like to discuss this submission further or require additional information, please contact me at jyoung@fsc.org.au.

Kind regards,

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