

Submission of Macquarie University Concerning Potential Adverse Effect on Public Universities of the *Taxation (Multinational - Global and Domestic Minimum Tax) Legislation 2024 (Legislation)*

Thank you for the opportunity to make a submission on the proposed legislation.

Macquarie University, which is a public university located in Sydney NSW requests that the following submissions be taken into account.

Summary

1. Macquarie University understands the purpose of and requirement for the proposed legislation to ensure that multinational enterprises pay a fair share of tax wherever they operate and generate profits. It submits however that in its present form, the Legislation may have unintended and undesired consequences for the not-for-profit sector including the Universities, with significant impact on funding and resources.
2. Macquarie University further understands that it is not the intention to include the not-for-profit sector within the ambit of the legislation. The University is concerned that given the range and nature of university activities there is a risk that this may occur.
3. Consistent with principles of good taxation design the Legislation should be consistent with the intended policy outcome and its legislative purpose. It should also be as certain as possible.
4. In the University's submission, the Legislation fails to comply with principles of good taxation design because it may:
 - a. have the unintended effect of changing the current tax regime for not-for-profit entities such as public universities;
 - b. it unnecessarily creates a conflict with and perhaps a major change in Australian law regarding charitable statutes with respect to taxation and
 - c. may limit University overseas activity,

where these effects are not required for the purpose of the Legislation.

Issue

5. The law in Australia has for good reason developed the principle that a not-for-profit entity may engage in activities where any profit from those activities flows back to support the charitable purpose of that entity and the tax treatment of the not-for-profit entity is in accordance with that principle.
6. The definition of a Non-profit Organisation in the Legislation by use of the words "exclusively" and "directly related" in relation to the activities of a Non-profit Organisation which is exempt from the Legislation is capable of creating uncertainty and possibly inadvertently making a significant and substantial change to the tax law in relation to not-for-profit entities.

7. Australian Universities engage internationally. There is uncertainty as to the impact of international operations on Universities as there is reference to “operation in the jurisdiction where it is located” in the definition of Non-profit Organisation. .

Universities

8. Public Universities in Australia are large institutions, many with revenues which would put them within the scope of the Legislation. They are engaged in a variety of activities and indeed, are frequently encouraged to extend their activities by Governments e.g. to take over the operation of a failing or redundant Government enterprise or to participate in activities which the Government considers would be in the wider public benefit. The activities are of benefit to the Community and the purpose of the University and are linked to core purposes. Macquarie University for example operates a Hospital and clinics which serve the purposes of teaching and research, other universities similarly operate veterinary hospitals and clinics or legal advice centres for the general public.
9. There are many reasons for Australian universities to operate internationally and it has been a recognised feature of the sector for many years. It is considered and promoted as a valuable activity by Australian Governments.
10. There is no evidence that universities are engaged in activities which the Legislation is intended to regulate or create any harm which the Legislation intends to cure. Public Universities are governed by statutory enactments which specify their objects and powers. Their activities are therefore limited by law and all revenue is applied accordingly.
11. Under the current law activities such as those referenced in paragraph 7. do not affect the tax status of the university which conducts them. There is no policy reason why the Legislation should change this and every reason to ensure that the Legislation does not inadvertently make a change to no good policy effect and potentially great harm to the University sector and the general public good.

Suggested Change

12. Changes which may prevent unintended consequences and/or uncertainty are:
 - a) Alignment of the definition of Non profit Organisation with current Australian law;
 - b) The definition of non-profit Organisation in the Legislation should specifically include Australian public universities established by Australian legislation and their controlled entities as a class of entity which is included in the definition. This is a simple way of eliminating uncertainty and the possibility of unintended consequences and in no way offends the purpose or nature of the Legislation.