

16 April 2024

International Taxation – Global and Domestic Minimum Tax – Primary Legislation

contact.internationaltax@treasury.gov.au

Dear International Taxation group,

**Submission to Treasury re: global and domestic minimum tax – primary legislation**

Universities Australia (UA) is the peak body for Australia's 39 universities. As some of the largest tax-exempt charitable organisations in Australia, universities are carefully monitoring this legislation.

UA and a working group of tax experts at member institutions have reviewed the primary exposure draft legislation and associated documents for the Global and Domestic Minimum Tax Legislation.<sup>1</sup> From this review we submit the following:

1. The wording of the exposure draft bill Taxation (Multinational – Global and Domestic Minimum Tax) Bill 2024 (the 'exposure draft') is not consistent with the terminology used in existing Australian tax or charitable legislation. We consider this creates unnecessary and unintended uncertainty and complexity.

Specifically, we note:

- a. Section 16(2)(c) of the exposure draft provides that an Excluded Entity includes a 'Non-profit Organisation'.

Further, Non-profit Organisation is defined within section 27. Definitions of the exposure draft (beginning line 21 on page 26 of the exposure draft).

We consider terminology and subsequent definition of Non-profit Organisation is widely in line with the current Australian tax and charity law definitions of 'Not-for-Profit Organisation'<sup>2</sup>, however the difference in terminology creates uncertainty as to whether existing Australian charities and not-for-profits will be excluded as intended.

2. To remove uncertainty, UA submits that the draft legislation be amended to specifically include within the definition of 'non-profit organisations' all entities with current registration as a Charity with the Australian Charities and Not-for-profit Commission (ACNC) under the Australian Charities and Not-for-profits Commission Act 2012. If a tax source is preferred, then reference may be made to entities endorsed by the ATO as income tax exempt charities under the exempt from income tax under s50 of ITAA 97.

We further submit:

- a. The definition be amended directly in the principal legislation.
- b. Should this not be accepted, we alternatively submit that this position be reflected within the exposure draft subordinate legislation (rules and explanatory

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<sup>1</sup> See: [International taxation – global and domestic minimum tax – primary legislation | Treasury.gov.au](#)

<sup>2</sup> See <https://www.acnc.gov.au/for-charities/start-charity/not-for-profit>

memorandum).

- c. If neither alternative is accepted, we request Treasury and the ATO publicly confirm its intent that registered/endorsed charities will be viewed as Excluded Entities under the definition as currently drafted for certainty within the sector.
3. We consider that adopting our submission is in line with both the OECD intention and in line with existing Australian policy goals in respect of international taxation, higher education, and the charity sector.

UA and its members are firmly of the view that universities should be excluded from the operation of exposure draft as “Non-profit Organisations” and that it should be made clear that the charitable sector as a whole will not be negatively impacted under the proposed legislation. Our considered reasons for this are outlined in the appendix to this letter.

Yours sincerely,



Luke Sheehy

**Appendix: Universities are charities registered with the ACNC. Universities should not and would not pay income tax under proposed legislation (OECD GloBE Model tax rules)**

1. As UA has previously argued,<sup>3</sup> universities should not be subject to Australian income taxes and this position is consistent with current Government policy and taxation policy. Universities are established to create public goods, specifically the provision of world class tertiary education and the conduct of research activities at the highest level. The Government appropriately incentivises universities to provide these outcomes via the tax system and other means.
2. The suite of government policies that apply to Australian universities has recently been thoroughly reviewed under the “Universities Accord” and the imposition of income tax via the global and domestic minimum tax rules was not raised nor considered during this process. Given the substantial uncertainty that exists with the current drafting of the exposure draft, we consider that the Accord reforms should be at least considered and preferably finalised before any bill is tabled in Parliament.
3. UA consulted with colleagues at the British Universities Finance Directors Group, who advised that following their consultations and negotiations with the OECD and UK Treasury, they expect UK universities to be excluded entities under the UK equivalent global and domestic minimum tax legislation.
4. This raises two points relevant for Australian policy makers:
  - a. UA is of the view that UK universities and Australian universities are substantially similar in structure and operations. The UK outcome suggests Australian universities should be similarly excluded.
  - b. Including Australian universities in the new tax legislation would impact their competitive position when compared to foreign universities.
5. Australian universities already pay income tax in other countries, where the Australian income tax exemption is not recognised. Universities do not engage in the base eroding activities that are being targeted by this legislation.
6. In previous discussions, Treasury has raised a potential concern that Australian universities may be viewed as undertaking activities that are ‘not directly related to the purposes for which they were established’ (i.e. criteria (f) in the definition of Non-profit Organisation in the Exposure Draft).

We are firmly of the view that this is not correct and, should this be tested by Australian Courts, that the existing charity common law in Australia would confirm this position. That said, leaving this uncertainty to the Courts to resolve is not appropriate, hence our submission for certainty.
7. The mission (and therefore purpose) of Australian universities as outlined by their governing documents is to pursue the purpose of advancing education, undertaking research and servicing the public interest. This purpose is recognised by the Courts as multifaceted. Given this interpretation it is unlikely universities undertake activities that are “not directly related” to the purposes for which they were established.
8. Further, UA and tax experts from UA members believe that Treasury, in raising this concern, may be misinterpreting OECD guidance on the GLoBE rules and reading the definition of ‘non-profit organisation’ far more narrowly than intended.
9. If there is a risk that the ATO assesses that UA members do not meet the definition of ‘non-profit organisation’ as a result of a trade or business that is not directly related to the purpose for which

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<sup>3</sup> See: [Universities Australia's - Submission to Tax concessions for the not-for-profit sector \(treasury.gov.au\)](#)

they were established, it would be expected that UA members could mitigate this risk by transferring the relevant activities into subsidiaries to take advantage of the “bright-line test” that is included in administrative guidance.

10. Such mitigation activity would result in additional administrative burden placed on universities, but no additional tax revenue raised by Treasury.