

5 September 2022

Assistant Secretary  
Corporate and International Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [MNETaxIntegrity@treasury.gov.au](mailto:MNETaxIntegrity@treasury.gov.au)

Dear Sir/Madam

## **Consultation Paper - Government election commitments: Multinational tax integrity and enhanced tax transparency**

Cochlear welcomes the opportunity to provide feedback on the policy issues and implementation considerations to improve multinational (MNE) tax integrity raised in the consultation paper.

We have contributed to the submission made by the Corporate Tax Association and endorse its contents as it relates to the broader range of issues raised by the government's commitments and the consultation paper. In particular, we support the 'overarching observation' that any change to Australia's tax integrity and transparency rules must be balanced and proportionate, and ensure our rules are not seen, or operate, as a handbrake on investment.

This submission focuses solely on the proposal to limit MNE deductions for payments relating to intangibles and royalties paid to low or no tax jurisdictions. Specifically, we are concerned that the paper misrepresents the availability of a preferential tax regime for intellectual property (such as a patent box) as a feature of low and non-taxing jurisdictions and an arrangement that enables MNE's to shift profits and avoid paying tax in Australia.

Including the availability of intellectual property tax preferential regimes in defining 'insufficient tax' or 'low or no tax jurisdictions' not only seems to go beyond what was suggested in the Government's election commitment but would be a further disincentive for globally mobile, knowledge-based companies to invest in Australia. This could also discourage Australian knowledge-based companies from continuing to invest locally.

As flagged in the consultation paper, OECD BEPS Action 5 introduced new rules to constrain eligibility requirements for a patent box including that these incentives can only be provided to an entity if substantial R&D activity resulting in the revenue generating IP is conducted within the jurisdiction (the 'nexus requirement'). BEPS Action 5 has helped ensure patent boxes encourage local innovation and commercialisation activities but do not have harmful effects on other countries.

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While the consultation paper suggests some patent boxes may be non-Action 5 compliant, of the more than 20 patent box regimes currently in place we are not aware of any that are not yet compliant or that have not been amended to become compliant. Further, Government should have confidence that the OECD would identify harmful or non-Action 5 tax regimes and discourage their existence. We support the CTA's view that there shouldn't be a need for Australia to develop its own rules that go beyond the scope of the work of the OECD.

Please contact Kimberley Simpson, Vice President Global Tax & Treasury at [ksimpson@cochlear.com](mailto:ksimpson@cochlear.com) if you would like to discuss Cochlear's feedback in further detail.

Yours faithfully  
**COCHLEAR LIMITED**

A handwritten signature in black ink, appearing to read 'D. Howitt', with a stylized flourish at the end.

Dig Howitt  
Chief Executive Officer and President