3 November 2022

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

Via email: contact.internationaltax@treasury.gov.au

Dear Treasury

Global agreement on corporate taxation: addressing the tax challenges arising from the digitalisation of the economy

The Australian Financial Markets Association (AFMA) represents the interests of over 125 participants in Australia's financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. They are the major providers of wholesale banking and financial market services to Australian businesses and investors.

We are pleased to lodge a submission on the Treasury Consultation Paper addressing the Australian implementation of the OECD multilateral agreement to address the tax challenges from the digitalisation of the economy (**the Consultation Paper**). AFMA is supportive of the Government legislating the commitment made at the OECD to address the taxation challenges arising from the digital economy in a manner consistent with other key jurisdictions, both in terms of timing and substantive implementation.

Executive Summary

The key aspects of AFMA's submission to the Consultation Paper are as follows:

- AFMA supports an exclusion for regulated financial services in respect of the application of the Pillar One measures on the basis as suggested by the OECD;
- Australia's adoption of the Pillar Two measures should apply to income years starting on or after 1 July 2024;
- The compliance burden arising from the adoption of the Pillar Two measures should be mitigated through appropriately calibrated safe harbours and *de minimis* exemptions; and

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- Australia should request a public statement from the OECD that a jurisdiction or regime with a tax rate in excess of the Pillar Two rate cannot meet the "low or no tax" condition.

Pillar One – Regulated Financial Services

AFMA supports the exclusion of regulated financial services from the scope of the Pillar One measures. In terms of providing clarity as to the scope of the exemption, our view is that the work undertaken by the OECD in its consultation on the regulated financial services exclusion is appropriate, insofar as the following entity types are excluded:

- Depositary institution;
- Mortgage institution;
- Investment institution;
- Insurance institution;
- Asset manager;
- Mixed financial institution;
- Regulated financial institution service entity.

As AFMA understands the OECD approach, the revenues generated by each entity that is classified as one of the above are excluded from the determination of whether the group is "in-scope" for Pillar 1, i.e. it has revenues in excess of EUR 20 billion and a profit margin above 10%. This approach is endorsed as being the basis of the regulated financial services carve-out from an Australian perspective.

Areas of Uncertainty from Pillar Two

AFMA members have highlighted the following areas as giving rise to considerable uncertainty with respect to the implementation of the Pillar One/Pillar Two measures:

- ***Inconsistent Commencement***: The potential for different commencement dates for different jurisdictions gives rise for the potential of double taxation, exacerbate the likelihood of disputes as to which jurisdiction has taxing rights and significant compliance challenges;
- ***International Consistency***: Without consistency across jurisdictions as to the definitions underpinning the calculation of the Pillar Two amount, there may be challenges from other jurisdictions as to the quantum of top-up tax payable.

AFMA understands that it is unlikely that jurisdictions such as the UK, the US and countries within the EU will be adopting the Pillar 2 measures until 1 January 2024 at the earliest and, in this context, AFMA would support a similar implementation for Australia's rules. Indeed, given that the requirements under the Pillar 2 proposals are to determine whether an entity within a jurisdiction has been taxed at a rate below the Pillar 2 rate, commencement will need to be aligned to that entity's income year, i.e. the measures to apply to income years starting on or after 1 July 2024.

This commencement timetable reflects the significant investments that will need to be made by all Significant Global Entities (**SGE**) and that such investments cannot commence until final enabling legislation is passed in the relevant jurisdictions.

As noted below, given the proposed carve-out for regulated financial services from the proposed Pillar One measures, AFMA makes no comment as to the commencement for these measures.

Design Features

The Consultation Paper enquires as to the design features that should be included in the implementation of the Pillar One/Pillar Two frameworks. AFMA notes that the substantive effect of the implementation of Pillar Two will be to require SGEs to undertake Pillar Two calculations, compared to the tax rules in the home jurisdiction, in each jurisdiction that the SGE operates. This will be a significant challenge and underpins the desirability of safe harbours/simplification measures as design features to mitigate the compliance burden - as well as an extended commencement period to income years starting on or after 1 July 2024.

A further desirable design feature could be for the development by adopting jurisdictions of templates that assist in the reconciliation of the domestic-to-GLOBE amounts on a consistent basis, thereby ensuring consistency of approach and, again, mitigating the compliance burden for SGEs.

Country-By-Country Safe Harbours

AFMA supports the formulation of country-by-country safe harbours and recommends the following from an implementation of such safe harbours perspective:

- Given that SGEs are generally required to undertake Country-By-Country (**CbC**) reporting, it makes sense to align any safe harbours to information disclosed in CbC reports;
- In particular, AFMA would endorse the suggestion from the OECD that applying effective tax rate as disclosed in the CbC reports as being the basis for computing a safe harbour effective tax rate that would remove SGEs in jurisdictions with income tax rates significantly higher than 15% from needing to undertake the detailed Pillar Two calculation;
- Additionally, AFMA would support the formulation of a *de minimis* safe harbour that would relieve SMEs with a small footprint in a particular jurisdiction from the obligation of meeting onerous compliance obligations. AFMA notes that the OECD *de minimis* exemption is crafted around revenue (EUR 10million) or income or loss (EUR 1million); both of which would disproportionately impact AFMA members, that generally operate high volume, low margin business models. Accordingly, AFMA would support a *de minimis* safe harbour based on a percentage, such as where the income in a particular jurisdictions is below a certain percentage (such as 2.5% as suggested by the OECD) of the SGE's worldwide income, given the flexibility that this would provide.

Aligning Pillar Two Rate to "Low-Or-No Tax"

AFMA takes the opportunity in this submission to reiterate its view regarding aligning the Pillar Two rate to inform a determination of what would constitute "low-or-no tax", a term that is important in many areas of international tax. In particular, AFMA's view is that a regime that has a rate of tax applying to it of 15% or higher should not be able to be considered to be a

harmful tax practice on that basis that the "low or no tax" condition that must be satisfied in order for such a determination to be made would not be satisfied.

AFMA was pleased that the Government adopted this approach in the 2022/23 October Federal Budget in its announcement to deny deductions for payments relating to intangibles held in low or no tax jurisdictions, defined as being jurisdictions with a tax rate of less than 15%.

Given this is a current area of uncertainty, AFMA would support Treasury seeking a public statement from the OECD that a jurisdiction or a regime with an effective corporate tax rate in excess of 15% could not be considered to satisfy the "low or no tax" criterion.

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Thank you for the opportunity to the Consultation Paper. Please contact me on (02) 9776 7996 or at rcolquhoun@afma.com.au to discuss any of the matters that we have raised in this submission.

Yours sincerely,

Rob Colquhoun
Director, Policy