



**Submission to Senate Economics Legislation Committee on *Major
Bank Levy Bill 2017***

15 June 2017

1. ANZ welcomes the opportunity to contribute to the Senate Economics Legislation Committee's consideration of the *Major Bank Levy Bill 2017 (Bill)*.
2. We have previously expressed our view that the levy is regrettable. It taxes specific entities and for reasons concerning profitability and market concentration that could apply to a number of industries. We have also had concerns expressed to us about its implications for political risk in Australia and ability to impact credit availability when economic growth is already under pressure. By making credit available to homeowners and businesses, Australian banks have safely and securely supported our economy's record performance to date.
3. That said, ANZ is committed to rebuilding trust with the Parliament and the community and we accept that the levy will pass into law. We greatly appreciate the pragmatic actions of the Government concerning the legislative entrenchment of the levy rate and the treatment of derivatives.
4. Our points below are offered to help the levy's finalisation, operation and future review.

First, the levy should be discontinued when the budget returns to surplus

5. One of the principal stated rationales for the levy is that it will assist in returning the Commonwealth budget to surplus. As such, we would suggest that the Bill be amended to provide that the levy will only apply until such time that the budget first returns to surplus.

Second, the levy should be consistent with international taxation principles by applying to Australian activities and excluding activities offshore

6. As proposed, we understand that the levy would:
 - Not apply to the activities of some of the world's largest banks in Australia; but
 - Would apply to Australian banks' offshore activities, including in jurisdictions where we already face bank taxation.
7. This means that Australia is declining to tax activities that occur within its borders but is taxing activities that occur outside them.
8. This approach does not align with international taxation principles concerning business profits. These state that jurisdictions have the primary right to tax profits

derived within their own jurisdictions. For example, under the double tax agreement between Australia and the United Kingdom, the United Kingdom has the primary right to tax the profits of an Australian company where those profits are made by a branch or subsidiary of the company in the United Kingdom.¹ Australia has the converse right in respect of a United Kingdom company. Under domestic tax law, Australia generally exempts the profits of an Australia company where those profits are made by a branch or subsidiary of the company in the United Kingdom (and most other non-tax haven countries).

9. While we recognise the levy is not a tax on profits and is thus outside this double tax agreement, we believe the levy should be consistent with the principle to avoid unequal tax burdens across major bank competitors and double taxation.
10. Large foreign banks in Australia compete with domestic banks primarily in the institutional markets – lending money to corporates, dealing in derivatives and providing custodial services to superannuation funds. As currently proposed, the Bill will increase major Australian bank costs relative to the costs of major foreign banks. This will help those major foreign banks win institutional market share away from locally owned businesses that employ thousands of Australians and, on behalf of their shareholders, already pay significant amounts of tax to the Commonwealth Government.
11. By applying to Australian bank liabilities in our offshore branches, the levy will also increase the costs of Australian banks that seek to compete overseas. We borrow money in offshore branches to lend to offshore institutional customers, including Australian exporters. The levy has the potential to make our services more expensive and thus less competitive.
12. Further, in applying to our offshore activities, the levy enlivens the risk of double taxation. As discussed above, ANZ's UK operations are already subject to the UK bank levy (if local liabilities exceed GBP20 billion) and will pay the UK bank profit surcharge (if taxable profits exceed GBP25 million). The Australian bank levy will sit on top of these charges.

¹ See Article 7(1) of the *Convention between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains* which states:

The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated in that other State. If the enterprise carries on business in that manner, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

13. We also note that by including the liabilities of offshore branches within the levy, the amount payable to the Government will be affected by foreign exchange movements. Offshore branches take deposits in foreign currency. The Australian dollar value of these liabilities will vary with movements in exchange rates and thus affect the levy payable.
14. Parliament could avoid these issues by ensuring the levy applies consistently to all Australian-based activities, regardless of whether they are carried out by domestic or foreign major banks, while leaving offshore activities to be taxed according to foreign laws only.
15. This approach would be consistent with the UK bank levy. This levy applies to foreign banks operating in the UK but will be amended to exclude the liabilities of UK banks' offshore branches from 2021. This amendment is occurring at the same time that the United Kingdom also introduces an income tax surcharge on the profits of banks that will partly replace the levy. Again, the profit surcharge operates consistently with principles of international taxation. In introducing these changes, the UK Government stated:

While the government considers that banks and building societies should make an additional contribution to reflect their unique risks, it recognises the need to balance this with considerations around UK competitiveness and banks' ability to support the broader economy...

and

The introduction of the profit surcharge will mean...that banks' contributions will be increasingly aligned with profit and capital accumulation, reducing the risk of tax constraining lending or influencing banks' decisions on the location of internationally mobile activities. It also means that banks' contributions will be increasingly linked to activities within the UK, helping to reduce the impact of tax on the competitiveness of UK bank's overseas operations and helping to reflect the ongoing impact of regulatory reform and resolution planning in reducing the risk of these operations to the UK economy.

...by allowing tax receipts to respond naturally to changes in bank's balance sheets and profitability, these changes will introduce stability into the banking regime and

*ensure that banks can incorporate tax into their business plans with greater certainty...*²

16. For the reasons above, we believe that the Bill should be amended to capture major foreign banks based on their group liabilities. If these exceed \$100 billion, then the levy could be payable based on the liabilities that the major foreign bank has booked within Australia. The Bill should also be amended to exclude the offshore liabilities of Australian headquartered banks.
17. These amendments would make the levy consistent with international tax principles and result in equal taxation on major bank competitors.

Third, the cumulative effect of the levy and prudential changes needs to be considered

18. To address the risk that the additive impacts of the levy and prudential changes unintentionally affect credit availability in the economy, bank soundness or financial stability, we would emphasise the importance of assessing bank regulation and the levy cognisant of the impact and operation of the other.
19. Since the crisis, Australian banks have been required to hold additional and more liquid capital. For example, ANZ has increased its common equity ratio from 4.7% in 2007 to 10.1% in 2017. This increase includes the additional 1% of higher loss absorbance capital that APRA requires domestic systemically important banks to hold. In line with APRA requirements, we have also increased the amount of capital that we hold against the home loans that we make.
20. ANZ is further adjusting its balance sheet as part its strategic priority to become a simpler, better balanced bank. This involves exiting low return and non-core businesses and reducing the reliance on low return aspects of our Institutional operations.
21. Looking ahead, we note that the Australian Prudential Regulation Authority (**APRA**) is considering its response to the Financial System Inquiry's recommendations that bank capital ratios are unquestionably strong and that banks hold additional loss absorbing capacity (known offshore as Total Loss Absorbing Capacity, or **TLAC**).

² HM Treasury *Summer Budget 2015*, 46; available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443232/50325_Summer_Budget_15_Web_Accessible.pdf

22. While we respect the conclusion of APRA that the levy does not harm its prudential policy objectives, there is interest in the cumulative impact of recent and proposed capital requirement increases, including TLAC, and the levy.
23. To give legislative comfort that assessments of cumulative impacts will occur, Parliament could amend the Bill (or the related *Treasury Laws Amendment (Major Bank Levy) Bill 2017*) to require, for example:
 - Referral of any future proposed adjustment to levy to the Council of Financial Regulators for its public advice on how the proposed adjustment interacts with other regulatory objectives; and
 - APRA to publicly consider the levy in its development or amendment of prudential standards, including by addressing the levy in any regulatory impact statement it prepares in connection with such development or amendment.
24. These changes would not go beyond what prudent policy making would entail. However, they would be a signal from Parliament to the financial markets that Australia takes the risk of adverse policy outcomes seriously.

Fourth, we have two remaining technical points

25. We appreciate the adjustments made by the Government so far. We have two remaining technical points relevant to the levy's implementation:
 - Averages versus quarter-end – While section 6(2) of the Bill allows for assessment of some liability amounts as quarterly averages, other significant liabilities, such as deposits from superannuation funds, are only assessed at quarter-end. This means that, if a superfund withdraws a deposit immediately prior to the quarter-end reporting date, the liability will not be included even if it has otherwise been on the bank's balance sheet since the start of the quarter. Conversely, banks would need to pay the levy for deposits made at the end of quarter as if they were held from the start. This will increase the effective charge on those briefly held deposits.
 - Double taxation – In addition to the point made above concerning double taxation arising due to the inclusion of offshore branches, we believe there should be a general principle that avoids double taxing liabilities. There is a risk that this could occur due to the same liabilities being taxed twice as a result of corporate structures.