

MEMORANDUM  
Date: 28 September 2021

Senator Andrew Bragg  
Chair  
Australian Senate Select Committee  
Australia

MC/2021.303.pb

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Dear Senator ~~Bragg~~, 

I would like to thank you for your letter dated 28 July 2021. I am pleased to learn that Australia is progressing with the intended replacement of the Australian Offshore Banking Unit regime (OBU), and we are grateful for the opportunity to contribute to the work undertaken by the Senate Committee in this respect.

In your letter, you outlined that one of the potential avenues being explored for replacing the OBU is a regime including the same design features as Singapore's Financial Sector Incentive scheme (FSI). As you are no doubt aware, the OECD's Base Erosion and Profit Shifting (BEPS) project includes four minimum standards to provide jurisdictions with appropriate mechanisms to protect their rightful tax bases. One of these minimum standards is the Action 5 standard, *Countering Harmful Tax Practices More Effectively Taking into Account Transparency and Substance*. The Action 5 standard is designed to address harmful tax practices that, if unaddressed through coordinated action, create a risk of unfair tax competition, undermining the level playing field and risking a "race to the bottom". The compliance of countries with the standard is ensured by the Forum on Harmful Tax Practices (FHTP). To that end, the FHTP has reviewed more than 300 tax incentives, including the Australian OBU and the Singaporean FSI.<sup>1</sup>

In case Australia were to implement a new regime with features similar to the FSI, it would need to ensure that all the FHTP's criteria are met, including the substantial activities requirements for taxpayers benefitting from the regime. This means that the core income-generating activities of such taxpayers should take place in Australia, with an adequate number of full-time qualified employees and adequate amount of operating expenditure. The regime itself and the ongoing compliance with the substantial activities requirements would then be reviewed by the FHTP.

My team in the OECD Centre for Tax Policy and Administration stands ready to assist you with any technical and policy advice required in designing a new preferential tax regime in Australia.

Kind regards, 

Mathias Cormann

Cc: Mr. Anthony Stannard, Chargé d'Affaires, Permanent Mission of Australia to the OECD

<sup>1</sup> The latest results can be found at: <https://www.oecd.org/tax/beps/beps-actions/action5/>