

Corporate Tax Association – Opening Statement: Inquiry on Government Amendments to Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023

31 January 2024

Thank you, Senators, for the opportunity to appear at today's hearing. The Corporate Tax Association represents over 150 large corporates operating in Australia. The membership covers domestic listed groups, foreign-owned groups and some large privately owned groups across all industries. The importance of the proposed thin capitalisation changes in this Bill is illustrated by the fact that they impact all CTA members. In our memory, no tax measure has raised more consternation over its consultation journey among our membership than what is currently before the Committee.

As Senators are aware, Australia has one of the most robust corporate tax systems in the world and the proposed EBITDA changes in the Bill build on that. Conceptually, the CTA and its members accept the government's desire to adopt OECD better practice on interest limitation rules, and we have been working constructively alongside the Treasury and the ATO to bring the government's commitment to fruition. There are, however, significant shortcomings with the government's current proposed policy design of these rules which will impact ordinary commercial dealings that do not present a tax integrity concern.

As Treasury noted in its submission to the inquiry, this is the fifth round of consultation on various aspects of this Bill. While this is technically correct, at no point has the Bill in its entirety been subject to holistic consultation. The length and protracted nature of consultation on this complex area of law is, in our view, attributable to the absence of a transparent, holistic consultation process.

Instead, the Bill has been subject to the following:

- An absence of consultation on significant changes to the original Bill (including the proposed Debt Deduction Creation Rule (DDCR)) that were not part of either the initial government proposal or the government's election commitment which resulted in the initial position on the DDCR (and other positions such as the third party debt test and shared excess EBITDA capacity) being akin to an ambit claim.
- Bespoke confidential sector-specific interactions on the Bill throughout the consultation phases, which meant no external party had a full appreciation of all issues that were being raised.
- Confidential consultation meetings on aspects of the Bill without provision of the proposed drafting to review.
- No inclusion of examples in the Explanatory Memorandum of the types of transactions which the DDCR in particular is concerned with so taxpayers and the ATO know the practical parameters of the measure as early as possible.

This approach has resulted in each revised version of the proposed legislation being subject to further change. All of these changes – which are complex and far-reaching – have led to

slippage in the delivery of a workable piece of draft law to meet the proposed 1 July 2023 start date.

Whilst we understand and acknowledge the government's election commitment to raise revenue from this measure, even with the most recent iteration of the proposed DDCR, genuine commercial transactions with no tax integrity concerns will be negatively impacted.

We are of the view that the proposed government amendments to the Bill would greatly benefit from relatively minor adjustments that would balance the government's election commitment with achieving sound tax policy.

Acting on the recommendations made in our submission will simply ensure that Australian outbound groups expanding offshore and inbound groups investing in critical capital-deepening activities in Australia are not unduly impacted whilst ensuring tax integrity concerns are dealt with appropriately.

We thank you for your time today and welcome the opportunity to appear and discuss our recommendations. We are more than happy to take your questions.