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Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Committee members

I refer to the Senate Economics Legislation Committee's call for submissions on the Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 ("the Bill") on 17 September 2015.

In response to the request, GlaxoSmithKline Australia Pty Ltd ("GSK Australia") offers this letter as our submission on the Bill and its likely impact on business and the economy. References to GSK are to the GlaxoSmithKline group of companies.

Background

GSK has a substantial business and employment presence in many countries around the globe. We look to align our investment strategies to those countries where we have substantial economic activity, where there is an appropriately skilled workforce and where government policies promote tax regimes which are attractive to business investment, for example research and development ("R&D") tax credit and patent box regimes. We have a substantial local business presence in the majority of territories where we operate, making an economic contribution to these economies through both corporate and other business taxes paid, in addition to providing local employment and investment.

Further details about GSK's corporate tax charges for each year are set out in the corresponding year's Annual Report.

We seek to maintain open, positive relationships with governments and tax authorities worldwide. Where appropriate, this means the group has entered into arrangements such as Continuous Audit Programmes and Advance Pricing Agreements ("APA"). An example of this is the unilateral APA between GSK Australia and the Australian Taxation Office ("ATO") covering the period 1 January 2012 to 31 December 2016 setting out agreed arm's length pricing for all significant cross-border related party transactions in our supply chain. With such a complex globally integrated business, where IP and value creation can be spread across multiple country and tax jurisdictions, such arrangements with a number of tax authorities provide transparency, structure and certainty to the process. We report to the ATO annually on this with lodgement of our annual compliance report.

GSK's business in Australia primarily consists of the sales, marketing and distribution of GSK's pharmaceutical products. GSK Australia also performs some manufacturing activities at various sites located in Victoria and New South Wales, and undertakes some local clinical trials.

GSK Australia pays corporate income tax and other business taxes on all of its activities. In addition, GSK makes a significant contribution to the wider Australian economy through the provision of approximately 1,500 skilled jobs across the country, expenditure on locally sourced materials used in the manufacturing process (such as packaging components) and local investment in sites and equipment.

Terms of reference:

Schedule 1 – Significant global entities

GSK Australia considers the threshold test being set at an 'annual global income' of AUD\$1 billion or more is an acceptable level at which the measures should apply.

Given 'global financial statements' will or may be denominated in a foreign currency, the application of an average exchange rate for the relevant period to convert the foreign currency to Australian dollars is an acceptable method of translation. It is important that the compliance burden for taxpayers is minimised and that the ATO publishes relevant average exchange rates regularly to enable taxpayers to comply with the proposed law.

Schedule 2 – Multinational tax avoidance

It is our view that Australia has a comprehensive and well designed tax system. It is a strong principles-based system that is aligned with international best practice. The incorporation of strong anti-avoidance rules, modern and comprehensive transfer pricing rules, thin capitalisation and Controlled Foreign Company ("CFC") rules prevent multinational enterprises from inappropriately shifting profits offshore and ensure a robust tax system that is internationally respected.

The international business landscape has changed over the years and international tax rules may need amending to reflect this. We support the aims of the OECD's Base Erosion and Profit Shifting ("BEPS") project in acknowledging and addressing this. We believe that pursuing reform through international channels in this way, and remaining consistent with the established international consensus, is the most efficient way to achieve effective reform on a global basis. We would argue that Australia should not go alone in implementing any rules which may not be consistent with the OECD's broader framework as this would risk creating double taxation under existing rules and principles.

Schedule 3 – Scheme penalties for significant global entities

In principle, GSK Australia welcomes and supports the implementation of a stricter penalty regime for those taxpayers found to have contravened Australia's anti-avoidance provisions. However, increasing penalties makes it even more important that these rules are clear in their scope and application, which is best achieved by consistency with the broader principles of the OECD.

4) Schedule 4 – Country-by-country reporting

We support the OECD's efforts on Action 13 of the BEPS Project to agree a template and mechanism for the disclosure to tax authorities of relevant tax information on transfer pricing and country-by-country-reporting ("CBC Reporting"). GSK Australia supports the proposed introduction of the CBC reporting rules in the Bill as being aligned with the OECD's BEPS approach.

Under existing Australian taxation rules there are various requirements to prepare and maintain significant transfer pricing reports and documentation (e.g. annual disclosure on the International Dealings Schedule, annual transfer pricing documentation, transfer pricing functional analysis, transfer pricing benchmarking studies and Annual Compliance Reports under an APA). Adding an additional layer of transfer pricing documentation to the existing requirements significantly increases the compliance burden on Australian taxpayers. We recommend that the existing transfer pricing rules be closely examined to align them with the CBC Reporting rules to reduce the existing transfer pricing documentation requirements to ensure there is no duplication with the new proposed rules.

Finally, the existing transfer pricing rules permit the ATO to enter into an APA with taxpayers. In an effort to reduce the compliance burden on taxpayers we recommend that an exemption from the proposed CBC Reporting rules be implemented for those taxpayers with a valid APA, by at least exempting the requirement for the provision of a Local file.

Yours sincerely

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GlaxoSmithKline Australia Pty Ltd