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Global and domestic minimum taxes: Interactions with other Australian tax laws

The Property Council of Australia welcomes the opportunity to provide a submission on *Global and domestic minimum taxes: Interactions with other Australian Laws* consultation paper. The Property Council of Australia champions our largest industry, employing over 1.4 million Australians, contributing 18 per cent of our national tax take and shaping the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

The Property Council remains concerned that blanket introduction of the OECD two-pillar approach to address the digitalisation of the economy will negatively impact tax functions of multinational entities. The changes will significantly increase compliance obligations, impact legal structures, and force multinational enterprises (MNEs) to source data that might be difficult to obtain adding to compliance costs. This in turn will be passed onto the end purchaser/user at a time when housing affordability is at the forefront of Australian households.

Noting financial statement disclosure obligations are already in effect, and the need to develop and implement new processes to meet extensive Pillar Two compliance obligations in coming years, the impact on Australian businesses will truly be felt.

With the current requirement for private country by country tax reporting remaining an issue, the Property Council remains concerned as of 1 July public reporting will be mandated as introduced by the legislation. On top of this, the government planning to bring in Pillar Two which will require additional reporting on country-by-country taxation. These measures result in regulation on regulation, on additional regulation.

Legislation like this is not implemented in isolation. No taxation measure is taken individually by corporations with this proposal the latest in a long line of regulatory cost that will impact the delivery of 1.2 million homes in the next five years. There is no coincidence that State and Territory Governments are announcing they will not make their individual housing targets. Housing is hit by a glut of tax changes that inhibit delivery of housing. Government policy impeding housing delivery include some listed below;

- Thin Capitalisation
- Foreign Investor Surcharging
- Your Future, Your Super
- Foreign Investor Surcharging
- Exemption Certificates no longer valid

- State taxes
- Local government charges

The Property Council remains concerned compliance costs for Australian multinational businesses are expected to be significant. This will be driven by a number of changes that are expected to be required to existing systems and processes including but not limited to:

- Establishment of internal committees to manage the implementation process
- Changes/incorporation of Pillar Two into governance systems
- Modifications to systems that will be necessary to identify and extract data
- Creation of new calculation processes specifically for GloBE rules and integrations back into existing systems
- Creation of new systems including data warehousing to enable tracking and retrieval of GloBE specific computations, such as recast deferred taxes
- Expansion of training programs and recruitment processes to create resource capability for ongoing compliance activities including GloBE computation and GloBE filings
- Greater reliance on legal advisers (internal or external) to accommodate potential rise in international tax controversy
- Increase in due diligence and development of deal processes to manage new tax risks arising under Pillar Two in mergers and acquisitions context

Safe harbours should assist in minimising some of the ongoing costs of compliance, particularly with respect to the need for detailed GloBE calculations. That is, if safe harbours can be agreed to only require detailed GloBE calculations for those entities / jurisdictions at risk of giving rise to a top up tax liability. This will facilitate a reduction in the information and data collection workload. A specified list of 'safe' countries would be very helpful in this regard.

However, the initial setup of new systems and processes is likely to be required regardless of safe harbours and if significant adjustments to existing information are required to comply with a safe harbour, this will clearly diminish the ongoing compliance savings. Standardisation of filing requirements will be an essential requirement to ensure compliance costs are not duplicated across multiple jurisdictions and we recommend that consistency in global reporting is therefore essential to minimising compliance costs.

The significant issues raised from Pillar Two is that it reduces the ability of Australia offering income-based incentives to attract investment in property. The latest work on Multinational Base Erosion and Profit Shifting (BEPS) OECD legislation on Thin Capitalisation was designed to target multinationals that are not paying their fair share of tax. A policy intention that the Property Council supports but reiterates these BEPS activities are not actions that our members across the property industry use or abuse.

The Property Council and our members wish to highlight two key areas that need additional guidance, given their importance to how Pillar Two rules apply to real estate investments generally and stapled groups:

1. Investment Fund and Real Estate Investment Vehicle definitions

Investment funds and Real Estate Investment Vehicles are excluded from Pillar 2. While section 27 of Exposure Draft of the Primary Legislation includes definitions of "Investment Fund" and "Real Estate Investment Vehicle" that broadly accord with the OECD Pillar 2 model rules, there is no real guidance on how these definitions apply in the context of Australian regulation of Investment Funds and Real Estate Investment Vehicles. Confirmation that typical Australian investment entities (such as AMITs, MITs, CCIVs and MISs) are either Investment Funds or Real Estate Investment Vehicles would be helpful.

2. Stapled groups

Confirmation that the OECD approach for Multi-Parented MNE Groups will be adopted under the Australian Pillar 2 legislation and EM would be very helpful, in particular confirming that where a stapled entity is an Investment Fund or a Real Estate Investment Vehicle, it would be an excluded entity for the purposes of

Pillar 2, whereas other stapled entities that are not Investment Funds or Real Estate Investment Vehicles would be required to apply the Pillar 2 rules.

Conclusion

Following the passage of the Government Amendments to Treasury Laws amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023, the Property Council believes that Pillar Two legislation is regulation on regulation. The protection government now has to ensure multinational organisations pay their fair share of tax in Australia is sufficient legislation to safeguard Australian tax revenue. We remain committed to working with Treasury in good faith to ensure that the outcome does not hinder investment into the new homes Australia needs.

If you have any questions, please contact Matthew Wales, Policy Manager – Tax and Foreign Investment, at MWales@propertycouncil.com.au or on 0451 146 886.

Yours faithfully



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