Corporate Tax Association

Level 11, 455 Bourke Street
Melbourne, 3000

Tel: (03) 96004411
admin@corptax.com.au

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Mr Marty Robinson
First Assistant Secretary
Corporate and International Tax Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email: contact.internationaltax@treasury.gov.au

Dear Marty,

Global and Domestic Minimum Tax – Subordinate Legislation and Explanatory Statement

As a representative of over 150 large corporates that operate across 22 industries, the Corporate Tax Association (**CTA**) welcomes the opportunity to provide further commentary and recommendations regarding Australia's implementation of the OECD Pillar Two Model Rules (**Model Rules**). We acknowledge the importance of the OECD in its role as a multilateral forum for progressing changes to global tax laws and Australia's ongoing support and commitment to implementing these rules in our domestic legislation.

To support Australia's implementation, we have made some observations and recommendations in our submission contained in **Attachment A** to this letter. In our view, the most efficient way to assist Treasury with the consultation on the Subordinate Legislation and Explanatory Statement is to focus on key areas that require further detailed examination by Treasury rather than providing feedback on each individual provision.

We understand that a large focus of the design of the Australian Rules has been to align as closely as statutorily possible with the Model Rules. We acknowledge Treasury's diligence throughout this process to ensure consistency with the Model Rules. It should also be recognised that Australia's inclusion of the Model Rules in our statutory framework must strike an appropriate balance between the minimal revenue estimated to be collected under these provisions and the compliance cost impost on large corporates and the ATO.

We observe that the Model Rules were designed to apply in a global environment. As such, the Model Rules cannot take into account all the nuances of domestic tax laws around the world. This is why the OECD has emphasised taking a 'common approach' to the adoption of Pillar Two and where implemented, should be administered in a way that "is consistent with the Model Rules".

These phrases and reference paragraphs are used repeatedly throughout the Model Rules and Administrative Guidance and have been relied upon by other jurisdictions where minor deviations from the Model Rules have occurred to ensure the Rules account for domestic nuances. We understand that countries including Belgium, Croatia, France, Germany, Greece, Hungary, Netherlands, Romania, Slovenia, Spain and Switzerland have used this flexibility to adapt the QDMTT to fit within their domestic frameworks whilst not disturbing the intent of the Model Rules.

In our view, the Pillar Two framework does provide a degree of flexibility to adapt the Model Rules on a 'needs' basis. We submit that some adaptation is needed in an Australian context to ensure the Model Rules can operate harmoniously alongside Australia's domestic law without disturbing the intent and outcomes sought under the Model Rules. One such example is the proper incorporation of Australia's tax consolidation regime (including Multiple Entry Consolidated (**MEC**) Groups).

This can be supported by the development of a comparison table that compares the Articles from the Model Rules to the provisions in the Australian Rules and appropriately explains alterations in language, divergences from the Model Rules, and reasoning as to why divergences in defining terms or legislative structure have occurred. Such a table would underpin qualification in the formative years where this process is likely to be self-assessed by some jurisdictions as the OECD works through over 100 assessments. It would also provide comfort to external auditors in completing their review of the Financial Statement Disclosures that will be required by corporates (see below) for their year-end reporting, particularly for those with a 31 December 2024 year-end.

We would welcome the opportunity to discuss this matter with you further. Should you have any questions or if you wish to arrange a meeting to discuss this matter, please do not hesitate to contact me at sstaples@corptax.com.au or Stephanie Caredes at scaredes@corptax.com.au.

Yours sincerely,

Simon Staples
Assistant Director

Attachment A –

Corporate Tax Association Submission: Global and Domestic Minimum Tax – Subordinate Legislation and Explanatory Statement

Commonly used terms in this submission

Abbreviation	Refers to
The **Imposition Bill**	Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024.
The **Assessment Bill**	Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024.
The **Consequential Bill**	Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Bill 2024.
The **Explanatory Materials**	Exposure Draft Explanatory Materials for the Imposition Bill, Assessment Bill, and Consequential Bill.
The **Rules**	Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024.
The **Explanatory Statement**	Explanatory Statement for the Rules.
The **Australian Rules**	Imposition Bill, Assessment Bill, Consequential Bill, Explanatory Materials, Rules and Explanatory Statement.
The **Model Rules**	OECD Global Anti-Base Erosion Model Rules (Pillar Two), administrative guidance, and associated commentary.
The **ITAA 1936**	Income Tax Assessment Act 1936.
The **ITAA 1997**	Income Tax Assessment Act 1997.
The **TAA 1953**	Tax Administration Act 1953.

Technical Amendments to the Subordinate Legislation

Implementation of permanent safe harbours

We recommend that Treasury work with the OECD Inclusive Framework to give priority to implementing permanent safe harbours to provide in-scope MNE groups with greater certainty on the degree of Pillar Two compliance that will be required following the end of the availability of the Transitional Country by Country Reporting (CbCR) Safe Harbour. As a starting point, we recommend that the OECD consider keeping the Transitional CbCR Safe Harbour as a permanent safe harbour or at least extend the period of the Transitional CbCR Safe Harbour for at least another two financial years given the different pace at which countries are announcing and implementing Pillar Two into their domestic law.

While less preferable, an alternative would be to implement the Simplified Calculations Safe Harbour which was outlined in the OECD's guidance document "Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)" issued on 15 December 2022.

The "Simplified Calculations Safe Harbour Framework" is slated to be included as part of agreed administrative guidance to be issued at a later date. MNE groups that have constituent entities in jurisdictions that operate under a high statutory corporate tax rate regime of at least 25% should pass the "effective tax rate" test, which is one of the three available simplified calculations.

We recommend that Treasury engage with the OECD to work through a suitable solution for a permanent safe harbour. In our view, keeping the Transitional CbCR Safe Harbour as a permanent fixture in the Pillar Two regime would be appropriate and efficient, and still achieve the Pillar Two objectives.

Ensure Australia's tax consolidation rules are appropriately reflected in the Australian Rules

We understand that a large focus of the design of the Australian Rules has been to align as closely as statutorily possible with the Model Rules. That said, the approach has not taken into consideration the flexibility of adapting the Model Rules so that they operate harmoniously with Australia's domestic tax laws without disturbing the intent and outcomes sought under the Model Rules.

Administrative Guidance published in February 2023 indicates that the "QDMTT[1] must be consistent with the design of the GloBE rules" and there is an acknowledgement that some degree of customisation in each jurisdiction is expected where it can be justified in the context of the jurisdiction's domestic tax laws. In our view, taking an approach that is consistent with the GloBE Rules focuses on the outcome of the application of the GloBE Rules rather than on the administrative machinery that supports the outcome. Many jurisdictions have taken the opportunity to make minor adjustments as needed.

This approach should be adopted having regard to Australia's tax consolidation rules. Incorporating tax consolidation, in our view, would not deviate from the OECD's position on a 'common approach'

[1] Qualifying Domestic Minimum Top-up Tax

to the Model Rules and ensuring that is administered in a way that ‘is consistent with the Model Rules’.

In our view, the OECD does provide a sufficient degree of flexibility to adapt the Model Rules on a ‘needs’ basis. We submit that some adaptation is needed in an Australian context to ensure the Model Rules can operate harmoniously with Australia’s domestic law without disturbing the intent and outcomes sought under the Model Rules.

MEC groups should be incorporated into the Australian rules

Subdivision 127-C GloBE Consolidated Groups in the Consequential Bill provides an administrative collection mechanism for the collection of the GloBE Top-Up Tax amount and the Domestic Top-Up Tax amount, imposing the obligation on the Head Company of the ‘consolidated group’. The group is deemed a GloBE Consolidated Group. The term ‘consolidated group’ takes its meaning from the ITAA 1997. As a priority, it is important that Treasury clearly outline how the Australian Rules will apply to a Multiple Entry Consolidated (MEC) group which is different from a consolidated group.

We suggest that the administrative collection mechanism be also made available to a MEC group with further consideration being given to including all Australian entities within a Pillar Two group subject to the Australian DMT.

For the various tests under the Transitional CbCR Safe Harbours, the rules need to be broad enough to enable MNE Groups with complex corporate group structures to access the Safe Harbours (i.e., an MNE Group made up of multiple MEC groups or consolidated groups with non-consolidated CEs). Such group structures may have multiple sets of accounts with multiple CbCRs that need to be combined to determine an MNE Group’s Total Revenue and Profit (Loss) before Income Tax and Simplified ETR.

Concessions for consolidated groups including MEC groups

Treasury will need to work with the OECD to make amendments to the administrative concessions for tax consolidated groups because there are currently flaws in the OECD guidance. For example, administrative guidance on the GIR provides an administrative concession for tax consolidated groups enabling such groups to be treated as a single constituent entity for GloBE purposes.[2]

There is no common approach among Australian tax consolidated groups to tax compliance calculations. Some use a bottom-up approach to calculations, whilst others use consolidated tax calculations and consolidated accounting profit before tax calculations (the concession requires a distinctly different aggregation). Furthermore, the concession does not apply to Australian MEC Groups since it requires that “all consolidated entities are wholly owned by the consolidating entity”. In MEC Groups, all of the entities may not be wholly owned by the consolidating entity (the entity reporting the consolidated tax position) but rather, by a foreign entity that may indirectly own members of the MEC Group through different ownership chains. It is also problematic as there will likely be differences between tax consolidated groups and accounting consolidated groups.

[2] Page 25, OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris, www.oecd.org/tax/beps/globe-information-return-pillar-two.pdf.

Extension of administrative simplifications to differences between Pillar Two and accounting groups

We are seeking Treasury's consideration as to whether it is still possible for an Australian Pillar Two Group to access the administrative simplifications where the Australian Pillar Two Group is not identical to the Australian tax consolidated group. In our view, it would appear that administrative simplicity is extended although it is unclear as to whether this is only possible where you make a GloBE consolidation election.

Use of local financial accounts

The Domestic Top-up Tax refers to the use of local financial accounting standards (section 2-35 of the Rules) and local currency (section 2-40 of the Rules). In our view, this would appear to be inconsistent with paragraph 3.4 of the Explanatory Statement, and it is unclear as to why Treasury has included these provisions in the Australian Rules.

We recommend that taxpayers should be able to use the Ultimate Parent Entity's financial statements and currency under the QDMTT with an ability to take into account elimination accounts if they are consistently / reliably traced to a specific Constituent Entity so to be consistent with the Income Inclusion Rule (**IIR**).

Australian-headquartered MNEs will prepare their calculations based on local financial accounting standards so it would seem unnecessary to include this specific requirement.

Further, many MNEs with foreign Ultimate Parent Entities have already commenced building global solutions to address the required compliance needs of the implementation of the OECD Pillar Two Model Rules across multiple jurisdictions. Requiring these groups to modify or build bespoke systems to undertake the Domestic Top-up Tax calculations using local financial accounts adds an unnecessary additional compliance burden on taxpayers for a regime that the Government recognises will generate minimal revenue.

As such, we recommend that sections 2-35 and 2-40 be removed.

Foreign currency translation

Given the complexities involved in the application of the foreign currency translation provisions, examples should be provided to explain the application of "Asymmetric Foreign Currency Gains or Losses" in the Explanatory Statement. As part of these examples, we think that it would also be beneficial if Treasury (and the ATO) indicate that where unintended permanent differences arise as a result of top-up tax being paid under the QDMTT, these permanent differences should be disregarded.

We note that the July 2023 Tranche of administrative guidance provides some commentary on foreign currency translation and that more guidance is expected. Further consideration should also be given to the administrative impacts of adjustments that may need to be made after an impacted entity has lodged an Australian GIR, DMT Return, and where relevant, a GIR prior to updated OECD administrative guidance being released.

Incorporating all existing elections into the Rules

We recommend that all elections present in the OECD Administrative Guidance be incorporated into the Rules. Whilst we recognise that the Assessment Bill provides the framework for incorporating Administrative Guidance into the interpretation of the Rules, we recommend that the Rules expressly incorporate all elections available to Constituent Entities at the time of writing. This approach has been taken in other drafting, particularly where you cannot simply rely on the language of the Rules.

Whilst some of these elections are listed in the Explanatory Statement, we are of the view that where possible, all listed elections in the Administrative Guidance at the time of writing should be included expressly within the Rules. One such example includes the hedging election which appears in paragraphs 3.103 to 3.105 of the Explanatory Statement.

Section 6-55 Acquisition or disposal taxed as an asset sale

We are seeking confirmation from Treasury that section 6-55 allows for tax consolidation push-down to occur where a controlling interest is acquired in a Constituent Entity regardless of whether the acquired Constituent Entity was previously part of a tax consolidated group.

Based on our current reading of the provisions, it is not clear that this usual consolidation process can occur. That is, under the Australian tax consolidation rules, the buyer can 'push down' the share purchase consideration to the tax bases of the assets of all Acquired Entities **regardless** of the tax profile of the seller.

Therefore, such treatment should also be permitted under the Model Rules in all circumstances (regardless of the tax profile of the seller). In our view, such treatment would not deviate from the OECD's position on a 'common approach' to the Model Rules.

Foreign exchange impacts on revaluation of equity investments

We observe that from an accounting perspective, foreign exchange gains or losses are neither fair value gains/losses, nor are they an amount included under the equity method of accounting. The accounting treatment of foreign exchange gains/losses is governed by a separate accounting standard, AASB 121.

Section 2.2 of the February 2023 Administrative Guidance introduced a 5-year Net Investment in a Foreign Operation (NIFO) hedging election which provides for a net investment hedge to be treated as an excluded equity gain/loss, to "follow the treatment of the investment it is hedging". Paragraph 2.2.3 states (emphasis added):

> *8. The following guidance will replace paragraph 57 of the Commentary to Art. 3.2.1:*
>
> > *57.1. MNE Groups commonly hedge foreign currency movements in Ownership Interests in Constituent Entities. The hedged risk, in particular, is the foreign currency exposure arising between the functional currency of the Constituent Entity in which a Parent Entity holds an Ownership Interest and the functional currency of the Parent Entity. Under Acceptable*

Financial Accounting Standards, foreign exchange gains or losses on hedging instruments that are determined to be an effective hedge of the currency risk attributable to a net investment in a foreign operation (a net investment hedge) are recognised in other comprehensive income at the level of the Consolidated Financial Statements.

57.2. ***The treatment of a net investment hedge should follow the treatment of the investment it is hedging. Therefore, a Filing Constituent Entity may make a Five-Year Election to treat foreign exchange gains or losses reflected in a Constituent Entity's Financial Accounting Net Income or Loss as also an Excluded Equity Gain or Loss for the purposes of Article 3.2.1(c) to the extent that:***

> ***(a) such foreign exchange gains or losses are attributable to hedging instruments that hedge the currency risk in Ownership Interests other than Portfolio Shareholdings;***
>
> ***(b) such gain or loss is recognised in other comprehensive income at the level of the Consolidated Financial Statements; and (c) the hedging instrument is considered an effective hedge under the Authorised Financial Accounting Standard used in the preparation of the Consolidated Financial Statements. As a consequence, any taxes arising on the foreign exchange gains described in the preceding sentence shall be treated as a reduction to Covered Taxes under Article 4.1.3 (a).***

The item which a net investment hedge is hedging is the foreign exchange movement arising from the value of the relevant Ownership Interest, as explained in paragraph 2.2.2 (emphasis added):

> 4. MNE Groups commonly hedge foreign currency risks arising from their net investments in foreign operations where the Entity's activities are conducted in a currency other than the functional currency of the parent entity. The hedged risk, in particular, is the foreign currency exposure arising between the functional currency of the foreign operation and the functional currency of any Parent Entity (UPE, Intermediate Parent Entity or Partially-Owned Parent Entity) of that foreign operation. A derivative or nonderivative instrument in the currency of the foreign operation is generally designated as a hedging instrument in a hedge of the net investment in the foreign operation. ***Therefore, gain or loss in the value of the Ownership Interest (in the foreign operation) based on the foreign exchange movement between the functional currency of the Parent Entity and the functional currency of the foreign operation should be offset (in whole or in part) by an opposite gain or loss in the value of the derivative or non-derivative instrument.***

Therefore, further consideration by Treasury is required regarding the symmetry intended by treating NIFO hedging gains/losses as excluded equity gains/losses that can only be achieved if the foreign exchange movements in respect of the underlying Ownership Interests are treated as excluded equity gains/losses. In our view, this should clearly be articulated in the Rules and Explanatory Statement.

<u>Impairment of ownership interests</u>

We observe that there appears to be a gap in the drafting of the Rules with respect to impairments of Ownership interests that requires further attention by Treasury.

The February 2023 Administrative Guidance included the following sentence at 2.9.1.2 (emphasis added):

> *“Similarly, gains and losses on the disposition of an Ownership Interest other than a Portfolio Shareholding and changes in the carrying value of an Ownership Interest other than a Portfolio Shareholding due to fair value accounting **or impairment** are removed from the owner’s GloBE Income or Loss computation irrespective of whether they are included in the owner’s taxable income computation.”*

In our view, the highlighted language confirms the intention for impairments with respect to Ownership interests to be excluded losses for Pillar Two purposes but note that the definition of excluded equity gains or losses does not strictly include such items. This is reflected in Article 3.2.1(c) of the Model Rules which excludes:

a) “Gains and losses from changes in fair value of an Ownership Interest, except for a Portfolio Shareholding;
b) Profit or loss in respect of an Ownership Interest included under the equity method of accounting; and
c) Gains and losses from disposition of an Ownership Interest, except for the disposition of a Portfolio Shareholding.”

An impairment is not strictly under the accounting standards a fair value method of accounting nor an equity method of accounting, so it is excluded from both items a) or b). Therefore, the administrative guidance fundamentally alters the interpretation of the Model Rules.

For this reason, we consider that the Subordinate Legislation should clearly articulate that impairments of Ownership interests are excluded for Pillar Two purposes, noting that the general provision that the rules should be interpreted by the Model Rules is arguably not enough in situations where the administrative guidance changes the meaning of the underlying Model Rules.

Interaction between deferred tax assets (DTA) from secondary taxes

We observe that there is a significant, unresolved issue with how the rules relating to recasting DTA’s interact with secondary taxes such as the Petroleum Resource Rent Tax (**PRRT**).

Specifically, recasting DTAs from secondary taxes in Adjusted Covered Taxes can cause unintended, adverse outcomes through a distortion of the GloBE ETR. For example, indexation on carry forward non-deductible expenditure for PRRT purposes, or other similar regimes, may cause top up tax due to the quantum of historic expenditure balances (unrecognised for accounting), notwithstanding an entity’s GloBE ETR may be above 15% when calculated solely on primary taxes (i.e. corporate income tax). This would result in an entity being taxed at an effective rate of higher than 30% in some circumstances.

We understand that Treasury is seeking to align as closely as possible with the OECD rules and guidance. However, the result of the interaction of these rules with secondary taxes is inconsistent with the intent and outcomes sought under the Model Rules. We request that Treasury provide further information and guidance on this issue and confirm that recasting of DTAs in these circumstances is not required. Further clarification on this issue from the OECD is also warranted.

Definition of 'Qualified Financial Statement' (QFS)

We observe that the definition of QFS included in s8-60(1) of the Rules appears to exclude subparagraph (c) of the OECD definition in the Model Rules which we understand as being replicated in the Australian Rules (refer to the 'Safe Harbours and Penalty Relief' publication, page 8).

This exclusion appears to be an error given that paragraph 8.39 of the Explanatory Statement describes the effect of subparagraph (c) which is consistent with the OECD definition and makes reference to s8-60(1)(c) as if it should exist.

QDMTT safe harbour

We observe that section 8-145 of the Subordinate Legislation specifies that the Minister must specify by legislative instrument that a QDMTT has QDMTT Safe Harbour status. We understand that passing a legislative instrument will take some time. We seek clarity from Treasury regarding the time it may take for a legislative instrument to be put in place and what taxpayers should do in the interim until the legislative instrument providing safe harbour status for a particular country's QDMTT comes into force. This will particularly be an issue in the initial years of this regime, especially where taxpayers may fail the transitional safe harbour and therefore seek to rely on the QDMTT safe harbour.

QDMTT switch-off rule

We observe that section 8-155 of the Subordinate Legislation appears to be jurisdiction-specific, whereas the examples in the Agreed Administrative Guidance July 2023 are more principles-based. Perhaps some commentary can be included in the EM to specify that the switch-off rule does not necessarily apply to a whole jurisdiction and include some qualifications as to how it will apply. Otherwise, the Minister appears to have broad discretion when the rule may be applied potentially more than that envisaged in the Model Rules.

Implementation and Administrative Simplification

With the Australian Rules applying to over 5000 entities but around 140 entities potentially being liable to top up tax, the implementation and administration of this measure should occur in such a way that ATO and taxpayer resourcing and compliance costs arising from the measure are not disproportionate to the revenue that this measure is expected to raise. As such, we are providing some further commentary to Treasury and the ATO that we think can support the efficient and effective implementation and administration of the Australian Rules.

Consolidated DMT Return

We observe that significant administrative savings could be delivered through how the Domestic Minimum Tax (**DMT**) Return is lodged. Our current reading of the Australian Rules suggests that one DMT return may need to be lodged per Constituent Entity located in Australia, even where this Constituent Entity forms part of a tax consolidated group (including a MEC group) or Australian accounting group.

Further consideration must be given to allowing for a consolidated DMT return to be lodged by the Designated Local Entity covering all Constituent Entities where the Designated Local Entity is the head company of an accounting, tax consolidated or MEC group. In our view, this approach would provide considerable administrative savings to both the ATO and taxpayers and would not put at risk Australia's ability to have a qualifying regime.

This approach is also further supported in the GloBE Information Return (GIR) Guidance where a permanent concession exists. It notes that tax consolidated groups can be treated as a single Constituent Entity for the GloBE Effective Tax Rate calculations and GIR disclosures if an election is made (and the criteria are met). [3]

Whilst we observe that Australian tax consolidated groups would not technically meet the first criterion because the taxable profits and losses are consolidated and not aggregated (this has been pointed out to the OECD), in our view the administrative framework is there to promote administrative simplicity. It is similarly used in Subdivision 127-C of the Consequential Bill which confers payment obligations on the head entity, and conferring lodgement obligations on the head entity can be supported in this manner.

Alternatively, the Rules and Assessment Bill should appropriately allow for a consolidated approach to lodgement. This may take the form of one DMT Return that sufficiently captures each Constituent Entity's liabilities (or nil) under the Australian Rules and can be supported by consolidated working papers.

This approach provides a level of consistency with current tax consolidation lodgement obligations in Australia and would avoid duplication where a group operates with more than one entry point or other like structures, minimising any additional resourcing pressures to meet these new compliance requirements. It also doesn't detract from the Pillar Two policy rationale for separate returns, as there are no domestic transfer pricing/value-shifting concerns within a consolidated group.

[3] Page 25, OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris, www.oecd.org/tax/beps/globe-information-return-pillar-two.pdf.

We do not think that these proposed approaches would put at risk Australia's qualification given that the Administrative Guidance published in February 2023 noted that the "QDMTT must be consistent with the design of the GloBE rules". We see this as an acknowledgement that some degree of customisation in each jurisdiction is expected where it can be justified in the context of the jurisdiction's domestic tax laws. That is, the focus of the Australian rules should be on whether a Constituent Entity will be liable to top-up tax in a particular jurisdiction rather than focusing on the administrative machinery that supports the outcome.

DMT Returns for dormant entities

Further to the above, our reading of the Consequential Bill is that a DMT Return will be required for each Constituent Entity whether they are active or dormant. We recommend that Treasury include the legislative mechanisms to provide the Commissioner with the power to disregard lodgement obligations for dormant Constituent Entities being required to lodge a DMT return or where possible, not be included in a consolidated DMT Return.

In the absence of a consolidated DMT Return (see above) that incorporates all Constituent Entities where the Designated Local Entity is the head company of a consolidated or MEC group, it is recommended that Treasury provide a legislative mechanism that ensures dormant entities are excluded from being required to lodge a DMT Return.

Lodgements of DMT Returns by Unincorporated Joint Ventures

As we noted in our submission dated 17 April 2024, further guidance in the Explanatory Materials is needed about the practical application of section 127-15(6) in the Consequential Bill. Our interpretation of the guidance in the Explanatory Materials suggests that unincorporated Joint Venture (**UJV**) participants will be required to jointly lodge a DMT Return for that UJV in its own capacity.

We observe that UJVs are not normally subject to the Australian Rules in their own capacity, and so all reporting obligations will be ceded up to the Ultimate Parent Entity's tax return, with the profits simply included in each participant's accounts per IFRS 11. That is, they are not equity accounted. Similarly, for income tax purposes, a UJV is not required to lodge an income tax return as the relevant information is reflected in each UJV participant's tax return.

We also note that UJVs don't hold assets, receive income jointly, or pay income tax, but rather the individual joint venturers do. As a consequence, there will be no income or expense with DMT being nil in any event.

As such, we recommend that the Designated Local Entity for the main group should have the option of lodging the DMT Return on behalf of the UJV, along with all the other returns within its purview. This could be achieved in a similar manner to which we are seeking for dormant Constituent Entities to be excluded from DMT lodgement obligations.

Consideration should also be given to extending this flexibility to incorporated JVs given that in their own right they would not typically be subject to the Rules unless its Ultimate Parent Entity is. The same flexibility should be given to incorporated JVs.

Other matters

With the Australian Rules applying to the years commencing on or after 1 January 2024, we thought it would be beneficial to also provide some further commentary on other aspects that require Treasury's consideration. Some of these relate to the Primary Legislation and Explanatory Materials however, we think that attention should again be drawn to them.

DMT interaction with ATO corporate residency guidance

The Explanatory Materials provide that the Assessment Bill implements Domestic Top-up Tax with respect to "Australian entities". The drafting in subsection 7(1) applies to Domestic Top-up Tax Amounts payable by an "Entity" which is defined in section 13 to include legal persons, trusts, partnerships and so forth but does not specify or limit the application of the Australian Domestic rules to Australian entities.

The Rules then clarify that the Domestic Top-up Tax Amount is payable to a Low-Taxed Constituent Entity (section 3-180 of the Rules) "located in Australia" or created in Australia (section 2-25 of the Rules). We understand that the DMT will only be levied on Australian operations.

Whilst we see the natural reading of the Australian rules as not applying Australian DMT to foreign operations or an offshore permanent establishment, we are seeking confirmation that the Australian DMT not be applied to foreign operations or offshore permanent establishments as a result of the ATO's corporate residency guidance[4]. That is, the foreign entity with foreign operations will be subject to Pillar Two in the place of its incorporation rather than being required to compute DMT in Australia and lodge DMT returns. In our view, this approach is consistent with an Australian-incorporated entity with foreign branches or subsidiaries.

Exits from the GloBE Consolidated Group

The drafting note to Subdivision 127-C states that "[a]n entity remains a member of the GloBE Consolidated Group even if the entity later leaves the consolidated group." Treasury should provide more detail on how that is expected to work, including examples of the impact on a leaving entity. The statement as drafted is ambiguous and could be read as including disposed of or divested Tax Consolidated Group entities within the GloBE Consolidated Group, even after they are owned by an unrelated third party.

[4] Practical Compliance Guideline PCG 2018/9 Central management and control test of residency: identifying where a company's central management and control is located