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Dear Sir or Madam

Global agreement on corporate taxation: Addressing the tax challenges arising from the digitalisation of the economy

PwC Australia welcomes the opportunity to make this submission in relation to the Treasury Consultation Paper "Global agreement on corporate taxation: Addressing the tax challenges arising from the digitalisation of the economy" released for consultation on 4 October 2022.

PwC Australia has been a strong supporter of measures that aim to build trust in the tax system and maintain the integrity of Australia's tax base.

Given the respective timeframes for possible implementation of Pillar One and Pillar Two reforms, our key observations relate to Pillar Two. Whilst we have endeavoured to provide responses to questions relating to Pillar One, given the delayed timeframe and the uncertainty with regards to the actual design of the rule and our expectation that it will have limited effect for Australian multinational companies, we have focussed on responding to the questions relating to Australia's adoption of Pillar Two.

The Pillar Two measures represent the most significant change to the international corporate tax system in decades. The time and cost to taxpayers in interpreting and analysing what is an incredibly complex series of rules, in addition to designing and implementing the reporting processes that will be needed in order to comply with the new rules, cannot be underestimated. In that respect, it is critical that sufficient time and guidance is provided to all taxpayers that are within scope (as well as those that are on the fringe of being within scope) well in advance of the commencement of the rules in Australia. This will involve a significant investment by, and alignment between Treasury, the Australian Taxation Office (**ATO**), tax professionals and taxpayers in order to make implementation of Pillar Two successful.

The commencement date of Pillar Two needs to be carefully considered. The OECD/G20 Inclusive Framework (the **Inclusive Framework**) on Base Erosion and Profit Shifting (**BEPS**) indicated that the measures would apply from 2023 and this was, at the time, supported by the then Government.

A potential start date of 1 July 2023, being the start of a financial year, in Australia is now less than 8 months away which does not give adequate time for stakeholders to consider and prepare for the new

law, noting that taxpayers currently require further information to be able to fully assess the impact of the new measures. In addition, the OECD is yet to release the Implementation Framework, which is not expected until the end of the year (at the earliest). We do not support hasty development of new legislation which does not give taxpayers certainty or sufficient time to understand the new law and the consequences on existing and proposed investment and activities.

Other OECD jurisdictions (such as the United Kingdom and certain European countries) have chosen to delay implementation of Pillar Two. To the extent that the Australian Pillar Two commencement date is earlier than other countries, this will likely impose a disproportionate compliance burden on groups operating in Australia.

We submit that if the Government decides that 2023 is the appropriate start date for the measures, that it applies to income years which commence on or after 1 July 2023. Having the measures start at the commencement of a new tax year will make it more efficient for taxpayers to manage and apply the new rules for the full income year. However, we submit that global alignment is critical in order to mitigate the risk of excessive compliance such that a start date of income years commencing on or after 1 January 2024 is more appropriate for the Income Inclusion Rule (**IIR**), with the Under Taxed Profits Rule (**UTPR**) being deferred an additional 12 months.

In summary, our key points relevant to the consultation proposal are as follows:

- Global alignment on the commencement and the adoption of Pillar Two rules is critical in order to mitigate the risk of excessive compliance.

- Fundamental uncertainties should be resolved before the rules come into effect in Australia. For example, a key threshold for the application of the rules is to determine which multinational groups are within the scope of the rules. This threshold is primarily determined by a revenue threshold of EUR 750 million. There is no guidance as to how this revenue threshold will be translated at the commencement of the rules, or otherwise revised annually as exchange rate fluctuations occur between the Australian dollar and the Euro.

- In order for the rules to be effective it is important that there is cohesion between jurisdictions as the rules are implemented. To date, there is no guidance as to how it will be confirmed that a country has a "good" IIR such that other countries' Global Anti-Base Erosion (**GloBE**) measures do not also seek to operate. Absent alignment, there is a risk the benefits of the rules will be outweighed by the non-value add compliance burden which stifles business.

- Initial comprehensive guidance should be provided prior to the start date of the new rules in Australia. Administrators in Australia need to provide details of the reporting requirements prior to the start date to allow systems to be configured appropriately. Guidance products used by the Australian Taxation Office (**ATO)** such as Law Companion Rulings and Practical Compliance Guidelines need to have regard not just to "low risk" categories on the Australian side, rather need to be "low risk" globally in recognition that the rules are multi-sided and alignment between countries is critical in order to avoid double tax and unnecessary disputes. Further, guidance is required in respect of companies restructuring in anticipation of the rules (similar to the domestic implementation of the OECD's anti-hybrid rules). Finally, it is noted that Pillar Two requires significant specialist tax accounting knowledge and it is necessary for guidance on this aspect, as this is an area not previously relevant to the application of Australian tax legislation.

- The introduction of a Qualifying Domestic Minimum Top-up Tax (**QDMTT**) may be appropriate if it results in Australian entities being excluded from GloBE calculations (which is not currently envisaged under the GloBE model rules), particularly if it gives related parties of Australian entities protection from inappropriate tax assessments under the other GloBE model rules in jurisdictions outside of Australia. It is noted that the rules should ensure that mitigating the likelihood of double tax is accorded the same degree of emphasis that is accorded to providing for the robust operation of the rules. Whilst it is noted that any QDMTT should produce outcomes that are consistent with the GloBE model rules in order to be a "good" QDMTT, it would be beneficial if it could be designed in such a way as to reduce the compliance and reporting burden for Australian entities. As a general comment, the rules should be implemented in a manner to eliminate administrative burden wherever possible.

- Safe harbours will be important to reduce compliance costs, particularly for low risk taxpayers. It will be important to achieve a pragmatic balance between integrity and complexity. Whilst important, an undue focus on integrity could significantly defeat the purpose of introducing safe harbours. The development of simple and reasonable safe harbours is vital to the administrability of the GloBE rules. Any safe harbours should extend to the QDMTT and the UTPR, and it will be important that the operation of the safe harbours are respected by the mechanics of the rules.

- There are existing and well considered features of Australian tax legislation that may not be appropriately catered for under the GloBE model rules. It is submitted that if unintended consequences arise as a result of the interaction between the GloBE model rules and Australian domestic legislation, it may be more practical to amend domestic legislation to address the issue as opposed to seek resolution through the OECD process. An example of this issue can be found in our response to question 33.

Our specific comments on the questions raised for each of the relevant Parts in the Consultation Paper are considered in the attached Appendix.

We welcome the opportunity to discuss our submission with you and to engage in further consultation as the specific measures are designed and refined. If you have any questions, please contact Lynda Brumm (lynda.brumm@pwc.com) on (07) 3257 5471.

Yours sincerely

Chris Morris
Australian Tax Leader

Appendix: Global agreement on corporate taxation

Specific Comments

1. ***What are your views on the challenges facing the international tax system and what role do you see for the two-pillar multilateral solution to the tax challenges arising from digitalisation?***

   There are various challenges facing multinational enterprises (**MNEs**) in the international tax system. Jurisdictions seeking revenue as part of budget repair and the introduction of unilateral tax measures are leading to increased complexity, overwhelming compliance burdens and the incidence of double taxation.

   We support a two-pillar multilateral solution that brings stability to the international tax system but have serious concerns about the two-pillar architecture in its current state, both in terms of its ability to bring stability, and in particular, complexity and potential for a disproportionate compliance burden and potential for disputes, both for tax administrators and taxpayers.

3. ***What costs and benefits do you see in Australia adopting the two-pillar multilateral solution?***

   As currently designed and in the absence of any meaningful safe harbours, the two-pillar multilateral solution, particularly Pillar Two is likely to introduce significant compliance costs for taxpayers and administrators alike.

   We note that the OECD originally estimated global tax collections will increase by $100[1] billion as a result of the two-pillar multilateral solution, in particular Pillar Two, but that conclusion was heavily caveated and based on untested assumptions.[2] Therefore, it may be suggested that there is a real risk that the cost of compliance outweighs the potential tax revenue generated from the measures.

   We expect that many MNEs will consider making changes to their global structures and operating models to comply with the two-pillar multilateral solution. Given Australia has one of the highest headline corporate tax rates of OECD jurisdictions (at 30%), and the likelihood of other countries implementing QDMTT regimes to protect their own revenue base, we do not expect the two-pillar multilateral solution will be a revenue raising measure for Australia. Rather, we expect that the two-pillar multilateral solution will act more as a deterrent measure in Australia.

5. ***What are the major areas of Pillars One and Two that are likely to generate uncertainty for your business? How could that uncertainty be best addressed?***

   The GloBE model rules (viz Pillar Two) are intended to be implemented as part of a common approach. The OECD note that:

[1] It is noted that this has subsequently been revised upwards to $150 billion.

[2] OECD (2020), *Tax Challenges Arising from Digitalisation - Economic Impact Assessment,* OECD, Paris.

> "*Consistency in the implementation and administration of the GloBE Rules is intended to result in a transparent and comprehensive system of taxation that provides predictable outcomes for MNEs and avoids the risk of double or over-taxation."*[3]

There are concerns that jurisdictions may implement the GloBE model rules inconsistently when the rules are enacted into domestic legislation. Further, there are concerns that tax administrators may also interpret the rules inconsistently across jurisdictions. Whilst we note that the rules should be implemented as part of a common approach to minimise these divergences, experience with the introduction of the hybrid mismatch rules (which were implemented by several jurisdictions based on the same OECD developed principles i.e. a common approach) would suggest that disparate approaches, and domestic interpretation, may still arise which can lead to significant uncertainty (and increased compliance costs).

We submit that consideration is necessary for the development of a multilateral convention to codify and coordinate jurisdictions' political commitment regarding the common approach. Further, we suggest that consideration is given to embedding OECD guidance into domestic legislation to allow key concepts to be coordinated by the Inclusive Framework. These key concepts may include, for example:

- which countries have a Qualified IIR
- which countries have a QDMTT
- how controlled foreign company (**CFC**) taxes should be allocated.

Finally, it will also be necessary to have a robust dispute resolution process. In the current reality, domestic rules will always be the prerogative of domestic courts, and it is entirely unknown how much weight they will give to OECD material, subsequent agreements etc. This could potentially lead to differing outcomes (and the courts may also find it challenging to judge concepts based on financial accounting, tax accounting and 'Pillar Two accounting').

In addition to uncertainty within the GloBE model rules themselves, there is currently significant uncertainty within the industry as to how amounts and tax attributes arising under the GloBE model rules should be accounted for (e.g. how should these amounts be reflected in statutory financial statements).

We understand that the International Accounting Standards Board (**IASB**) is actively considering this issue but is yet to provide any guidance. This creates significant uncertainty for MNEs within the scope of the rules in relation to the impact on the financial statements, and will become a pertinent issue once jurisdictions have substantively enacted legislation. For example, it is possible that the United Kingdom will have substantively enacted legislation in mid-2023 which may require Australian MNEs with United Kingdom entities within their global corporate structure to account for Pillar Two in their statutory financial statements before the Pillar Two rules are enacted (and operative) in Australia.

To provide greater certainty and assist taxpayers in complying with their tax and accounting obligations, the Pillar Two rules should not be substantively enacted in Australia before a decision is made, and appropriate guidance provided by the IASB on the accounting treatment of Pillar Two amounts. This should also ensure greater consistency in statutory audits of financial statements. We note that timely accounting guidance was not available at the

[3] At paragraph 1, OECD (2022), *Tax Challenges Arising from the Digitalisation of the Economy - Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two),* OECD, Paris

commencement of Australia's tax consolidation regime in 2002 which produced considerable difficulties.

9. ***What challenges do you foresee with the OECD timelines, which have Pillar Two coming into effect in 2023 and Pillar One coming into effect in 2024?***

   As noted in our introductory remarks, the Pillar One and Pillar Two measures represent the most significant change to the international corporate tax system in decades. The time and cost to taxpayers in interpreting and analysing what is an incredibly complex series of rules, in addition to designing and implementing the processes that will be needed in order to comply with the rules, cannot be underestimated. In that respect, it is critical that sufficient time and guidance is provided to all taxpayers that are within scope of the rules, well in advance of the commencement of the Pillar One and Pillar Two rules in Australia.

   The proposed timeframe places a significant degree of urgency on the need for legislation and administrative guidance in order to allow sufficient time for taxpayers to appropriately prepare for the introduction of these rules. In the absence of sufficient time to prepare, taxpayers face a real risk of being unable to meet their compliance obligations.

   For the Pillar Two GloBE measures, it is also important to acknowledge that the OECD is yet to publish complete guidance materials including, for example, the Implementation Framework and commentary addressing the co-existence with the United States' Global Intangible Low-Taxed Income (**GILTI**) rules. Australia should not seek to implement any aspect of the two-pillar multilateral solution until such guidance has been completed and published by the OECD.

   Further, the start date for the Pillar One and Pillar Two measures should be at least six months after the entire package of rules receive Royal Assent. This ensures taxpayers are given sufficient lead time to allow them to assess their existing global corporate structures and operating models, and to restructure where appropriate or necessary.

   The interests of fairness require that an Exposure Draft of the new law should be available well in advance of the proposed application date and that ample time is provided for public consultation. It is reasonable to request that taxpayers are afforded sufficient time, following release of Exposure Draft legislation, to determine the likely impact of these very complex rules and to enable restructuring and realignment of the global corporate structures and operating models, as appropriate.

   Taxpayers and tax administrators will also face significant challenges where countries implement the Pillar One and Pillar Two rules with effect from different income years. For example, to the extent Australia enacts Pillar Two and the commencement date is earlier than other jurisdictions (e.g. the United Kingdom from 1 January 2024), this will impose a disproportionate compliance burden on MNEs operating in Australia.

10. ***What design features would you like to see within the existing Pillar One and Two frameworks? For example, are there any approaches to implementation which may mitigate implementation challenges?***

    In their current form, the GloBE model rules (viz Pillar Two) are far too complex and uncertain in key aspects of their interpretation to be implemented and administered consistently by jurisdictions. The GloBE model rules will impose enormous costs on both taxpayers and tax administrators attempting to apply their full scope to a taxpayer's global operations.

In most common and low risk fact patterns, taxpayers and tax administrators would readily agree that rigorous application of the rules is unnecessary. Accordingly, development and publication of appropriate safe harbours must be treated as an urgent priority as MNEs and tax administrations undertake the work necessary to build financial systems to comply with the rules. Failure to make this a priority risks the long-term success of the entire undertaking, despite the significant costs that taxpayers will need to incur in preparation for the implementation of the rules. Appropriate safe harbours will simplify the operation of the Pillar Two rules and will reduce the compliance burden on businesses. Refer to our response at question 29 for recommendations regarding safe harbour mechanisms.

Further, as noted earlier, consideration is necessary for the development of a multilateral convention to codify and coordinate jurisdictions' political commitment regarding the common approach. Such a multilateral convention could also contain a mechanism to determine the allocable top up tax and for multilateral dispute resolution (e.g. a mechanism similar to that being developed for Pillar One). Nevertheless, even if such a convention is not possible at this time, the Implementation Framework, when released, should specify a robust dispute resolution framework in which there is a process that produces a result that is accepted by all jurisdictions. This will ensure a coherent application of the GloBE model rules worldwide and potentially facilitate audits and settle disputes between companies and authorities or between authorities.

11. ***What interaction issues could arise between Pillar One and Pillar Two, and other Australian or foreign tax laws? How should these interactions influence the way Australia implements the two-pillar multilateral agreement?***

    There are various interaction issues that will need to be considered. The most pressing issue to resolve is the interaction of the GloBE model rules with the United States' GILTI rules. Taxpayers need to have real time certainty in relation to these interaction issues.

    Other interaction issues could arise in relation to the taxation of financial arrangements, the imputation system, petroleum resource rent tax and the tax consolidation regime. Further, any reallocation under Pillar One has not yet been addressed in the context of Pillar Two (and vice versa). These issues will need to be considered and resolved.

    To assist in addressing these issues, we submit that the implementation of the rules in Australia could include a regulation making power which may also assist in having amendments implemented faster than through the Parliamentary process thus providing certainty sooner.

12. ***Are there any other comments or issues you wish to raise in relation to the Pillar One and Two rules that should be considered by Australia in the design and implementation stage?***

    Further work should be done to understand and inform the extent of items for consideration as part of the design and implementation stage. This may be best undertaken with targeted working groups involving stakeholders.

    We also note that it will also be necessary to implement measures to mitigate the impact of significant foreign exchange fluctuations which may cause entities with a non-EUR functional currency to move into or out of the rules purely due to foreign exchange movements.

Further, there are currently significant design issues with regard to Pillar One (e.g. identifying who is the taxpayer, relief mechanism etc). These issues need to be considered and resolved.

13. ***What changes (e.g. to processes or systems) do you anticipate that businesses may be required to make in order to comply with Pillar Two?***

    There is likely to be significant system changes required by businesses in order to comply with Pillar Two. We have identified approximately 250 data points that are required to calculate the top-up tax (per entity) based on the GloBE model rules. Many of these data points are not currently accurately captured or reported in many Enterprise Resource Planning (**ERP**) systems. This is largely due to the granularity of data required under Pillar Two and the mix and match of tax and accounting concepts used.

    System changes often require a significant lead time with internal IT departments and we have seen examples of system and reporting changes taking in excess of 12 months to process through to completion. This is in cases where a system change can be processed (as some cannot). In undertaking dry-runs, many taxpayers have found that they will need to maintain separate ledgers (and accounts), in addition to those used for tax and accounting reporting, purely for undertaking their GloBE calculations. This will significantly increase the compliance costs, especially where automation is not possible and manual calculations are required. Ultimately groups will need to find technology solutions to manage Pillar Two compliance in a sustainable way.

14. ***Do you have any suggestions relating to the implementation of Pillar Two that could help minimise your compliance costs?***

    As noted throughout our submission, timely and coordinated guidance will be critical in minimising compliance costs. We submit that Australia should take lessons from the implementation of the hybrid mismatch rules, noting that the hybrid mismatch rules are far less complex than the GloBE model rules. Specifically, we consider contemporaneous guidance is key in the following areas, for example:

    - the potential application of Part IVA of the *Income Tax Assessment Act 1936* (including the general anti-avoidance rules and the diverted profits tax) as taxpayers assess the response to the introduction of the GloBE model rules; this should clarify that taxpayers will not be subject to Part IVA or other integrity measures where they restructure in order to pay more domestic tax (i.e. an appropriate Pillar Two response) but which results in the elimination of any top-up tax potentially payable in Australia. (Similar to the hybrid mismatch rules contained in Division 832 of the *Income Tax Assessment Act* 1997, consideration should be given to including appropriate commentary in the explanatory materials);
    - the method by which taxes paid under a CFC regime should be reallocated under the GloBE model rules;
    - which countries' rules are considered "good" (i.e. qualified) rules for GloBE model rule purposes, including a mechanism to update this list with regulations from time to time; and
    - the method by which any top-up tax arising under the UTPR is allocated to Constituent Entities and interacts with domestic tax rules (i.e. what happens if a UTPR liability is allocated to a loss making entity).

We refer to our comments in response to question 10, which sets out why safe harbours are critical to minimising compliance costs. Further, we refer to our comments in response to question 15, which sets out the possibility that an appropriately designed and incorporated QDMTT could reduce compliance costs if it were to reduce the reporting burden.

Additionally, we suggest that the reporting requirements for taxpayers should be minimised in the initial years of implementation to allow groups to focus on application of the GloBE model rules and calculations, with reporting information to increase subsequently once groups have successfully established systems and processes.

To the extent that the information required to be provided in the GloBE Information Return overlaps with other reporting requirements, consideration should be given to the reduction or elimination of those other requirements. Additionally, consideration should be given to circumstances in which the need for country-by-country reporting (**CbCR**) can be removed or restricted once Pillar Two is operational (given Pillar Two is the mechanism to impose tax, as distinct from the transaction reporting under CbCR).

15. ***Would a Domestic Minimum Tax in Australia add to, or alternatively, mitigate the compliance costs of implementing Pillar Two?***

An appropriately designed QDMTT, which is subject to safe harbours and has less onerous reporting requirements may reduce compliance costs and reduce the potential for double taxation if as a result of implementing a QDMTT the GloBE model rules are "turned off" in other jurisdictions in respect of Australian entities. We note that the GloBE model rules currently envisage any tax paid under a QDMTT as an adjustment to the Jurisdictional Top-Up Tax (refer Article 5.2.3 of the Model Rules). We submit that from a policy perspective, it should be accepted that if a QDMTT applies there can be no top-up tax otherwise due such that it is not necessary to include that jurisdiction in the broader Pillar Two calculations. This policy would be in line with the rationale for "turning off" the UTPR where a UPE jurisdiction has a Qualifying IIR.

17. ***Do you have any comments on how Australia should implement the GloBE Model Rules into domestic law?***

Regardless of how the rules are implemented, we submit that the new rules should not leverage existing Australian tax concepts and definitions. Incorporation of the GloBE model rules into domestic law should utilise concepts and definitions set out in the GloBE model rules. This will assist in ensuring Australia's rules are globally aligned, can leverage global guidance and are deemed to be "good" rules (i.e. a Qualified IIR) for GloBE purposes. Failure to achieve alignment may significantly increase the compliance costs for taxpayers and administrative costs for administrators.

18. ***Do you agree that the GloBE Model Rules should apply in Australia for fiscal years commencing on or after a specific date?***

We agree that the GloBE model rules should apply for fiscal years commencing on or after a specific date. Having the measures start at the commencement of a new tax year will make it easier for taxpayers to manage and apply the new rules for the full income year (particularly given the reliance on consolidated accounts and the difficulty in preparing part-year calculations).

19. ***Do you have any comments on Australia's timing of adoption of the GloBE Model Rules, including any advantages or disadvantages of being an early/late adopter? What challenges do you foresee if the GloBE Model Rules were to commence in 2023 as proposed under the OECD timeline?***

    We do not consider it feasible or practical for companies to commence the rules in 2023 given the OECD is yet to provide its complete guidance and commentary (with a significant number of issues remaining unresolved), the IASB are still considering the accounting reflex of Pillar Two amounts and the impact on financial accounts, draft legislation is yet to be made available, the absence of safe harbours, and the need for significant guidance to assist taxpayers. A 2023 commencement date is likely to result in significant errors, shortcuts, and wasted compliance efforts that are not considered and planned out.

    That said, Australia could consider adopting the IIR before other countries introduce the UTPR in order to minimise disruption, noting that Australia should still defer the implementation of the UTPR as currently proposed (i.e. by 12 months).

20. ***We would like to understand your readiness for complying with the GloBE Model Rules. Do you have any comments on the skills and capabilities of your responsible staff and advisers in undertaking the calculations and applying the GloBE Model Rules?***

    Based on feedback from our clients and work undertaken to date in relation to the Pillar Two GloBE rules, we anticipate significant challenges for MNEs in securing a sufficiently skilled workforce to implement Pillar Two and ensure compliant reporting on an ongoing basis. Pillar Two is a new tax regime representing the biggest change to the international tax framework that we have seen in decades. It will require employees to be specially trained and already have a base knowledge in tax and accounting (across several jurisdictions). Further, there are likely to be challenges in sourcing the detailed data required for the GloBE calculations and reporting. Updating existing technology or developing new technology to capture data and report will require the involvement of sufficiently skilled individuals and significant investment. These challenges are likely to be exacerbated by the current skills shortage in Australia, supply chain issues in a post-COVID environment and the global economic outlook.

21. ***Do you have any comments on the timeframes that may be required to implement the required system and reporting changes for your business in undertaking the calculations and applying the GloBE Model Rules?***

    As stated in response to a previous question, given GloBE calculations would in most cases represent a departure from both financial reporting and local tax amounts, taxpayers would effectively be required to prepare a 'third set' of books in order to comply with the GloBE Model Rules.

    Based on our discussions with taxpayers to date, the required systems and reporting changes to comply with the GloBE model rules represent a significant undertaking and for many taxpayers will require at least 12-18 months lead time to properly design, implement and test. Further lead time may be required depending on local filing protocols (e.g. XML schema).

22. ***Are there any remaining uncertainties or issues regarding Australia's adoption of the GloBE Model Rules, including but not limited to the computation of GloBE income, adjusted covered taxes, and the transitional rules, which require further clarification?***

There are several remaining uncertainties and issues regarding the GloBE model rules. These have been covered extensively in OECD consultation so we will not look to replicate all this information in our response. However, some of these issues are fundamental to the operation of the GloBE model rules and the ability of the rules to achieve the intended outcomes such that we have outlined some of the more urgent issues below:

- There is no guidance as to how a rule (i.e. the IIR, UTPR, or even QDMTT rules) would be respected as a "qualified" rule.
- There is no guidance on what safe harbours companies may be able to avail themselves of. This is significant as MNEs may be allocating resources to respond to Pillar Two. If it eventuates that the particular MNE could avail itself of safe harbours, this would seem to be an unintended and unfair outcome given the resources expended.
- Even at this potentially late stage in the process there is no clear guidance as to what information should be included in a GloBE Information Return.
- The interactions between the GloBE model rules, GILTI and the United States' alternative minimum tax regime are unclear.
- There is no guidance as to how taxes paid under a CFC regime should be reallocated. This is particularly relevant for GILTI and also in Australia where there is "blending" of foreign income tax offsets.
- There is a considerable lack of guidance in relation to how foreign exchange issues will be dealt with in the GloBE model rules.
- There is no clarity on the intended dispute resolution process.

We would be happy to expand on these comments further and highlight some additional issues and uncertainties if it would be useful. We consider it important to resolve these issues and remove any uncertainties before the GloBE model rules are implemented in Australia.

23. If the UTPR is implemented by way of a denial of deductions or other alternative methods, including deemed income, do you have any views on how to allocate a UTPR Top-up Tax liability amongst Australian Constituent Entities?

Given the top-up tax liability arising under the UTPR is allocated based on a substance based allocation key (refer Article 2.6 of the Model Rules) it is suggested that this would be a reasonable allocation key to allocate the top-up tax liability within a jurisdiction as presumably the information would have already been gathered. Should another allocation key be deemed more appropriate it will be important that this does not increase the compliance burden of implementing the GloBE model rules.

We submit that careful consideration is required as to how the UTPR allocation interacts with the Australian tax consolidation rules and the concept of joint and several liability.

Further, additional detail is required from the OECD Inclusive Framework as to how the top-up tax mechanism will apply and interact with domestic tax rules (i.e. the availability of losses) in order to assess the implications of adopting the UTPR.

We reiterate our comments throughout this submission that the GloBE model rules should be implemented and administered consistently between jurisdictions to manage the compliance burden and associated compliance costs.

27. ***Do you see any issues with a GloBE Information Return that requires disclosure of detailed information supporting the calculation of these steps?***

    We expect the compliance burden in the first couple of years to be significant in performing Pillar Two calculations, before overlaying the reporting requirements.

    Australia could consider adopting "light" reporting requirements in the initial years of implementation to allow groups to focus on application of the rules and calculations, with reporting information to increase once groups have successfully established systems and processes. Over time the information collected should be monitored to ensure it is relevant and informative. We would recommend that the detailed information provided in the GloBE information return should focus on the "key" metrics on a jurisdictional, rather than a constituent entity, basis (e.g. total GloBE Income, total Covered Taxes, jurisdictional ETR).

    Duplication of information across Company tax returns, CbCR and Pillar Two reports should be identified and eliminated.

28. ***Do you have any additional feedback on how the GloBE Information Return could be designed (including on content, filing, and exchange of information requirements)?***

    Further work should be done to understand and inform the most appropriate approach.

    Australia could consider designing an initial template and then testing this across a sample of companies to determine what information is more readily attainable and that which may be more complex based on common systems today. This could assist in determining what information should be sought in the initial years that is most critical to administrators, with secondary information introduced once taxpayers have established their foundational systems and processes to apply the rules.

29. ***Do you have any comments on possible scope, design, and conditions of access to a safe harbour?***

    Further work and consultation should be done to understand and inform the scope, design and conditions of access to safe harbours. We consider these to be one of the most critical aspects to Australia's adoption.

    The following are proposed safe harbour methodologies:

    - A specific "good list" (or "general administrative guidance") of jurisdictions that have a headline statutory rate of at least 15% and do not offer any harmful tax incentives as defined by the OECD. We would further note that any tax incentives that are designed to incite positive economic or social policies should be excluded from the definition of a harmful tax incentive. For example, incentives tied to headcount/employment, research and development, creation of new technologies, "green" or environmental incentives, etc.
    - Jurisdictions that have a headline statutory rate of at least, for example, 15% and the effective tax rate for accrued income taxes of such jurisdiction in an MNE's CbCR is at least for example, 15%.

- An exemption from the scope of the GloBE model rules for MNE groups where the economic activity of the business is predominantly undertaken (defined as, for example, 90% of revenues) in the UPE jurisdiction, and the aggregate revenue generated in other jurisdictions is less than EUR 750 million.

30. ***Do you have any views on a Country-by-Country Reporting-based safe harbour, how it should be designed, and what adjustments would need to be made to the reported amounts?***

    Further work and consultation should be done to understand and inform the most appropriate approach.

    We have set out above a proposed design of a CbCR based safe harbour. We submit that minimal adjustments should be made to the reported amounts as each adjustment increases the compliance burden and erodes the benefit of the safe harbour.

31. ***Do you have any specific concerns on potential interactions with integrity provisions of the Australian tax law, such as the controlled foreign company (CFC) rules and the hybrid mismatch rules, and any uncertainties which may arise from their interaction with the GloBE Model Rules?***

    Further work and consultation is required to understand and inform the various concerns or issues with existing integrity provisions.

    As a general comment, we would encourage a specific working party to consider the interaction of existing integrity provisions with the GloBE model rules. In particular, the working party should consider initially, and monitor subsequently, whether the objectives of certain integrity measures are otherwise achieved, or unintended consequences arise, once the GloBE model rules are in operation. This should include an assessment of whether any additional compliance and complexity created by the existing rules can be reduced, or if amendments would be beneficial without being at the cost of facilitating harmful tax practices

    We suggest that consideration will need to be given to the interaction of the GloBE model rules and Australia's hybrid mismatch rules; for example, whether GloBE model rules or the hybrid mismatch rules take priority in application. If the GloBE model rules take priority, does tax paid under these rules count in determining whether a deduction/non-inclusion mismatch arises. If so, there may be considerable difficulty in determining whether a specific payment has been subject to taxation under the GloBE model rules and legislative changes would be required to clarify how top-up tax would be allocated.

    Conversely, if hybrid mismatch rules apply in priority, how should the tax liability arising from a denied deduction be allocated, where appropriate, to the undertaxed jurisdiction in order to avoid addressing the under taxation twice.

32. ***Are there any issues which you think may arise in allocating taxes imposed under Australia's CFC Tax Regime?***

    Further work and consultation is required to understand and inform the various concerns or issues with the CFC regime.

As noted in our response to question 22, we envisage that an issue to work through will be how any Australian tax paid (after the impact of foreign income tax offsets) is allocated to a CFC. A further question arises as to whether any methodology should be consistent with the treatment of taxes paid under the GILTI regime, which also has a global blending element.

33. ***Do you have any comments on how the GloBE Model Rules in relation to corporate restructurings and holding structures may interact with Australia's tax laws on mergers and acquisitions, including tax consolidation? Do you also have any comments on how the GloBE Model Rules could be implemented so that interactions with our domestic rules, including tax consolidation, do not lead to outcomes inconsistent with the GloBE Model Rules?***

    Further work should be done to understand and inform the most appropriate approach.

    We submit that there appears to be a risk that Australian entities may not be able to avail themselves of the treatment afforded in Article 6.2.2 of the Model Rules where there is a sale of an Australian entity from one tax consolidated group to another tax consolidated group. Consideration could be given to remedying this through clarification of the operation of Part 3-90 of the *Income Tax Assessment Act 1997* to ensure they are seen as asset transactions for both the buyer and seller.

34. ***Do you have any views on whether any Top-up Tax paid by an Australian Constituent Entity under the GloBE Model Rules should give rise to franking credits?***

    To the extent it can be confirmed that the generation of franking credits would not jeopardise the status of Australia's IIR (or QDMTT) as "good" rules, we submit that the top-up tax paid should give rise to franking credits. Further we note the policy rationale explained at paragraph 138 of the Report on the Pillar Two Blueprint[4], which would support Australian income tax being a covered tax despite the existence of franking credits could extend to allowing franking credits to be generated by top-up tax.

35. ***Do you have any comments on whether or not Australia should adopt a Domestic Minimum Tax in conjunction with the implementation of the GloBE Model Rules?***

    Further work should be done to understand and inform the most appropriate approach. We refer you to our comments in response to question 15.

36. ***Do you agree that a Domestic Minimum Tax in Australia should only apply to multinationals in the scope of Pillar Two (for example, not applying to businesses that only operate in Australia)?***

    Further work should be done to understand and inform the most appropriate approach.

    We agree that any Domestic Minimum Tax in Australia should only apply to MNEs within the scope of Pillar Two. However, to the extent that Pillar Two is taken as an opportunity for tax reform, we submit that the benefits of any such reform also flow to those entities that are not within the scope of Pillar Two.

[4] OECD (2020), *Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint: Inclusive Framework on BEPS*, OECD, Paris.

Where relevant, there may be non-discrimination issues to consider in the context of Australia's Double Tax Agreements.

37. ***If Australia were to adopt a Domestic Minimum Tax, do you have any views on its design as a Qualified Domestic Minimum Tax (that is, on the Domestic Minimum Tax being consistent with the outcomes under the GloBE Model Rules)?***

    We refer you to our comments in response to question 15.

38. ***If a Domestic Minimum Tax were to be implemented, do you have any views as to whether there should be a separate return (that is, in addition to the GloBE Information Return and any potential local GloBE Tax Return), and do you have any additional feedback on this return? Would there be any particular issues if a Domestic Minimum Tax Return were to be due earlier than the GloBE Information Return?***

    Further work should be done to understand and inform the most appropriate approach.

    We refer you to our comments in response to question 15. We submit that the introduction of a QDMTT should reduce the reporting burden for Australian entities, not add additional compliance requirements (i.e. a QDMTT return in addition to a GloBE information return). Further, where the mechanism at question 15 is adopted, there should be no need to file a QDMTT return in advance of a GloBE information return.

    Consideration should be given to self-assessment as part of filing the Australian income tax return (given the high corporate income tax rate in Australia of 30%, this should streamline the compliance process).

39. ***If a Domestic Minimum Tax is implemented, how should the relevant liability be allocated amongst Australian Constituent Entities? Should the liability be joint and several amongst Australian Constituent Entities?***

    Further work should be done to understand and inform the most appropriate approach.

    However, our preliminary comment is that the GloBE model rules should reflect Australia's tax consolidation regime with respect to this issue.

40. ***Do you have any views on whether tax paid in Australia under a Domestic Minimum Tax should give rise to franking credits?***

    We refer you to our comments in response to Q34.