

20 December 2023

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

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

Dear Secretariat,

Submission to the Senate Economics Legislation Committee

Inquiry into Government Amendments to Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023

Perpetual Limited (“Perpetual”) appreciates the opportunity to make a submission to the Senate Economics Legislation Committee (“the Committee”) inquiry into the Government Amendments to Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023 (“the Bill”).

Perpetual also wishes to acknowledge and thank the Committee and Treasury for prior opportunities to provide input, and for subsequent amendments resulting from consultation.

1. About Perpetual

Perpetual is an ASX listed global financial services firm operating a multi-boutique asset management business, as well as wealth management and trustee services businesses.

Perpetual owns leading asset management brands including Perpetual, Pendal, Barrow Hanley, J O Hambro, Regnan, Trillium and Thompson, Siegel and Walmsley (TSW). Perpetual’s private wealth business services high-net worth clients, not for profits, and small businesses through brands such as Perpetual Private, Jacaranda Financial Planning and Fordham. Perpetual’s corporate trust division provides services to managed funds, the debt market and includes a growing digital business, encompassing Laminar Capital.

Headquartered in Sydney, Perpetual services its global client base from offices across Australia as well as internationally from Asia, Europe, the United Kingdom and the United States.

2. Debt Deduction Creation Rules

The proposed “debt deduction creation rules” seek to mitigate the base erosion arising from excessive debt deductions created in connection with acquisitions of assets from associates or payments to associates by denying debt deductions in certain circumstances. The stated aim of the “debt deduction

creation rules” is to disallow debt deductions to the extent that they are incurred in relation to debt creation schemes that lack “genuine commercial justification”. However, the original Bill tabled in Parliament on 23 June 2023 did not give effect to this stated intention, instead operating very broadly. The intention of the Government Amendments is to limit the operation of the debt deduction creation rules in accordance with the recommendations in the Senate Economics Legislation Committee report on the original Bill released on 22 October 2023 and having regard to consultation on Exposure Draft Amendments to the Bill released on 8 October 2023.

We acknowledge that the proposed amendments address many issues that were raised during the Senate Economics Committee hearings on the Bill and noted in the Committee’s Report, and many of the issues raised during consultation on the Exposure Draft amendments. In particular, we welcome the following proposed amendments to the debt deduction creation rules:

- The limitation on the application of the rule **only to debt deductions paid or payable to an associate**, meaning third party borrowings to acquire assets from associates are not within scope.
- The exemption for a new membership interest in an Australian entity or a foreign company and for the acquisition of new depreciating assets.
- The limitation of the related party payments rule to specific targeted payments. Rather than applying to debt used to fund any payment or distribution to an associate as originally drafted, the amendments result in the rules being more narrowly targeted. To be caught, the related party borrowing must be used to fund, or facilitate the funding of, a targeted payment or distribution to an associate. The targeted payments are listed in sec 820-423A(5A) and include dividends, trust and partnership distributions, returns of capital, share cancellation payments, royalty payments, certain repayments of principal, and payments ‘of a similar kind’. We consider such “targeting” of payments more correctly reflects the stated intention of the debt deduction creation rules and should ensure that the rules do not apply to many ordinary commercial transactions between related parties.
- The inclusion of a ‘hard’ one year deferral for application of the rules. The debt creation rules will now only apply to assessments for years of income ending on or after 1 July 2024.

However, we do believe that the introduction of a simple overarching purpose test (i.e. transactions where the predominant purpose is to increase debt deductions in Australia or reduce assessable interest income in Australia) would assist in ensuring that commercially justifiable transactions are excluded from the debt deduction creation rules and provide more certainty for taxpayers. This would also more closely align with what the OECD envisaged in the BEPS Action 4 Report. Such an overarching test would provide an opportunity for taxpayers to liaise with the ATO in relation to any transactions undertaken that might otherwise unintentionally fall within the ambit of the rules. The provisions as currently drafted do not give the Commissioner any scope to consider or apply any discretion to transactions which may be impacted by the rules but fall outside the broad stated intent of the regulations.

3. Submission

Perpetual submits that:

The changes to the debt deduction creation rules included in the proposed Government Amendments address many of the concerns raised in the Senate Economics Legislation Committee report on the original Bill released on 22 October 2023 and during consultation on the Exposure Draft Amendments to the Bill released on 8 October 2023.

The introduction of a simple overarching purpose test) would assist in ensuring that commercially justifiable transactions are excluded from the debt deduction creation rules and provide more certainty for taxpayers.

Thank you for the opportunity to make this submission. If you require any further information, please do not hesitate to contact John Kirkness (Head of Tax) at [REDACTED]

Yours faithfully,

A large black rectangular box redacting the signature of Chris Green.

Chris Green
Chief Financial Officer
Perpetual Limited