

Senate Standing Committee on Economics  
ANSWERS TO QUESTIONS ON NOTICE

**Treasury Portfolio**

**Inquiry into the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—  
Integrity and Transparency) Bill 2023**

**Division:** Corporate and International Tax Division  
**Topic:** List of Unintended consequences  
**Reference:** Spoken  
**Senator:** **Dean Smith**

**Question:**

Senator DEAN SMITH: Thank you, officials from the Treasury and the ATO, for making yourselves available. Mr Robinson, in your opening remarks you talked about a number of unintended consequences that had been realised since the introduction of the legislation. Can you detail for the committee what are those unintended consequences?

Mr Robinson: I mentioned a few of those in relation to the third-party debt test, in particular the inadvertent exclusion of some types of entities—in particular, trusts—due to the definition of 'Australian resident', as we heard before. The income rules for calculating tax EBITDA for attribution managed investment trusts—I mentioned that example as well. I might throw to Mr Hawkins, who's a bit more familiar with some of the detail on some of the other types of issues we've been working through with stakeholders.

Mr Hawkins: I would clarify those points. Essentially those points Mr Robinson has been talking about go to the gateway provisions for these entities to access the test in the first instance. They are, we would assert, relatively minor technical amendments to remedy. In terms of some of the other points, as you would've heard from the Property Council earlier this afternoon, that go to recourse and security: there are effectively two limbs to the third-party debt test, those being the conduit financing element and the base test. There were queries put to us about the limited recourse in the base test, in terms of the security of assets between the borrower and the third-party lender. We're looking at getting a bit more alignment with the conduit financing limited test. Those are some of the core examples in respect of the third-party debt test. You would appreciate, in what you've heard today in some of the submissions that were made to the Senate committee, there was a fair degree of consistency in those points.

In terms of the debt creation rules, further to what Mr Robinson has outlined in terms of the scope of assets or economic activity: we have also been talking to the likes of the ABA and the Securitisation Forum, in terms of the potential inadvertent impacts on those sectors. I note that, in terms of the core thin cap amendments, the financial entities and ADIs have the existing thin cap rules that apply—so the new earnings based rules don't apply to those sectors. We are contemplating the potential to apply a similar policy principle to ADIs and financial entities in respect of the declaration rules as well.

Senator DEAN SMITH: On notice, could you provide us a list of those unintended consequences. That would be most helpful. Mr Robinson, in your earlier contribution you talked about the continued consultation that is being undertaken. Can you elaborate in terms of who is being consulted and who is expected to be consulted, and what is the time frame for those consultations?

**Answer:**

Treasury outlined some technical considerations in relation to Schedule 2 – Thin capitalisation of the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023* during the public hearing.

Decisions on the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023* are ultimately a matter for Government, noting any amendments will be informed by the Senate Economics Legislation Committee’s final report.

The Government intends to undertake public consultation on any amendments to the Bill.