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3 April 2013

The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir

Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013 ("the Bill")

General Electric (GE) welcomes the opportunity to comment on the Bill and Explanatory Memorandum (EM) of the proposed new transfer pricing rules.

We recognise that a number of submissions will be made by the tax profession and industry bodies in respect of this matter. However, given our particular interest in this matter and our previous submission to the Standing Committee on Economics, we thought it was appropriate to make our own submission.

We support the Government's policy of aligning Australia's transfer pricing rules with OECD guidance. We also acknowledge that the Bill more closely aligns with OECD principles than the previous exposure draft of the provisions.

Our comments are as follows:

Consistency with OECD Guidelines

There are certain provisions in the Bill that leave uncertainty over whether the Australian transfer pricing rules go beyond the OECD Guidelines. For example, as acknowledged in The Treasury submission to the Standing Committee on Economics, Section 815-130(4) does not have an equivalent in the OECD Guidelines. This provision is justified by the overall concept of "the arm's length principle". It does not seem appropriate to extend the meaning of the OECD guidelines by including additional exceptional circumstances which are not specified in the OECD guidelines unless there is a clear policy intent to do so.

The policy intent of the legislation could be achieved by incorporating the OECD Guidelines directly into the legislation rather than drafting unique stand-alone provisions. Using language in the Bill that is not the same as the language in the OECD Guidelines could lead to differences in interpretation, despite the intention that the new transfer pricing measures be consistent with the OECD Guidelines.

Submissions on the new provisions seem to suggest that the provisions read in the context of the EM will ensure they are consistent with OECD guidelines. Given that the EM can only be referred to in judicial interpretation when the words of the statute are unclear, it seems inappropriate to rely on the EM to ensure the correct interpretation of the primary provisions. The provisions should be clear as drafted.

Time Limits

We commend the introduction of a time limit for amending assessments. However, we believe that consistent with the amendment period that applies for general income tax assessments, four years is an appropriate period, rather than the proposed seven years.

The EM does not provide any justification for a seven year period. Given the substantial annual disclosure that companies such as GE now make in the international dealings schedule in respect of transfer pricing, we do not consider an extended period of seven years is justified.

Documentation, penalties and RAP threshold

As noted in our submission to Treasury, we do not see any reason why the threshold for establishing a RAP should be higher for transfer pricing than for other areas of tax law.

The EM does not explain why the Government considers it necessary to introduce stricter requirements for establishing a RAP for transfer pricing than for other tax matters. The proposed requirements will create an unreasonable compliance burden that goes beyond OECD recommendations. The OECD Guidelines state that "it would be quite burdensome if detailed documentation were required at [the time of preparing the tax return] on all cross-border transactions between associated enterprises".

We would be pleased to meet and discuss these important matters with you at any time. You can contact our Tax Director, Chris Vanderkley

Yours sincerely,

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