Opening Statement

On behalf of Chartered Accountants Australia and New Zealand and The Tax Institute, we thank the Committee for inviting us to appear as witnesses at today's public hearing.

We welcome and support tax measures that seek to close loopholes and ensure that all taxpayers pay an appropriate share of tax. New measures need to be designed with the principles of good tax policy in mind, and implemented in a measured and fair way. They should balance the outcomes sought, for example, increased revenue, against the impact on affected parties, like increased compliance costs for taxpayers and their ability to easily comply. Importantly, the input of stakeholders with expertise should be taken into account through proper consultation starting as early in the process as possible.

In this regard, we thank this Committee and the Government for the consultation that has taken place and continues to occur. Short consultation periods and unanticipated elements along the way have made the process perhaps more challenging than it needed to be, but we are pleased to see that some stakeholder feedback has been taken on board and we trust that learnings from this process will be used to improve consultation processes going forward.

Given the complexity of the proposed new rules and the concerns that we, and other stakeholders have raised, we emphasise the importance of a contemporaneous post-implementation review to promptly identify and resolve unintended outcomes.

We maintain our view that the commencement date of the new rules should be delayed until 1 July 2024 at the earliest. Taxpayers and their advisers need time to understand the changes, update their reporting systems, and ensure they accurately report their tax liabilities, a process which can only fairly begin after the legislation is enacted. We are now mere months before the end of the financial year and we still do not have enacted law giving effect to the changes. Retrospective application has the potential to put affected taxpayers in a historically non-compliant position that is difficult and costly to rectify.

We also maintain our strong view that the debt deduction creation rules should be removed from the bill and subject to specific consultation. These rules were not included in the exposure draft, and widespread stakeholder feedback has raised concerns with their operation. While we welcome the amendments that have narrowed its otherwise broad scope, further work is required to make these rules fit for purpose.

Importantly, the new thin cap rules do not fall down without the debt deduction creation rules. The broader regime can operate effectively without them, and a delayed introduction after fulsome consultation and careful design, will not undermine the overall integrity of the rules.

We continue to have concerns that aspects of the proposed rules may haveadverse economic impacts. The fixed ratio test contains special provisions for investors with ownership interests below 10% and above 50%. We welcome these rules. However, investors with ownership interests between 10% and 50% are required to use a more restrictive version of the test, which is likely to result in debt deductions being disallowed.

There does not appear to be a clear policy rationale for this disparate treatment and we are concerned that this may disincentivise investment in Australia, as many joint venturers or consortia looking to invest are likely to fall within this gap.

There are a range of other technical amendments that are still required. These primarily concern the application of the third-party debt test, the debt deduction creation rules that were mentioned, and the impact of the new rules on private groups.

There are also several areas where further guidance in the EM could better support taxpayers to understand the new rules and ensure that the ATO has a robust framework within which to provide guidance and administer the legislation as intended.

We would be pleased to answer any questions.

Thank you.