Committee Secretary
Senate Standing Committee on Economics (Legislation)
PO Box 6100
Parliament House
Canberra ACT 2600 Senate Economics Legislation Committee

4 January 2024

Dear Committee Secretary

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

Thank-you for the opportunity to make a submission to this committee with regards to the proposed Government Amendments to TLAB 2023.

As a starting point we note that the amendments made to the original draft bill are welcome, however, there remain some fundamental issues which we request are given further attention by the Committee.

1. **Retrospective nature of the proposed debt creation rules**

The amendments are proposed to take full effect from 1 July 2024, with no 'grandfathering' of existing debt arrangements beyond that date. Accordingly, taxpayers are going to be required to consider and apply the new debt-creation rules retrospectively to determine how these new rules apply to their historical circumstances.

In our view this creates a significant burden on taxpayers and practitioners, particularly given the complexity of these proposed rules and that the scope of the debt creation rules (as explained below) can apply to ordinary business transactions. This means that taxpayers will be required to review many transactions going back a number of years to try and determine the effect of these new rules.

We would encourage the Committee to consider that these changes should only be applicable to new debt entered into after the commencement date of the new legislation. We note that if there are concerns about historical debt related transactions entered into by taxpayers then the Australian Taxation Office has other means at its disposal (e.g. the application of the general anti-avoidance rules) to target any borrowings considered to be egregious.

2. **Application of proposed debt creation rules to ordinary commercial transactions**

The debt creation rules enacted in their current form will give rise to denial of interest deductions for ordinary business activities (e.g. the acquisition of trading stock from overseas related parties).

No policy reasons have been provided in relation to why this particular type of ordinary commercial transaction falls foul of the proposed debt creation rules. In this regard, we note that the prior debt creation rules (contained in the former Division 16G of the Income Tax Assessment Act 1936) contained such an exception.

In this regard, we request that due consideration be given to further targeting the debt creation rules to the specific circumstances which the Government are concerned about – i.e. large, one-off transactions that could be attributed to a tax avoidance purpose (e.g. a return of capital to shareholders, funded by a borrowing).

This could be achieved by broadening the scope of the exceptions from the debt creation rules to include the acquisition of trading stock. This is a standard business transaction, entered into by many taxpayers across Australia. There does not seem to be any meaningful policy reason for excluding the acquisition of trading stock from the scope of the debt creation rules and we request that the Committee considers including such an exception.

3. <u>Scope of depreciating asset exemption from debt creation rules</u>

We understand that the intent of the proposed exemption for "Acquisition of certain new depreciating assets" is to allow an Australian entity to deduct interest on borrowings to acquire depreciating assets from a related party if the relevant criteria are met.

In our view, certain aspects of this proposed exemption are unnecessarily restrictive. In particular, the requirement in 820-423AA(2)(a) is that:

> *"at the time of the acquisition, the acquirer reasonably expects to use the CGT asset:*
> *i) for a taxable purpose; and*
> *ii) within Australia; and*
> iii) *within 12 months."*

The time of acquisition is not necessarily the same time as a decision will be made to use the CGT asset for a taxable purpose as a depreciating asset. This is particularly the case for taxpayers who both hold depreciating assets for their own use and as trading stock (with an intermingling between the two as appropriate).

It would seem that the appropriate requirement in this regard should be the actual use of the asset, not the intention at the time of acquisition.

Accordingly, consideration could be given to simplifying the wording of 820-423AA(2)(a) along the below lines to make it clear that the relevant test should be the actual use of the asset, not the intended use at the time of acquisition:

> *"the acquirer uses the CGT asset:*
> *i) for a taxable purpose; and*
> *ii) within Australia; and*
> *iii) within 12 months."*

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Should you have any queries on the above please do not hesitate to contact me on [redacted]

Yours sincerely,

PKF(NS) TAX PTY LIMITED

[redacted]

Iain Spittal
Director