Australian Government

Australian Government response to the Senate Economics Legislation Committee Inquiry Report

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

May 2024

Introduction

On 5 December 2023, the Senate referred the Government amendments to the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share-Integrity and Transparency) Bill 2023* (the Bill) to the Senate Economics Legislation Committee for inquiry and report by 5 February 2024.[1]

This was the second Senate inquiry on the Bill and followed extensive, iterative consultation with stakeholders on the Bill.

The Government amendments focused on the thin capitalisation schedule and responded to stakeholder feedback and the Committee's recommendations from their first Inquiry report.[2]

The thin capitalisation changes are an election commitment of the Government to bring Australia's former (asset-based) thin capitalisation rules into broad alignment with OECD best practice. Specifically, by introducing earnings-based interest limitation rules to limit an entity's interest deductions in line with their taxable earnings before interest, tax, depreciation, and amortisation (EBITDA).

1 5 February 2024, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABMultinationalTax

2 22 September 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABMultinationalTax

Response to the recommendations

Coalition Senators' Dissenting Report – Recommendation 5

That the Treasury consult with industry to propose a possible carve out for the plantation forestry sector to minimise the impact of the thin capitalisation rules.

Australian Government response

The Government **notes** this recommendation.

The thin capitalisation reforms are an integrity measure, ensuring that an entity's debt deductions are linked directly to its economic activity and taxable income in Australia. The reforms were drafted to apply to the same taxpayer base as the former (asset-based) thin capitalisation rules.

The Government consulted extensively with stakeholders on the amendments to the Bill, including with the plantation forestry sector. A key amendment from this consultation was to change the taxable earnings before interest, tax, depreciation, and amortisation (EBITDA) method in the Fixed Ratio Test of the new thin capitalisation rules, in line with initial recommendations from the Australian Forestry Products Association. This amendment broadened the eligible depreciation expenses to specifically allow plantation depletion and establishment costs to be added to the tax EBITDA method. The effect of this amendment was to minimise the impact of the new thin capitalisation rules on the plantation forestry sector by increasing an entity's tax EBITDA, allowing for higher interest deductions.

The final Bill as passed by both houses of Parliament included a non-Government amendment to allow Australian plantation forestry entities to continue to apply the former thin capitalisation law. This amendment has the practical effect of carving out Australian plantation forestry entities from the new earnings-based thin capitalisation rules reflected in *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023*. The Bill passed the Parliament on 27 March 2024 and received Royal Assent on 8 April 2024.

The Government has previously noted that this is a technical and complex piece of tax legislation and signalled our commitment to engage with stakeholders. We note the Australian Taxation Office is working with industry on the implementation of this reform to manage taxpayers' transition to the new thin capitalisation regime, and in line with usual practice, the Treasury will continue to consider the technical feedback from this transition.