



19 July 2024

Committee Secretary
Senate Standing Committees on Economics
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

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Dear Committee Secretary,

RE: Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024 [Provisions] and related bills

Australian Energy Producers is the peak national body representing companies actively engaging in oil and gas exploration and production in Australia. Australian Energy Producers welcomes the opportunity to make a submission on the Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024 [Provisions] and related bills.

Australian Energy Producers has reviewed the submission provided by the Corporate Tax Association (CTA) and supports the commentary and recommendations contained in that submission.

The development and implementation of the OECD Pillar Two Model Rules into Australian law is complex. While it is important that Australian law aligns with the Model Rules it is also important that this is done in a way that is cognisant of the compliance costs that affected taxpayers will confront in implementing the new arrangements. We understand that while 5,000 entities will have to comply with these new rules, only 140 entities may be liable to pay top-up tax under this regime.

The OECD guidance materials allow for flexibility in the implementation of the Model Rules to take account of the specific context within individual economies. This recognises that different economies will have differing circumstances that will require the tailoring of the Model Rules. We consider that this offers the opportunity to adapt the Model Rules to ensure that they operate effectively within the Australian tax law and to minimise the compliance cost to the greatest extent possible.

Lodgements of Domestic Minimum Tax (DMT) Returns by Joint Ventures

The guidance in the Explanatory Materials suggests that unincorporated Joint Ventures (UJV) participants will be required to jointly lodge a DMT Return for that UJV in its own capacity. UJVs are not normally subject to Australian tax in their own capacity, and so all financial reporting obligations will be ceded up to the Ultimate Parent Entity's tax return. Similarly, for income tax purposes, UJVs are not required to lodge a stand-alone return as the relevant information is reflected by each UJV participant. We also note that UJVs don't hold assets, receive income jointly, or pay tax, but rather the individual joint venturers do.

Recommendation: Designated Local Entity for the main group should have the option of lodging the DMT return on behalf of the UJV.

Interaction between Deferred Tax Assets from secondary taxes

There is a significant, unresolved issue with how the rules related to recasting DTAs interact with secondary taxes, such as the PRRT in Australia and similar regimes in other jurisdictions.

Specifically, recasting DTAs from secondary taxes in Adjusted Covered Taxes can cause unintended, adverse outcomes through a distortion of the GloBE ETR. For example, indexation on carry forward undeducted expenditure for PRRT purposes, or other similar regimes, may cause top up tax due to the quantum of historic expenditure balances (unrecognised for accounting), notwithstanding an entity's GloBE ETR may be above 15% when calculated solely on primary taxes (i.e. corporate income tax). This would result in an entity being taxed at an effective rate of higher than 30% in some circumstances.

We understand the need to align as closely as possible with the OECD rules and guidance. However, the result of the interaction of these rules with secondary taxes are clearly inconsistent with the intent and outcomes sought under the Model Rules. We request that further information and guidance on this issue be provided, and that recasting of DTAs in these circumstances is not required. Seeking further clarification on this issue from the OECD is also warranted.

Recommendation: Confirm that recasting of DTAs is not required.

As a capital importing country, much of this investment has been funded by foreign investors. Australia's reputation of political and regulatory stability has been essential in motivating this investment. It is critically important the policy settings and legislative frameworks are designed to attract investment in Australia.

Australia needs to ensure that its reputation as a destination of choice for foreign investment is maintained. This is important for the continued operation of the oil and gas industry in Australia, investment in new gas supply for the domestic market and our regional trading partners. It will also be essential for investment in renewable energy and low emission technologies to deliver the energy transition to a net zero emission economy.

If you require further information or would like to discuss the comments above, please do not hesitate to contact me on [REDACTED] or [REDACTED].

[REDACTED]

Wayne Calder

Director - Economics