Deloitte.

Deloitte Tax Services Pty Ltd
ACN 092 223 240
477 Collins Street
Melbourne, VIC, 3000
Australia

Tel: +61 3 9671 7000

1 November 2022

Assistant Secretary
International Tax Branch
Corporate and International Taxation Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email
contact.internationaltax@treasury.gov.au

Dear Assistant Secretary,

Global agreement on corporate taxation: Addressing the tax challenges, digitalisation of the economy

We are pleased to provide our submission in response to the Consultation Paper issued by The Treasury in relation to the global agreement on addressing the tax challenges arising from the digitalisation of the economy, known as the "Two Pillar Solution".

We recognise that the Two Pillar solution is an important step forward for Australia, as an active member of the OECD Inclusive Framework and as a responsible participant in the global tax community, in combating base erosion and profit shifting practices. Australia has a more comprehensive and robust tax system than most other countries, and arguably less need to implement the large scale reforms of the Two Pillars. On the other hand, we acknowledge that Australia has a responsibility to support global multilateral solutions to solve global multi-jurisdictional problems. However, this support needs to be balanced against the significant compliance costs of additional integrity measures that are imposed on Australian multinational businesses. The Australian response should be guided by a principle that such compliance costs should not divert resources disproportionately to the risks that are being addressed.

The key themes of our response to this Consultation Paper are that in implementing these rules Australia should in our view:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organisation"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the "Deloitte organisation" serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 312,000 people make an impact that matters at www.deloitte.com.

Deloitte Asia Pacific
Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

Deloitte Australia
The Australian partnership of Deloitte Touche Tohmatsu is a member of Deloitte Asia Pacific Limited and the Deloitte organisation. As one of Australia's leading professional services firms, Deloitte Touche Tohmatsu and its affiliates provide audit, tax, consulting, risk advisory, and financial advisory services through approximately 8000 people across the country. Focused on the creation of value and growth, and known as an employer of choice for innovative human resources programs, we are dedicated to helping our clients and our people excel. For more information, please visit our web site at https://www2.deloitte.com/au/en.html.

Liability limited by a scheme approved under Professional Standards Legislation.
Member of Deloitte Asia Pacific Limited and the Deloitte organisation.

©2022 Deloitte Tax Services. Deloitte Touche Tohmatsu

- Co-ordinate timing of implementation with a critical mass of countries in the Inclusive Framework, particularly the United Kingdom, New Zealand, Canada and the 5 EU member States[1];
- Maintain the greatest level of consistency in interpretation of the rules with other countries and closely follow globally agreed standards for filing and reporting requirements; and
- Incorporate a dispute resolution mechanism to deal with emerging international tax disputes which may arise in future.

Our comments in this submission principally relate to Pillar Two.

We have set out our comments in relation to **Pillar One** in **Appendix A**.

We have set out our responses to the questions in the Consultation Paper relating to **Pillar Two** and the implementation of GloBE rules in **Appendix B**.

With respect to the GloBE rules our expectation is that Australia is unlikely to experience a significant increase in revenues through adoption of the rules. This is due to our 30% corporate tax rate and the fact that Australia has limited regimes that use tax as an incentive mechanism. With respect to offshore operations which could be subject to the IIR in Australia or the UTPR, we agree that Australian companies should meet the new globally accepted norms under Pillar Two. Our expectation is however that, in part due to our existing robust integrity and anti-avoidance rules, and on the basis that countries globally adopt GloBE rules or similar changes, the incidence of top up tax on global profits will not be significant.

We therefore strongly advocate for **simplification** where possible and **consistency** with other countries' implementation in terms of timing, interpretation and application, filing obligations and dispute resolution. We recommend that this consistency is codified as much as possible with scope for Regulations to be used in a way to achieve flexibility whilst providing Australia the necessary protections for change of law.

The GloBE rules are incredibly complex and there will undoubtedly be situations and arrangements that have not and cannot be forecast at the moment. The future economic conditions and other countries' behaviours cannot be predicted. It is therefore imperative that Australia does not draft laws that are too rigid or in a way that stifles innovation and investment.

We recommend that further detailed consultation be conducted on the Two Pillar Solution and particularly around the technical development and drafting of the GloBE rules in Australia. We look forward to continuing our involvement in this ongoing consultative process and would be happy to discuss our comments.

If you have any questions on our responses to the Consultation Paper please contact Amelia Teng on +61 3 8486 1118 or David Watkins on +61 2 9322 7251.

Yours sincerely

David Watkins
Partner, Tax & Legal

Amelia Teng
Partner, International Tax

[1] Referring to the joint statement on 9 September 2022 by the governments of France, Germany, Italy, Netherlands and Spain

APPENDIX A: Pillar One

On the assumption that no Australian headquartered multinationals will be in scope of Amount A of Pillar One, the consequence of Amount A will be that an appropriate portion of the Pillar One tax paid by foreign in-scope groups will be allocated to Australia. It is not expected that this will create significant compliance or other issues for the Australian members of that group.

Whilst the scope of Pillar One may increase over time and include Australian headquartered multinationals, we consider that there is no need at present to contemplate this possible expansion and introduce legislation applying to in-scope Australian headquartered multinationals.

We note that the global implementation of Pillar One is likely to experience greater challenges than Pillar Two. We submit that Australia should remain supportive of the global implementation of Pillar One, but should also contemplate the alternative scenario that its implementation is delayed or that it does not proceed. In that case, the unilateral responses from various countries (such as DSTs, deemed permanent establishment rules, and other responses) have the potential to adversely affect Australian headquartered multinationals, including those much smaller than the groups proposed to be covered by Pillar One. As a result, it may be that Australian headquartered multinationals and / or their foreign subsidiaries find themselves exposed to additional foreign taxes relative to the current position. It is possible that any such foreign tax would increase the overall tax cost of the group.

We note that the Treasury Consultation paper makes limited references to Amount B under Pillar One. We understand that the OECD is continuing to work on the Amount B elements, with the outcomes of the work to be completed by the end of this year (2022). Australia should stay engaged with the development of Amount B. It will be important that the Australian application of Amount B is done in a way that is consistent with the application of Amount B by other States, so that there is no risk of disputes or possible double tax.

APPENDIX B: Pillar Two

Outlined below are our comments with respect to questions 13-40 of the Consultation Paper, inclusive, which all relate to the implementation of Pillar Two and the GloBE rules. We do not expect the subject to tax rule (**STTR**) to have common application to Australian multinationals and therefore our responses refer primarily the GloBE rules.

Compliance costs and impacts on large multinationals Q13 - What changes (e.g. to processes or systems) do you anticipate that businesses may be required to make in order to comply with Pillar Two? Q14 - Do you have any suggestions relating to implementation of Pillar Two that could help minimise your compliance costs? Q15 - Would a Domestic Minimum Tax in Australia add to, or alternatively, mitigate the compliance costs of implementing the GloBE Model Rules? Q16 - If any of your related companies is a resident in a jurisdiction that does adopt the Global anti-Base Erosion (GloBE) Model Rules, do you consider that your compliance burden will be largely the same whether or not Australia adopts these rules?

[13] We consider that the compliance costs for Australian multinational businesses are expected to be significant. This will be driven by a number of changes that are expected to be required to existing systems and processes including but not limited to:

- Establishment of internal committees to manage the implementation process
- Changes/incorporation of Pillar Two into governance systems (local and group level)
- Modifications to technology systems (ERP systems) necessary to identify and extract data
- Creation of new calculation processes specifically for GloBE rules and integrations back into existing systems
- Creation of new systems including data warehousing to enable tracking and retrieval of GloBE specific computations, such as recast deferred taxes and DTL recapture amounts
- Expansion of training programs and recruitment processes to create resource capability for ongoing compliance activities including GloBE computation and GloBE filings
- Greater reliance on legal advisers (internal or external) to accommodate potential rise in international tax controversy
- Increase in due diligence and development of deal processes to manage new tax risks arising under Pillar Two in mergers and acquisitions (**M&A**) context

[14] Safe harbours should assist in minimising some of the ongoing costs of compliance, particularly with respect to the need for detailed GloBE calculations. That is, if safe harbours can be agreed to only require detailed GloBE calculations for those entities / jurisdictions at risk of giving rise to a top up tax liability then the information and data collection exercise may be reduced. A specified list of 'safe' countries would be very helpful in this regard (see our comments further below under 'Safe Harbours'). However, the initial setup of new systems and processes is likely to be required regardless of safe harbours and if significant adjustments to existing information are required to comply with a safe harbour, this will clearly diminish the ongoing compliance savings.

Standardisation of filing requirements will be an essential requirement to ensure compliance costs are not duplicated across multiple jurisdictions and we recommend that consistency in global reporting is therefore essential to minimising compliance costs.

[15] In our view a domestic minimum tax (**DMT**) is likely to add to compliance costs for large multinationals in Australia. The extent of the increase will depend on the profile of the multinational and the design of the DMT.

[16] The compliance burden experienced by Australian taxpayers that are part of an in scope group is likely to be largely impacted by the profile and corporate structure of the particular group, including whether Australia is a UPE

Deloitte.

jurisdiction or a subsidiary. In our view there will likely be a considerable compliance costs for Australian in scope entities if the GloBE rules are widely adopted by other group member countries, regardless of whether Australia adopts the rules.

Mode if implementation

Q17 - Do you have any comments on how Australia should implement the GloBE Model Rules into domestic law?

The GloBE rules could be implemented as part of the Income Tax Assessment Act or as a separate stand alone Act, subject to meeting Constitutional requirements in respect of taxation laws.

Under either approach it is imperative that the rules maximise consistency with the implementation of rules in other jurisdictions. In our view the best way in which to support the common approach developed by the OECD Inclusive Framework is to allow for the OECD GloBE Model rules to be incorporated into our legislation as fully as possible and only deviate in drafting where a term or concept requires specific explanation or clarification in an Australian context. We appreciate that complete repetition of the GloBE Model rules into Australian legislation may have some challenges where the terms may conflict with existing definitions or require clarification (eg Passive Income, tax consolidated groups). Extensive consultation on Exposure Draft legislation is recommended to socialise these requirements in detail.

We note that draft legislation in the United Kingdom and the draft EU directive do not directly reflect the GloBE Model rules, however the structure is broadly the same and core concepts have been adopted. We recommend that Australia also follow the architecture of the GloBE Model rules at a minimum.

With regards to the status of the GloBE Model rules we recommend that, in order to keep the measures up-to-date and synchronised with any future OECD guidance, Australia incorporate the rules with an ambulatory approach to interpretation. The legal status of the OECD Model rules and OECD Commentary from an Australian statutory interpretation perspective should be made clear, to provide assistance in the event of future disputes between countries in relation to GloBE rules. It is widely understood that the complexity of the GloBE rules will demand ongoing technical analysis and guidance to be developed over the course of years to come. Whilst Australia may wish to reserve rights to adopt changes or additions from a policy perspective, we recommend that the legislative design accommodate a streamlined process that can allow this to be as efficient as possible. Use of Regulation or Legislative Instrument powers may be an option to consider in this regard.

Timing of implementation

Q18 - Do you agree that the GloBE Model Rules should apply in Australia for fiscal years commencing on or after a specific date?
Q19 - Do you have any comments on Australia's timing of adoption of the GloBE Model Rules, including any advantages or disadvantages of being an early/late adopter? What challenges do you foresee if the GloBE Model Rules were to commence in 2023 as proposed under the OECD timeline?

[18] An income year basis (starting on or after a specific date) for the commencement of the rules is strongly preferred. Whilst this will result in different start times for different taxpayers this is of minor importance compared to the complexity of a part-year start date.

The commencement date of the GloBE rules in Australia should be aligned, to the greatest extent possible, with the commencement date of the rules in a critical mass of countries within the Inclusive Framework. In particular, alignment with major economies and those that Australia share a common law connection would be sensible. Noting the difficulties for Pillar Two implementation currently being experienced by the United States, it is accepted that adoption at the same time as the US may not be possible, but in our view this should not necessarily impede

Deloitte.

Australia's adoption timeline. As the largest economy the co-existence of GloBE with US laws is already an issue that is being addressed a global/OECD level.

Therefore, in our view Australia should not precede United Kingdom implementation, which current draft legislation indicates will commence for fiscal years on or after 31 December 2023 (practically, 2024 implementation).

[19] There are no advantages to being an 'early' adopter for Australia on the basis that the amount of revenue from top up tax liabilities in Australia is not expected to be significant and early adoption will exacerbate difficulties in preparing for implementation. Administrative guidance and further technical advice surrounding the rules continues to be delivered by the OECD and an early adoption would not allow taxpayers sufficient time to digest these developments, although we note that adoption as soon as possible would have one advantage of curtailing the 'transitional period' relevant to some of the rules in Article 9.

However, there is a downside of also being a 'late' adopter with respect to the IIR as it may mean that other countries seek to apply the UTPR, or may inappropriately burden intermediate parent entities to apply the IIR in an interim period, causing disjointed compliance, pending commencement in Australia.

Readiness for implementation

Q20 - We would like to understand your readiness for complying with GloBE Model Rules. Do you have any comments on the skills and capabilities of your responsible staff and advisers in undertaking the calculations and applying the GloBE Model Rules?
Q21 - Do you have any comments on the timeframes that may be required to implement the required system and reporting changes for your business in undertaking the calculations and applying the GloBE Model Rules?
Q22 - Are there any remaining uncertainties or issues regarding Australia's adoption of the GloBE Model Rules, including but not limited to the computation of GloBE income, adjusted covered taxes, and the transitional rules, which requires further clarification?

[20] From an adviser perspective our readiness for GloBE implementation is currently focussed on capability development and talent acquisition to ensure that we have the capacity to support our clients in the implementation of Pillar Two. The evolving OECD administrative guidance and development of areas of technical concern is a key challenge in scaling this capability, as is a shortage of existing talent in specialist areas such as tax effect accounting.

Clients report a good general awareness of Pillar Two amongst internal stakeholders, including the tax function as well as other finance functions and amongst senior executives. However, given the complexity of the GloBE rules from both a technical and data gathering standpoint, the capability and capacity to undertake the calculations is currently best described as being at the 'beginning' stages.

[21] Whilst data system and technology solutions are forecast to assist with this process in due course, we estimate businesses will need at least 12 months or more on average to be properly ready for GloBE implementation. We note that the timeframes for a multinational to implement the GloBE are highly dependent on their particular profile, corporate structure and existing technology / ERP infrastructure.

From a training and talent acquisition perspective and mobilising resources we estimate approximately 3-6 months ahead of implementation will be required, depending on complexity of the group.

[22] Remaining uncertainties

There are a number of uncertainties and issues with the GloBE rules which continue to cause concern and are impacting readiness for implementation. We understand that many of these have been raised through the OECD public consultation and are being considered for further guidance, however we have set out a non-exhaustive summary list of these issues for consideration in the Australian context.

Deloitte.

GloBE rules reference (Chapter)	Topic	Summary issue
General	• Accounting • Dispute resolution / tax certainty	• Guidance on required accounting treatment of top-up tax liabilities under IAS 12 including whether deferred tax accounting is applicable • Guidance is required on how disputes between countries' GloBE rules will be resolved. Co-ordination is necessary to prevent taxpayers being subjected to duplicated processes in different countries and potentially conflicting sets of rules (eg general anti-avoidance). Audits of GloBE and top-up tax liabilities should be co-ordinated by the UPE jurisdiction.
1 - Scope	• "Group" meaning in Article 1.2.2	• Clarity is required on how the rules apply to groups that are not required to prepare consolidated financial statements (eg charitable foundations, investment funds), particularly whether the definition in Article 10.1 paragraph (d) applies to require 'deemed consolidated accounts' to be hypothesised.
3 – GloBE income	• Financial Accounting Net Income or Loss (FANIL) • Excluded equity fx hedges • Intragroup financing • Tax consolidated group election	• Examples detailing how FANIL is worked out entity by entity basis under Article 3.1.2 including where amounts are recorded in 'equity', when consolidation adjustments can be "reliably and consistently traced" (see OECD Commentary chapter 3, paragraph 3). • Clarification of scope of excluded equity gain or loss for Article 3.2.1(c) purposes including whether foreign currency movements in respect of ownership interests will also be excluded (see OECD Commentary chapter 3, paragraph 57). • Clarification required on scope of the intragrouo financing rule in Article 3.2.7. The rule appears extremely broad and guidance is necessary on when a HTC will experience a "commensurate increase in taxable income" (eg treatment of losses by HTC). • Clarification would be helpful for when / how the tax consolidated group election in Article 3.2.8 applies, including whether a separate election is to be made for each consolidated group in a country and whether the election is available for grouping relief regimes whether or not such relief is applied in a particular year.
4 – Adjusted covered tax	• Covered taxes with respect to excluded income/loss • Deferred taxes • CFC and PE allocations • Non-refundable tax credits	• Clarification required on meaning of 'income excluded' in Articles 4.1.3, 4.4.1 (and 9.1.2), particularly whether covered taxes on items not included in FANIL are excluded. • Confirmation on whether deferred taxes are taken from group financial statements or local statutory accounts (see Article 4.4.1) • Further guidance on covered taxes allocable to PE are required, including allocation of deferred taxes.

Deloitte.

	• Stateless entities and deferred taxes	• Clarity on what kinds of credits fall within which basket (Non-refundable tax credits vs refundable tax credits) would be helpful). • Confirmation on whether the Article 4.5.1 election is limited to CEs in a 'jurisdiction" or is also available for stateless entities.
9 - Transition	• Transition period • Deferred taxes • Article 9.1.3	• Transition period begins from 30 November 2021. Clarification is required whether this transition is only for entities that would currently be within scope of the GloBE rules. • Guidance is required on the meaning of the deferred taxes 'reflected or disclosed' in the financial accounts for purposes of Article 9.1.1 • Guidance and clarification of the operation of 9.1.3 is required particularly as the transition period is now extended due to delays in implementation. The meaning of 'carrying value' and 'basis in the acquired assets' and the interaction with deferred taxes requires detail illustration.

Imposing the Top-up Tax liability

Q23 - If the UTPR is implemented by way of a denial of deductions or other alternative methods, including deemed income, do you have any views on how to allocate a UTPR Top-up Tax liability amongst Australian Constituent Entities?
Q24 - Do you have any views or comments on how the adjustments should apply in years where Constituent Entities are in losses or have insufficient deductions?
Q25 - Do you have any concerns if the Top-up Tax liability was to be joint and several amongst Australian Constituent Entities, whether under the IIR or the UTPR (if implemented by way of a separate tax charge)?

[23] One way to allocate the UTPR amongst Australian Constituent Entities (**ACE**) would be to mirror the allocation in Article 2.6 by which Australia's share of the UTPR top-up liability is determined having regard to the UTPR percentage. This would at least have an advantage of utilising information already gathered by the MNE group necessary to perform the country UTPR calculation.

[24] With respect to the application of the UTPR in a tax loss or insufficient deduction situation, in our view the rules should be kept as simple as possible. We understand the integrity of the GloBE rules require a cash tax expense to be recognised, although the denial of deductions even in a loss scenario does in our view involve the loss of an attribute which is akin to a cash tax expense. However, we also believe that the application of the UTPR in a tax loss situation can be expected to be quite uncommon on the basis that many countries will adopt GloBE rules or DMT rules. Complex rules for tracking denied deductions and carry forwards should therefore be avoided in the interests of a simple mechanism in all cases, such as a cash tax liability. This would also be consistent with the IIR and therefore would perhaps be better understood.

[25] We note that the Consultation Paper observes that other countries are considering joint and several liability for Constituent Entities for the top-up tax liability imposed under both the IIR and UTPR in their country. Whilst we understand the potential necessity for this from a collection point of view we note that this could give rise to commercial tensions between entities that are note within the same business unit or have outside ownership interests.

Deloitte.

Where ACEs are jointly and severally liable it may also be necessary to have a mechanism to share and fund the allocations between ACEs. The existing infrastructure in the tax consolidation regime is well understood and therefore may be a suitable starting point for this purpose (with necessary modifications for the ACE group concept).

Administrative provisions

Q26 - Are there any particular issues which should be considered in developing the necessary administrative or 'machinery' provisions in Australia's domestic implementation of the GloBE Model Rules?

Australia should follow the administrative guidance of the OECD Inclusive Framework as closely as possible to maintain consistency with the implementation of GloBE rules around the world. This includes filing obligations, deadlines and dispute resolution.

In terms of the machinery provisions further consultation should be conducted in this regard as Exposure Draft legislation is developed, although some of the points to note should include:

- SGE penalties should not apply to the top-up tax liability under GloBE
- Consideration of registration process required to connect entities within a GloBE MNE
- Payments of Top-up tax liability should be done on an annual basis and not differ for small/large remitters
- Details regarding access to MAP to be considered

GloBE Information Return

Q27 - Do you see any issues with a GloBE Information Return that requires disclosure of detailed information supporting the calculation of these steps?
Q28 - Do you have any additional feedback on how the GloBE Information Return could be designed (including on content, filing, and exchange of information requirements)?

[27] We appreciate there is a need for detailed information to be assembled to be able to perform the GloBE calculations. However we envisage that provision of such detailed information will result in information about related companies in a MNE global group being shared with tax administrators that the constituent entities in that country do not possess due to commercial confidentiality reasons. The risks that this may pose should be considered more broadly and socialised in further consultation once the OECD endorsed GloBE forms and administrative guidance is released.

[28] Common data points and formats across implementing countries should mitigate some of the cost of compliance, maximise the scope for technology solutions to be successfully deployed and enhance data quality. Data to be included in these returns should be the must-haves rather than the nice-to-haves.

Australia should not develop unilateral filing obligations or go beyond what the OECD Inclusive Framework recommends as the common approach, as this will conflict with the imperative for global consistency.

XML schemas / electronic lodgments formats must be harmonised globally to prevent any duplication or adjustments being required by Australian businesses.

Safe harbours

Q29 - Do you have any comments on possible scope, design, and conditions of access to a safe harbour?
Q30 - Do you have any views on a Country-by-Country Reporting-based safe harbour, how it should be designed, and what adjustments would need to be made to the reported amounts?

Deloitte.

[29] In order to be effective safe harbours should be accessible by all in scope entities in Australia and have broad application by containing conditions which can be expected to apply by a majority of entities within scope. We can see merit in broad safe harbours being introduced for the purposes of transitioning into the GloBE regime, with perhaps a sunset clause in a few years once technical concerns have settled.

In terms of design, a list of 'safe' countries that does not require supporting computation would be most beneficial to affected entities. For example, a list of countries could be based on corporate income tax rates, incentive regimes or a DMT. However, we appreciate there would be political challenges in establishing and developing such a list at a global level.

As such, if computations are required we recommend that safe harbours should be based on currently available information with few adjustments. It is also important that the safe harbours do not conflict with one another and that there is some flexibility if there are a range of safe harbours. For example, if Country-by-Country reporting (**CbCR**) provides a safe harbour against GloBE it would unfortunate if the safe harbour did not also apply if a country chooses to implement a DMT.

We also note that GloBE rule provide for a credit for tax paid under a QDMT against a computed GloBE top-up tax liability. This conceptually could mean that GloBE may have operation to residual top-up tax liability amounts to the extent that the QDMT liability doesn't perfectly align with that computed under the GloBE. We recommend that safe harbours be sufficiently flexible to allow for such differences.

[30] A safe harbour for GloBE that leverages existing information or reporting requirements as much as possible would be most beneficial. In this sense, CbCR seems appropriate as a data source however we strongly recommend that no adjustments or very minimal adjustments be made to CbCR data in order to maintain the purpose of compliance cost savings.

Assuming that a CbCR safe harbour would apply the minimum tax rate of 15% plus a margin to reflect that it would be an approximation of GloBE jurisdictional ETR, we also recommend that Australia advocate for a slim margin given our relatively high corporate tax rate on Australian sourced profits and on Australian residents including under Australia's CFC regime.

Interaction with integrity provisions Q31 - Do you have any specific concerns on potential interactions with integrity provisions of the Australian tax law, such as the controlled foreign company (CFC) rules and the hybrid mismatch rules, and any uncertainties which may arise from their interaction with the GloBE Model Rules? Q32 - Are there any issues which you think may arise in allocating taxes imposed under Australia's CFC Tax Regime?

Australia has a large number of integrity provisions and anti-avoidance rules which will require careful consideration as Australia's GloBE rules are legislated. For the most part these considerations relate to potential overlap in the issue being addresses and possible double taxation consequences that may arise with the implementation of the GloBE rules. We also recommend that the implementation of the GloBE rules presents an opportunity to revisit some of the policy settings underpinning the existing measures. In particular, we raise the following interaction issues for consideration:

Hybrid mismatch rules	• Whether the top-up tax liability under IIR, UTPR or DMT should result in an amount being "subject to foreign income tax" as defined in section 832-130. This is relevant for a number of provisions within Division 832 including 'dual inclusion income' and 'deduction/non-inclusion' mismatches. • Whether withholding tax should be taken into account in working out whether an amount is "subject to foreign income tax". This is particularly

	relevant for the targeted integrity rule in Subdivision 832-J which *excludes* withholding tax and yet benchmarks the foreign tax at 10%. There is a high risk of double taxation if the targeted integrity rule were to apply and an amount of top-up tax was determined for the recipient entity. • Whether the GloBE base should be adjusted for amounts disallowed by the hybrid mismatch rules. • The allocation of Adjusted Covered Taxes to Reverse Hybrids and Branches potentially conflicts with the outcomes for reverse hybrids and branch hybrid mismatches in Division 832. • The imported mismatch rule is an extremely broad reaching rule which can operate to permanently disallow deductions in certain circumstances, including where timing differences reverse in future years. The implementation of GloBE rule presents an opportunity to correct this deficiency which is inconsistent GloBE policy settings which accommodate timing differences via deferred taxes. • Whether a deduction which may be denied by the UTPR still constitutes a deductible payment for the hybrid mismatch rules.
CFC rules / branch profits exemption	• Australia's CFC rules in Part X do not permit 'grouping' of entities for the purpose of computation of any attributable income for an attributable taxpayer. As a result, we do not expect significant difficulty in allocating CFC taxes to a specific CFC in accordance with Article 4.3.2. • However the limitation in 4.3.3 relating to Passive Income may pose a practical challenge. We suggest that "Passive Income" for GloBE rules be defined with reference to the OECD GloBE rules or in accordance with relevant accounting standards and not the definitions as provided for under Part X. While this may leave open the meaning to different interpretations, to do the alternative may result in wider meaning of Passive Income than intended and unnecessarily disadvantage Australian multinational groups to foreign counterparts in restricting the tax that can be allocated to CFCs. • Consideration should be given to interaction of foreign income tax offset (FITO) rules in Division 770 with GloBE taxation or DMT taxation in a foreign subsidiary. We understand that the GloBE rules effectively prioritise CFC regimes and a DMT is worked out after the allocation of CFC taxes to an entity but that this issue may be further considered as part of the Implementation Framework. • Interaction between the active income test and the GloBE rules. • Similar considerations to above in relation to the branch profits exemption under section 23AH of the Income Tax Assessment Act 1936.
Transfer pricing	• Consider whether Article 3.2.3 and Division 815 have potential to conflict in some circumstances. • Potential interaction between compensating adjustments and Article 4.6.1 for post filing adjustments for GloBE purposes.
Part IVA	• Whether a particular outcome for GloBE purposes could be a tax benefit or whether the GloBE rules will have a separate general anti-avoidance rule embedded.

Deloitte.

	• Timing and general interaction with DPT and MAAL.
Proposed intangible measure in 2022-23 Federal Budget, October 2022	• How/whether a top-up tax liability will be taken into account in working out the rate of foreign tax.

Corporate restructuring under GloBE

Q33 - Do you have any comments on how the GloBE Model Rules in relation to corporate restructurings and holding structures may interact with Australia's tax laws on mergers and acquisitions, including tax consolidation? Do you also have any comments on how the GloBE Model Rules could be implemented so that interactions with our domestic rules, including tax consolidation, do not lead to outcomes inconsistent with the GloBE Model Rules?

The interaction between the GloBE Rules and the Australian tax consolidation rules is likely to give rise to uncertainty in a mergers and acquisitions (M&A) or corporate restructure context. These uncertainties will need to be addressed on implementation and may present as compliance challenge with respect to year 1.

Use of historical carrying values

A fundamental aspect to the operation of the GloBE Rules in the computation of ETR is the use an entity's historic carrying values of assets and liabilities. This is confirmed to be the case in a M&A context by virtue of Article 6.2.1(c). The commentary to the Model Rules at paragraph 51 of Chapter 6 supports this and the intention to exclude purchase accounting adjustments including in relation to acquisitions pre-commencement of the GloBE. For MNE groups with significant historical M&A activity, the default position to use historic (unadjusted) carrying value is likely to be quite burdensome as the relevant data may not be available. The commentary separately at paragraph 4 of Chapter 3 (with respect to Article 3.1.2) provides that for acquisitions prior to 1 December 2021, a Constituent Entity may use the carrying value reflected in its separate accounts (i.e. after purchase accounting adjustments) but "only if the MNE group does not have sufficient records to determine its Financial Accounting Net Income or Loss with reasonable accuracy based on the unadjusted carrying values of the acquired assets and liabilities".

It may be uncertain to taxpayers whether or not their records enable a calculation with "reasonable accuracy". We recommend that consideration be given to codifying this exception to the use of unadjusted carrying values for acquisition pre-1 December 2021 with eligibility deemed to be satisfied with respect to acquisitions that took place greater than a specified number of years prior to commencement of GloBE (e.g. 4 years would align with usual period to which corporate tax returns are open to amendment).

Article 6.2.2 and sales of entities between Australian tax consolidated groups

Broadly, Article 6.2.2 operates to treat an acquisition or disposal of a controlling interest in a Constituent Entity as an acquisition or disposal of assets and liability if the transaction is treated as such for the purposes of the laws in the jurisdiction of the target Constituent Entity (with tax imposed on the difference between tax cost basis of assets and consideration paid for them or their market value). The operation of this Article may be significant as otherwise any gain would be viewed as an 'Excluded Equity Gain' which is adjusted out of the calculation of a Constituent Entity's GloBE income or Loss together with any tax imposed on the sale of shares.

We suggest that in implementing the rules, it be made express that with respect to an entity leaving a tax consolidated group and joining another tax consolidated group, Australia's tax law should be taken as operating in a "similar manner" to an asset acquisition (via exit and entry ACA calculations and consequences) and as a

Deloitte.

consequence, this provision will be satisfied where the disposal could give rise to a taxable gain (even if no gain arises due to the relevant tax cost basis and market values).

Article 6.3.4 and operation of Australia's cost base resetting rules for Australian tax consolidated groups

Broadly, Article 6.3.4 permits a Constituent Entity to make an election to adjust the basis of its assets and liabilities to use the fair value of its assets and liabilities (post-acquisition 'uplift') if it includes the difference between its historical carrying values and their fair value in the computation of the entity's GloBE Income or Loss either fully in the year of acquisition or otherwise over a 5 year period. It should be clarified in the Australian law that this provision is available to be applied (on election) generally when a tax consolidated group acquires an entity and the tax cost basis of the target's assets are 'reset' notwithstanding that in some circumstances the tax cost base values may not actually be uplifted fully to market value.

Tax paid under the GloBE rules and imputation

Q34 - Do you have any views on whether any Top-up Tax paid by an Australian Constituent Entity under the GloBE Model Rules should give rise to franking credits?

It is important that GloBE rules as implemented in Australia are viewed as a "Qualified IIR" (**QIIR**) and "Qualified UTPR" (**QUTPR**) in accordance with Article 10.1 to ensure co-ordination with other countries GloBE rules and mitigate the risk of double taxation of profits of Australian multinational groups. From this perspective, we appreciate there is a concern that in allowing franking credits to Australian taxpayers in respect of a top-up tax liability this may be judged as a 'benefit' that disqualifies the GloBE rules per Article 10.1.

In our view maintaining the status of Australia's GloBE rules as a QIIR and QUPTR should be a primary goal. However, we suggest that the concern regarding disqualification is not technically proven and if Australia's GloBE rules can qualify as a QIIR or QUTPR regardless of imputation, franking credits should be allowed for top-up tax paid in Australia.

In particular we note the example provided in the OECD Model rule Commentary Chapter 10 at para 124 regarding provision of a tax credit for GloBE liability that can be used against other taxes as a 'benefit' that disqualifies an IIR. In our view it is implicit in the example that the credit is obtained and utilised by the MNE group and not a credit of the type covered by the meaning of Qualified Imputation Credit. Importantly the Commentary states in para 125 that the underlying principle being the condition that no benefit be provided is to provide a level playing field and to avoid inversions incentivised by differences in the implementation of the GloBE Rules.

From this perspective, we note that the provision of franking credits in Australia (or GloBE tax or otherwise) would not appear to incentivise inversions of multinational groups to Australia. The franking credits on attachment to distributed profits merely mitigate double-taxation in the hands of resident shareholders and for non-resident shareholders, mitigate the imposition of dividend withholding tax. The MNE group does not itself benefit from deriving the franking credits in the sense that they cannot utilise the tax attribute but rather only pass on to their investors.

We also note the comments in the Consultation Paper that "GloBE taxation may be viewed as an additional "foreign income tax and contrasted from our CFC regime , as it does not represent tax on income which would otherwise be included in the Australian corporate income tax base…". However, we question whether this is an appropriate basis for excluding franking on top-up tax liabilities as the revenues collected in Australia under either the IIR or UTPR are practically altering the corporate income tax base.

Domestic minimum tax

Q35 - Do you have any comments on whether or not Australia should adopt a Domestic Minimum Tax in conjunction with the implementation of the GloBE Model Rules?
Q36 - Do you agree that a Domestic Minimum Tax in Australia should only apply to multinationals in the scope of Pillar Two (for example, not applying to businesses that only operate in Australia)?
Q37 - If Australia were to adopt a Domestic Minimum Tax, do you have any views on its design as a Qualified Domestic Minimum Tax (that is, on the Domestic Minimum Tax being consistent with the outcomes under the GloBE Model Rules)?
Q38 - If a Domestic Minimum Tax were to be implemented, do you have any views as to whether there should be a separate return (that is, in addition to the GloBE Information Return and any potential local GloBE Tax Return), and do you have any additional feedback on this return? Would there be any particular issues if a Domestic Minimum Tax Return were to be due earlier than the GloBE Information Return?
Q39 - If a Domestic Minimum Tax is implemented, how should the liability be allocated amongst Australian Constituent Entities? Should the liability be joint and several amongst Australian Constituent Entities?
Q40 - Do you have any views on whether tax paid in Australia under a Domestic Minimum Tax should give rise to franking credits?

[35] While we can appreciate the appeal behind introducing a DMT in Australia to mitigate application of another country's GloBE rules with respect to Australian profits, in light of Australia's tax settings and relatively high corporate tax rate, we expect the incidence of a DMT applying to Australian profits to be minimal. This raises doubt in our view on the value of introducing a DMT in Australia, particularly should implementation result in additional compliance requirements locally (e.g. a DMT return).

[36] If a DMT were to be implemented it should only apply to Australian multinationals otherwise in scope of the GloBE rules. To expand the scope of a DMT to out of scope entities is unwarranted given the DMT is at best a protective mechanism for the Australian tax base.

[37] If implemented a DMT should fully align in its design with the ETR methodology in the GloBE rules. To not do so, would risk the DMT not being viewed as a "Qualified DMT" and in turn risking double taxation of Australian profits under another countries GloBE (IIR or UTPR) rules.

[38] To minimise compliance costs any DMT computations should be included in a multinational's GloBE Information Return and in a consistent manner to other countries adoption of DMT requirements. We appreciate that timing of DMT may be a factor supporting a separate return but suggest this could be managed without imposing further compliance burden on taxpayers. Further OECD guidance should be sought if Australia goes down the path of a DMT.

[40] If a DMT is implemented it should give rise to franking credits as it will clearly relate to Australian profits.