



RSM Australia Pty Ltd

Level 13, 60 Castlereagh Street
Sydney NSW 2000

T +61 (0) 2 8226 4500

F +61 (0) 2 8226 4501

www.rsm.com.au

20 April 2023

Ronita Ram
A/g Assistant Secretary
Tax Treaties Branch
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

Submission via email: MNETaxIntegrity@treasury.gov.au

RSM Australia submission – *Denying Deductions For Payments Relating To Intangible Assets Connected With Low Corporate Tax Jurisdictions*

Dear Ronita,

Thank you for the opportunity to provide our views on exposure draft legislation and accompanying explanatory material to implement proposed measure to deny deductions for payments relating to intangible assets connected with low corporate tax jurisdictions (the **Proposed Measure**).

RSM Australia agrees, in principle, that multinational enterprises (**MNE**) should pay their 'fair share' of tax in Australia. However, RSM Australia has concerns regarding the current drafting of the Proposed Measure, specifically the:

- Absence of any 'purpose' or 'motive' test, which is inconsistent with how the Proposed Measure was initially envisaged by the Australian Labor Party (**ALP**). Reference, in this regard, is made to comments by the ALP in 2019 that MNEs would not be denied a deduction where it is demonstrable that a payment is not for the dominant purpose of tax avoidance¹;
- Lack of provision for instances where the payment of withholding tax or operation of other rules such as Australia's controlled foreign company (**CFC**) regime would result in a material and presumably unintended detrimental impact to an MNE group's effective tax rate;
- Definition of 'low corporate tax jurisdiction' under proposed section 960-258. Areas of concern include:
 - Proposed paragraph 960-258(2)(e), which could result in a myriad of countries being deemed a 'low corporate tax jurisdiction' due to offering concessionary rates of income tax on certain types of income. Indeed, it is noted that this could hypothetically result in Australia being deemed a 'low corporate tax jurisdiction' if it was foreign. We strongly recommend that this definition is refined, for instance by qualifying the reference to the words "have regard only to the lowest rate" so that

¹ [LABOR WILL CRACKDOWN ON LOOPHOLES FOR MULTINATIONALS - SUNDAY, 5 MAY 2019 \(billshorten.com.au\)](https://billshorten.com.au)

this provision only applies to the extent actually applicable to the actual entity. This would be further supported by clarificatory wording in the Explanatory Memorandum, preferably with some examples of common fact patterns; and

- Lack of provision for taxes imposed at a non-national level. For example, a country with a national corporate tax rate of less than 15% could be deemed a 'low corporate tax jurisdiction' for the purposes of the Proposed Measure, notwithstanding that taxpayers in that country are subject to corporate tax at a rate materially higher than 15% owing to the imposition of corporate tax at the regional and/or local level.
- Extension of the Proposed Measure to back-to-back arrangements absent any requirement for the Commissioner of Taxation to demonstrate that each payment in a series of payments funds the next payments or is at least sequential, which could result in the Proposed Measure being applied in a manner far broader than intended, and with significant attendant compliance costs; and
- Lack of clarity regarding the purpose of the Proposed Measure, given the forthcoming global minimum tax rate of 15% to be implemented pursuant to the Organisation for Economic Co-Operation and Development's (OECD) Pillar Two project, or its intended interaction therewith.

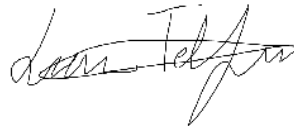
Furthermore, RSM Australia is concerned by the proximity of the end-date of the current consultation to the slated effective date of 1 July 2023. This proximity does not in our opinion provide sufficient time for Treasury to consider submissions received, which is compounded by the breadth and complexity of the Proposed Measure.

Please contact Liam Delahunty at liam.delahunty@rsm.com.au or Liam Telford at liam.telford@rsm.com.au should you have any queries in respect of, or wish to discuss, this submission.

Best regards,



Liam Delahunty
Partner
RSM Australia



Liam Telford
National Tax Technical Director
RSM Australia