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Brian McKay
Corporate and International Tax Division
Treasury
Langton Cres
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By email: corporate.tax@treasury.gov.au

Dear Brian

Extending the definition of a Significant Global Entity

CPA Australia represents the diverse interests of more than 164,000 members working in 150 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

We support the Government's commitment to the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework) and the ongoing efforts to ensure that Australian legislation appropriately captures the relevant large business groups.

We agree with efforts to enhance the transparency of large business groups headed by proprietary companies, trusts, partnerships and investment entities. However, we remain concerned that the inclusion of financial reporting requirements and the use of accounting standards to set definitions and thresholds in tax legislation increases the complexity of our legislative framework.

The draft legislation continues the trend of using accounting standards for the administration of tax by imposing general purpose financial statement reporting on entities or groups that are otherwise not required to consolidate or report. We reiterate our view that tax reporting and financial reporting serve different purposes and therefore the use of financial statements to enhance tax transparency is conceptually flawed.

The draft legislation indicates that the original basis for defining a Significant Global Entity (SGE) through the requirement to lodge consolidated General Purpose Financial Statements (GPFS) was insufficiently comprehensive for the purposes of tax administration and Australia's commitments under the Inclusive Framework.

The solution, however, is not necessarily to further impose reporting requirements through taxation law that are otherwise exempted by either the accounting standards or legislation, including the *Corporations Act 2001 (Corporations Act)*. There is a fundamental mismatch between the regulatory intent behind the obligations imposed by legislation such as the *Corporations Act* and those being sought by modifying the *Income Tax Assessment Act 1997* through these proposals.

This divergence between the legislative intent and the obligations increases costs of compliance, creates different reporting requirements and leads to the publication of information otherwise not required by law. We observe that this approach will capture:

- Portfolio companies that operate independently but are controlled by an investment entity
- Entities that currently lodge special purpose financial statements or are exempted in accordance with the *Corporations Act* or by the Australian Securities and Investments Commission (ASIC)

- Entities that are otherwise immaterial according to accounting standards, and
- Large business groups with minimal cross-border dealings that are currently not required to prepare general purpose financial statements.

While the Explanatory Memorandum states that the purpose of the draft legislation is to align Australia's tax laws with international commitments, the draft legislation goes further by imposing significant administrative penalties on groups and entities captured by the new SGE definition even where their operations are wholly or materially contained within Australia.

We also anticipate significant challenges in implementation, noting that the ATO took over two years to draft its current guidance. For many groups currently exempted, the potential delayed timeframes and lack of clarity can raise uncertainty and increased compliance costs.

Another point of uncertainty is that given ASIC maintains its register and publishes financial reports under the *Corporations Act*, it is unclear how this extension to entities outside the scope of the *Corporations Act* will be accommodated.

If passed, we submit that the amendments should apply in relation to income years starting on or after 1 July 2020 given the significant change and impost on new SGEs to shift to GPFS reporting. The retrospective application to the prior (2018-19) and current (2019-20) income year is an unreasonable impost given that the legislation has yet to be introduced into Parliament more than 18 months after announcement.

If you have any queries do not hesitate to contact:

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Yours sincerely

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