15 January 2020

Manager
Corporate and International Tax Division
Treasury
Langton Cres Parkes ACT 2600

Attention: Brian Mackay
By email: corporate.tax@treasury.gov.au

Dear Mr Mackay

Exposure Draft: Extending the definition of a Significant Global Entity (SGE)

The FSC welcomes the opportunity to comment on the exposure draft legislation and explanatory memorandum on the proposed extended definition of SGE to include large business groups headed by proprietary companies, trusts, partnerships, and investment entities.

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost $3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

Submission

The FSC, as the peak body representing managed funds in Australia, has concerns with the proposed extension of the SGE definition. These concerns are outlined in more detail in the submissions to this consultation by Deloitte Australia and the Australian Investment Council:

- The proposal will mean the Multinational Anti-Avoidance Law (MAAL) and Diverted Profits Tax (DPT) will apply retrospectively to entities newly classified as SGEs (although we understand penalties will not apply retrospectively).

- The Australian proposal is not consistent with the OECD model legislation for entities that are within the scope of Country by Country (CbC) reporting. As noted in the Deloitte submission, the OECD model legislation applies the accounting consolidation rules. In turn, Australian accounting rules (AASB 10) broadly treat investment entities as an exception to consolidation.
    - By contrast, the current Australian proposal could apply CbC reporting to many more investment entities under the OECD model approach; and as Deloitte notes impose a compliance cost burden on investment entities to determine if the exercise "control" over another entity.
- The impact of coming within the SGE definition is large, particularly because the SGE penalty regime is quite severe, with the one hundred fold increase in lodgement penalties that occurred in July 2017.
- In some cases, particularly outlined in the Australian Investment Council submissions, investment entities brought into the SGE net could be small to medium sized entities (SMEs). This would be imposing a tax regime designed for large multinational businesses on SMEs, as result that would not be consistent with the Government's broader economic agenda.

We submit that if the policy intent is to bring large investment entities into the scope of the MAAL and DPT, then a measure targeted just at this alone should suffice, without also imposing severe SGE penalty regime on these entities as well.

We would be happy to discuss this submission further. I may be contacted on [redacted] or +61 (2) 9299 3022.

Yours sincerely,

[redacted]

Michael Potter
Senior Policy Manager, Economics & Tax