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Dear Sir / Madam

Submission: Amendments to the interest limitation rules

This submission provides our comments on the Exposure Draft issued on 18 October 2023 **(October 2023 ED)** in relation to Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023 **(June 2023 Bill)**.

We acknowledge that on some matters, the October 2023 ED positively addresses stakeholder feedback following the release of the June 2023 Bill.

Our submissions are based on the October 2023 ED (noting that there may be further changes in the Parliament) and are made with the intent that the law when finalised is consistent with the policy objectives (as we understand them), does not create unintended consequences and, to the greatest extent possible, maximises certainty and equality of treatment for comparable circumstances: that is, achieves horizontal equity[1]

Our submission comments are in the attached appendix. We would be pleased to discuss any aspect further.

Yours faithfully

David Watkins
Deloitte, Tax Insights & Policy Leader

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[1] The Review of Business Taxation: A Tax System Redesigned, Report July 1999 states that "The concept of equity in the business tax system relates principally to horizontal equity. This concept implies that business income earned in similar circumstances should be taxed in similar ways. This means that, in principle, all entities carrying on business activities should be taxed in a similar manner".

Deloitte.

Appendix

Submission: Amendments to the interest limitation rules

A. Law effective from 30 June 2023 not yet passed

We continue to be concerned that the interest limitation rules are (subject to limited exceptions) applicable to income years commencing on or after 1 July 2023 and have not yet been legislated. The October 2023 ED contained significant changes in policy announced some 4 months after the commencement date. Whilst the announced changes are broadly favourable to affected taxpayers and reflect submission comments to date, the effect of the October 2023 ED is equally to highlight that such policy adjustments will exclude other arrangements which are commercially comparable.

As at the end of October 2023, the measure has not been legislated and it is not yet clear when the measure will become law.

This delay in passing the law, and the ongoing shifts in policy effectively lock affected taxpayers / potentially affected taxpayers into existing arrangements: there remains a hope that some positive policy shifts may emerge, and there is insufficient certainty to change financing arrangements. This has the effect that if taxpayers are adversely affected by the law as finalised, almost half an income year has passed before a taxpayer is in a position to plan a response, let alone implement such a response.

This is a highly undesirable state of affairs, and all effort should be made to prevent other cases of this sort of delay in passing laws.

Need for guidance

Given the compressed timeframe for this consultation and the many matters raised during the various consultation processes, many of which have not been publicly addressed, we are concerned that the law when finalised will still contain a number of uncertainties which will need to be managed by taxpayers, advisers and the ATO.

Accordingly, we recommend that a post implementation review be conducted. Indeed, we envisage an ongoing process involving Treasury and the Australian Taxation Office (ATO) on a real time basis as issues are identified. In addition, a more typical post implementation review should be conducted in say 2-3 years.

In light of the above, we submit that consultation focus will quickly need to move to ATO guidance products to address key issues such as the potential application / non-application of Part IVA and the potential application / non-application of the schemes rule in s802-423D.

B. Fixed ratio test

1. Tax loss recoupment: corporate tax entity

We note the addition of s820-52(1A) which clarifies how prior year tax losses are to be taken into account at step 1 [or paragraph (a)] of the tax EBITDA computation in s820-52. We suggest that an example be included in the EM to demonstrate the application of this provision, together with other existing rules that regulate the amount of tax loss recoupment.

However, consistent with our previous submissions, we again submit that the recoupment of prior year tax losses at step 1 of the tax EBITDA computation **inappropriately reduces the tax EBITDA amount in later years**, which can result in an inappropriate denial or deferral of interest deductions in subsequent years.

Our concern is reflected in this simple example. Assume in Year 1 (Y1):

Assessable income	$10
Allowable deductions (other than interest and depreciation)	$10
Tax depreciation deductions	$5

Relevantly:

- The Y1 tax EBITDA is $nil, noting that the Y1 tax EBITDA is <u>not</u> reduced by the Y1 depreciation deductions;
- The Y1 carry forward tax loss is $5, which reflects the Y1 tax depreciation deductions.

In Y1, the Y1 tax depreciation deductions do **not** reduce Y1 tax EBITDA (appropriate outcome and consistent with policy).

Under the proposed methodology, it is **anomalous** that the Y1 carry forward tax loss which reflects Y1 depreciation deductions **reduces Y2 tax EBITDA**. As a result of the reduction of Y2 tax EBITDA, Y2 interest deductions will potentially be denied in Y2.

We have previously proposed an alternative methodology to compute tax EBITDA in such tax loss cases, which we submit produced a simple, principled and appropriate outcome in dealing with tax loss recoupment. However, the October 2023 ED continues to adopt the same methodology as per the June 2023 Bill.

Notwithstanding the above submission and given the tax loss recoupment methodology adopted by the October 2023 ED, we **further submit** that any tax losses incurred **prior to** years commencing on or after 1 July 2023 (pre-losses) should be **excluded** from the computation of tax EBITDA for years commencing on or after 1 July 2023. Indeed, given the Temporary Full Expesning (TFE) claims of some taxpayers, ther ewill be cases where tax losses incurred prior to 1 July 2023 reflect the tax dpreciation cliams by way of TFE. We submit that such pre-losses should be excluded:

- Such prior year tax losses were computed under a different interest limitation regime, and reflect the result of that prior regime. For example, to the extent that prior year interest deductions were excessive under the prior regime, the interest deduction was permanently disallowed in that year, and this result was reflected in a reduced prior year tax loss.
- As such prior year tax losses have already been subject to the former interest limitation rules, these losses should not be used again to affect the calculation of permitted interest deductions under the new interest limitation rules. Such an approach effectively means that the prior year facts can have the effect of twice reducing interest deductions.
- If contrary to this submission, tax losses incurred prior to years commencing on or after 1 July 2023 continue to be taken into account for tax EBITDA computation in years commencing on or after 1 July 2023, we submit that it therefore follows that taxpayers should be permitted to:
    - recompute those prior year tax losses to remove the effect of the former interest limitation rules (ie, prior year tax losses to be adjusted to remove interest denial under the former rules); and

- notionally apply the new rules to prior years so as to compute a notional FRT disallowed deduction balance as at 1 July 2023.

2. Distributions and tax EBITDA

Dividends

We welcome the proposed modification to s820-905(3) such that dividends will **not be excluded** from tax EBITDA only where the shareholder is **not an associate entity**. That is, where the relevant shareholder interest is less than 10%, such dividends will be included in tax EBITDA. This aligns the dividend test with the equivalent test for trust and partnership distributions, which was contained in the June 2023 Bill.

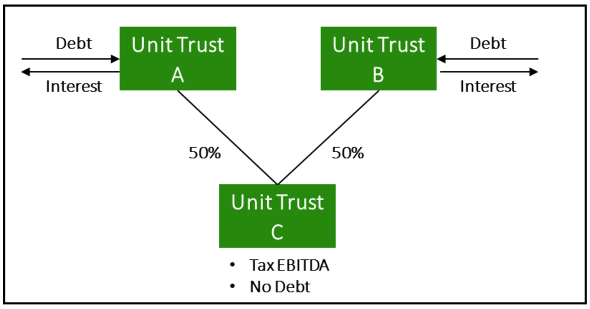
Excess tax EBITDA amount

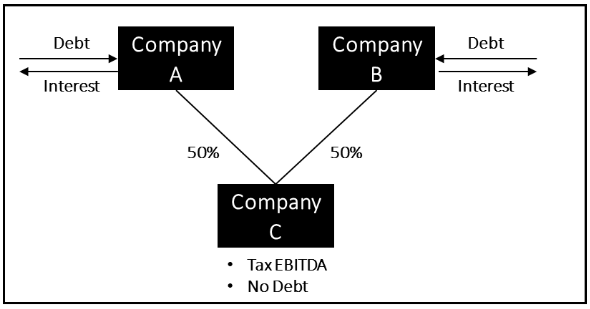
We welcome the introduction of the **trust excess tax EBITDA amount** concept. As drafted, this applies in limited cases involving:

- eligible unit trusts / managed investment trusts;
- with a 50% or more relevant interest in another eligible unit trust / managed investment trust

We submit that there is no difference in principle between eligible trusts jointly owing an eligible trust, and companies jointly owing a company. We submit that the concept of an excess tax EBITDA amount should equally apply in a corporate case. Similarly, excess tax EBITDA concept should be available to partners in a partnership.

As drafted, the trust fact pattern on the left (below) is accommodated but the equivalent corporate fact pattern on the right is not accommodated.





To limit the excess tax EBITDA concept to certain trust arrangements has the capricious result that tax outcomes materially differ for what is essentially the same commercial or economic outcome, based on commercial and structuring decisions that were made in prior years. This has the result of effectively picking winners and losers based on no sound policy distinction.

The combined effect of the above is a patchwork result as follows:

		Investment in		
		Company	Trust	Partnership
<10% interest				
	Inclusion in tax EBITDA	Y	Y	Y
	Excess tax EBITDA amount	N	N	N
10%-49.9% interest				
	Inclusion in tax EBITDA	N	N	N
	Excess tax EBITDA amount	N	N	N
50%+ interest				
	Inclusion in tax EBITDA	N	N	N
	Excess tax EBITDA amount	N	Y **	N

** only for investments by eligible trusts in other eligible trusts

The above framework produces seemingly arbitrary gaps (10%-49.9%) and arbitrary winners and losers (50%+ investment).

It is submitted that the law when finalised should produce equivalent outcomes as between commercially equivalent arrangements.

It is further submitted that there is no clear policy basis for the adverse outcomes that apply to the 10%-49.9% zone.

- Why should an eligible trust with a 50% interest in an eligible trust obtain a different and better result than an eligible trust with a say 40% interest in an eligible trust?
- Why should a company with a 40% or a 50% interest in a joint venture company be excluded from any excess tax EBITDA amount?

C. Third party debt test

The scope of the credit support prohibition is too broad

Subsection 820-427A(3)(ca) prohibits recourse to assets otherwise covered by paragraph (c) where the assets are rights under or in relation to a <u>guarantee, security or other form of credit support</u>.

The relevant paragraph of the EM states that:

> "The general prohibition on recourse to credit support rights is maintained. The prohibition ensures that <u>multinational groups</u> do not have an unfettered ability to 'debt dump' third party debt in Australia that is <u>recoverable against the global group</u>." (emphasis added)

We submit that the drafting of the credit support prohibition is too broad and goes well beyond the intent of the EM for the following reasons:

- Subsection 820-427A(3)(ca) prohibits credit support provided between <u>Australian members</u> of an obligor group that relate to recourse provided <u>wholly to Australian assets</u>. These arrangements provide no ability (let alone an unfettered ability) for the third party debt to be recoverable against the global group.

- Subsection 820-427A(3)(ca) prohibits credit support regardless of whether it is provided by associated entities or non associated entities of the borrower. Only credit support provided by foreign associate entities should be relevant in targeting 'debt dumping' by multinational groups.

The unnecessarily broad scope of the credit support prohibition means that it is incompatible with cross collateralisation arrangements provided within the Australian obligor group in standard multi entity wholly domestic finance arrangements where there should be no policy concern of the sort indicated in the EM.

Finally, to avoid any misinterpretation of the assets to be analysed in paragraph (c), a note should be included to confirm that to the extent that recourse provided to the holder of the debt interest may itself be considered an asset of that holder it should be disregarded in applying that paragraph. Rather, it should be the asset to which recourse is provided that are considered for the purposes of that paragraph.

In the interests of time and acknowledging the compressed time frame to finalise this matter, we have respectfully set out some suggested drafting amendmnets to better convey our thinking.

Suggested drafting amendments for subsection 820-427A(3)(ca) (markups in red)

> (ca) none of the assets mentioned in paragraph (c) are rights under or in relation to a guarantee, security or other form of credit support provided by a *foreign entity which is an associate entity;

OR

> (ca) none of the assets mentioned in paragraph (c) are rights under or in relation to a guarantee, security or other form of credit support provided by an associate entity other than an associate entity that is the entity mentioned in subparagraph (c)(iii);

In addition, a note should be included in section to confirm that:

> Note: In applying paragraphs 820-427A(3)(c) and (ca) disregard the fact that recourse provided to the holder of the debt interest may itself be considered an asset of that holder.

Scope of the credit support development carve out in subsections 820-427A

Deloitte welcomes the expansion of the credit support development carve out in the October 2023 ED beyond rights that relate solely to the development of a CGT asset that is real property (as was the case in the June 2023 Bill). However, we remain concerned that the carve out will still exclude credit support provided to many important Australian infrastructure development projects that we understand, from a policy perspective, are intended to be covered.

Application of the credit support carve out to infrastructure projects

Unlike real estate developments, many infrastructure projects have the following features:

a) **The constructed assets may comprise principally or even wholly of moveable assets.** In this case the land may simply be the site on which the infrastructure assets are located which may not constitute use of the land. Even where they could be considered connected with the use of the land there is doubt as to whether they would be incidental to that use. Rather it would be the case that the use of the land should be considered incidental to the use of moveable assets. In this regard, we note the long line of case law confirming the key distinguishing feature between a fixture and a chattel/moveable property is that the former is attached to the land with the objective of the better use and enjoyment of the land rather than the land merely being a convenient site for the use of the asset.

b) **The land access rights may be a licence or other non exclusive right of access (not ownership or a lease of the relevant land).** As there is no ownership or lease of land the moveable property could not be considered incidental to that ownership of the land. The only very limited exception to this would be where the landowner or lessee was considered the user of the assets (eg in the case of social infrastructure PPP projects where the State Government uses assets constructed by the consortium).
c) **The assets may not be attached to the land at all (eg offshore wind assets, railway rolling stock procurement etc).** As there is no ownership or lease of land the moveable property could not be considered incidental to that ownership or use of the land.
d) **There may be intangible assets created in connection with the development of the tangible assets (eg project deeds and concession deeds).** As part of financing, constructing and operating of infrastructure asset the consortium may enter into a project deed or concession agreement which provides certain rights (eg the right to charge users) and obligations (eg the obligation to construct and operate the infrastructure according to agreed standards). The creation of the intangible asset could be considered connected to the development of the land and moveable assets. Accordingly, to the extent that the credit support could be seen to be, directly or indirectly, resulting in the creation of an intangible assets that would not satisfy the requirements of the carve out.

Application of the credit support carve out to real estate developments

In respect of real property, the EM notes that 'the connection between a credit support right and the creation or development of real property must be tested continuously ….. where a credit support right initially related wholly to funding the creation or development of real property, but subsequently relates to other business activities in later income years in relation to the same real property (such as an investment holding activity where the real property development activity is completed), then the exception provided by subsection 820-427A(4) will not apply.'

Practically this will be problematic for BTR developments as well as some office or other commercial developments. Banks are requiring the credit support to continue during the lease up period until the asset reaches stabilisation (c96% leased). The lease up period for BTR (1-2 years depending on size of the development) is typically longer than a commercial asset, although for commercial developments it is also possible that the level of pre-leasing achieved will be insufficient. This means that BTR funds and certain commercial developments will not be eligible to apply the TPDT during the lease up phase.

Suggested drafting amendments to section 820-427A(4)-(6) (markups in red)

(4) A right is not taken to be a right of a kind mentioned in paragraph (3)(ca) if:

(a) the right relates wholly to the financing, creation or development of one or more CGT assets that comprise, or are reasonably expected to comprise, real property situated in Australian or moveable assets that are to be used solely within Australia (including Australian territorial waters) (together "**the development assets**").

(aa) For the purposes of subsection (a) disregard any CGT assets that comprise intangible assets arising solely in connection with the creation of the development assets.

~~(b) assuming that the holder of the right exercised the right, the right would not reasonably be expected to allow, directly or indirectly, the holder or another entity to have recourse for payment of the debt mentioned in paragraph (3)(c) against a *foreign entity that is an *associate entity of the holder.~~

Note: Intangible assets for these purposes would include concession deeds or project deeds which impose an obligation on the counterparty to construct the relevant development assets.

(5) For the purposes of paragraph (4)(a), in determining whether a right relates wholly to the creation or development of a *CGT asset of a kind mentioned in that subsection, disregard the extent (if any) to which the right relates incidentally to another matter.

Remove section 820-427A(6)

(7) For the purposes of paragraph (4)(a), if:

(a) the creation or development of the CGT asset mentioned in paragraph (4)(a) has reached completion during an income year or during the prior income year; and

(b) paragraph (4)(a) was satisfied in respect of a right at any time in the income year prior to the income year mentioned in paragraph (7)(a)

the right shall be taken to relate wholly to the creation or development of a *CGT asset.

Definition of Australian entity in relation to partnerships

The third party debt test and the Australian entity definition is presently drafted in such a way that existing, genuine debt in partnerships relating to Australian business operations using Australian assets will not meet the third party debt conditions.

This is inconsistent to the policy intent as set out at paragraph 2.92 of the June 2023 EM to design the third party debt test to accommodate genuine commercial debt arrangements relating to Australian businesses.

In particular, a partnership carrying on business in Australia, with Australian assets and employees, but which has Australian partners with less than 50% direct participation interest in a partnership, will not satisfy the definition of Australian entity and the third party debt test conditions. This would prevent the deductibility of genuine, commercial amounts of debt deductions relating to its Australian business operations.

While we note the comments in the October 2023 EM at paragraph 1.31 that the Australian entity definition was modified "to ensure it captures partnerships with a strong connection to Australia and does not allow anti-avoidance behaviour", we submit that this is already satisfied through the requirements in the third party debt conditions that:

- the holder of the debt interest has recourse only to Australian assets (that are held by the entity, membership interests in the entity or held by a member of the obligor group in relation to the debt interest); and
- the entity uses all, or substantially all, of the proceeds of issuing the debt interest to fund its commercial activities in connection with Australia that do not include any business carried on by the entity at or through its overseas permanent establishments and the holding by the entity of any associate entity debt, controlled foreign entity debt or controlled foreign entity equity.

As such, we are not aware of any need for an additional requirement that the Australian assets be held by an Australian entity.

If there is a need to have an additional requirement that the Australian assets be held by an Australian entity, this requirement should be consistent between partnerships and trusts. That is, a partnership should satisfy the Australian entity definition if at least one partner is an Australian trust or Part X Australian resident in the same way that a trust satisfies the Australian entity definition if any trustee is a Part X Australian resident.

D. Debt deduction creation rules

The introduction of the proposed debt creation rules was not part of the pre-election commitment from the (now) government and no public consultation was conducted prior to the June 2023 Bill.

The rules are a fundamental rewriting of longstanding interest deductibility principles and require further consideration.

A range of welcome proposed amendments are contained in the October 2023 ED however we continue to have many concerns with the proposed debt creation rules. We submit that:

- The debt creation rules should not proceed as part of the bill dealing with the new interest limitation rules and should be the subject of adequate stakeholder consultation prior to enactment and commencement.
- Prior to the rules commencing, we submit that the following be clarified:
  - Why the rules are needed given that the new interest limitation rules "will combat multinational profit shifting and tax avoidance by ensuring that debt (interest) deductions are linked to an entity's economic activity and taxable income in Australia". It is submitted that the debt creation rules will act in many cases to prevent such a matching of debt deductions and economic activity.
  - Why are ordinary commercial transactions not consistently excluded from the proposed debt creation rules?
- The debt creation rules (if introduced) should only apply to arrangements entered into in years of income commencing on or after Royal Assent.

Further, we remain concerned that the purported rationale for the new debt creation rules is not reflected in the proposed legislative provisions:

- The EM to the June 2023 Bill states that the rules are directed at "debt creation schemes that lack genuine commercial justification". However, there is **no such legislative test (there is no purpose test)**. Despite some improvements in the October 2023 ED the new rules remain capable of applying to a wide range of ordinary commercial arrangements that go well beyond the expressed intent outlined in the EM. For example, whilst a new carve out for tangible depreciable assets has been introduced, the acquisition of trading stock from certain associates continues to be within scope.
- The EM to the June 2023 Bill states that the rules are concerned that "interest-bearing debt effectively allows for profits to be shifted out of Australia in the form of tax-deductible interest payments". However, the measures are not limited to such circumstances but **can apply to onshore debt**, including from local banks in situations where an associate acts as an intermediary and in circumstances where the interest income is fully subject to Australian tax.

There continues to be a need to align the legislative drafting with the supposed intent articulated in the EM.

In our view the **former debt creation rules** were more appropriately targeted to high risk transactions. For example, amongst other matters, the former debt creation rules did not apply:

- To the acquisition of trading stock (not being part of the acquisition of a business or part of a business); or
- Where the Commissioner was satisfied the transaction did not increase the overall indebtedness of the group.

Acknowledging the amendments contained in the October 2023 ED go some way toward constraining the operation of the proposed rules we submit there remain instances where the rules continue to have an overly expansive impact. For example:

Subsection 820-432A(2): whilst now drafted so as not to apply to third party debt lent directly to the relevant entity, the inclusion of 3 carve-outs in subsection 820-423AA does not go far enough to limit the acquisition of CGT assets as part of normal business operations.

Example A: an Australian distributor will not be able to claim debt deductions on a working capital facility that is on-lent by an associate pair (via a group financing entity) that funds the acquisition of trading stock from an associate. This is the case even where both the interest income to the lender and the income from the sale of trading stock is fully subject to Australian tax.

In respect of the tangible depreciating asset exception (s820-423AA(2)), we submit that the associated language in the EM (paragraph 1.35) should be reviewed, and in particular, the use of the terms "bulk-acquired" and "on behalf of".

. In order to ensure that s820-423A(2) does not apply each entity within a group would need to borrow directly from a third party rather than via a group financing entity (to the extent the relevant acquisition is not otherwise carved out by s820-423AA). Such a change may alter the form, but not necessarily the substance, of the arrangement and may not be commercially viable for some.

Acquisition of a legal or equitable obligation: Subsection 820-432A(2) can arguably apply to all related party debt even in cases where there is **not** an acquisition of a CGT asset given s820-423A(2) captures, in the alternative, the acquisition of a legal or equitable obligation. It is not clear as to what circumstances are intended to be covered by this aspect of the ruleand this needs to be clarified.

We submit that there should be clarification of this limb of s820-423A(2) by way of Note, Example or narrative in the EM.

Subsection 820-432A(5): whilst now drafted to include limited carve outs (new s820-423A(5A) and (5B)) this provision remains drafted in exceptionally broad terms. For example:

- The potential operation of s820-423A(5)may be complex to apply in assessing whether the proceeds of a financial arrangement may be said to be used **to increase the ability of the entity to make** a relevant payment or distribution. The operation of this requirement needs clarification and may prove challenging to administer such that considerable uncertainty and disputes appear likely. Inconsistent application by taxpayers is foreseeable.

- In respect of s820-423A(5B), we understand that this is intended to prevent the operation of s820-423A(5) where Payer borrows under a ”new” loan (which would otherwise satisfy s820-423A(5)) to repay a principal sum owing to Recipient under an ”existing” loan, but only in circumstances where the existing loan does not satisfy s820-423A(5)(a), (b) and (c). s820-423A(5B) requires that the Recipient is an ”Australian entity”. Thus a new loan used to repay an existing debt owed to a foreign associate (recipient) will not fall into s820-423A(5B), with the result that s820-423A(5) would apply, even though this may leave the borrower’s (Payer’s) total debt unchanged (i.e. no new net debt is created and interest income may in fact be brought into the Australian tax net). It is not clear why s820-423A(5B) is drafted on this basis.

- Further, it is not clear why the Australian entity requirement would not also include a non-Australian entity relevantly operating through a permanent establishment in Australia.

- Similar to our above comments relating to s820-423A(2), a financing arrangement will be in scope of subsection 820-423A(5) where it is effectively back to back with a third party lender (i.e. via an associated financing vehicle) therefore demonstrating the need for the debt creation rules to incorporate a conduit financing entity carve out.

- The carveouts in new s820-423A(5A) and (5B) are uncertain in their requirements and scope. We submit that there should be clarification by way of Note, Example or narrative in the EM.

Refinancing: consider a case where an Australian taxpayer has an historic related party debt owing to a foreign group member, where the proceeds were used to acquire an asset from unrelated parties. The associated interest expense under that loan should not be denied by the debt creation rules. However, assume that the loan is about to expire and so is refinanced with replacement related party debt, either from the current group lender or another foreign group member. Such a refinancing prima facie falls into:

- s820-423A(2) if the new loan involves the taxpayer acquiring a legal or equitable obligation; and / or
- s820-423A(5) as there is a payment (repayment of principal) to an associated recipient, being the original lender.

It is not clear to us that any of the exceptions apply, noting in particular that s820-423A(5A) and (5B) require that the recipient must be an Australian entity.

It is not clear as to the policy basis that causes such a refinancing to effectively convert deductible interest to non-deductible interest.

Section 820-423D (Schemes)

We are concerned by the breadth of section 820-423D. This is effectively an anti-avoidance rule provided as a back up to an anti-avoidance rule. Where activated, the Commissioner can treat the debt creation rules as applying, in cases where the rules would not otherwise apply.

We read this to be applicable in the following case:

- A taxpayer is contemplating an ordinary commercial transaction which if funded by way of related party debt, would result in non-deductible interest under the debt creation rules.
- Acknowledging those rules, the taxpayer enters into an external funding arrangement in a **policy compliant manner**, so that the debt creation rules do not apply (although we would maintain that understanding what a *policy compliant manner* is at this point is not abundantly clear).
- Notwithstanding that the transaction is an ordinary commercial transaction funded in a way that is policy compliant with the debt creation rules and does not breach the debt creation rules, the Commissioner can nonetheless apply the debt creation rules if (as is likely) a principal purpose is that the debt creation rules do not apply.

We note that section 820-423D is drafted such that where the conditions are met, the Commissioner "may" determine to apply the anti-avoidance rule. In our view, the Commissioner will need to develop guidelines as to when the anti-avoidance rule will not be applied (such as in policy compliant circumstances above) as opposed to egregious circumstances where the rule ought be applied.

Furthermore, we are concerned that there are no particular prescribed matters that the Commissioner has to take into account in deciding whether to apply section 820-423D. The Commissioner is given an exceptionally broad power.

Other matters

In addition, we note the retrospective operation of the rules should be further addressed. Based on revised drafting, debt deductions incurred for income years that begin on or after 1 July 2024 on financial arrangements issued many years ago could be subject to the new rules. In some instances records may not be available to ascertain whether the proposed rules may apply. We submit that when effective, the debt creation rules should only apply to arrangements entered into on or after the start date (or 22 June 2023).

E. Drafting error s820-423A(6)(b)

We note a minor drafting error has resulted from the October 2023 ED.

Amendments as per Item 59 of the amending October 2023 ED:

- omitted "second associate";

- inserted a replacement term commencing with the word ”the”

The result is that proposed s820-423A(6)(b) reads as

> (b) a recipient may be **the the** entity with whom the payer enters into or has the financial arrangement, or another entity.