The Tax Institute

1 July 2025

Ms Danielle Wood
Chair
Productivity Commission
Level 8, Two Melbourne Quarter
697 Collins Street
Docklands VIC 3008

By email: 5pillars@pc.gov.au

Dear Ms Wood,

Pillar 1: Creating a more dynamic and resilient economy

The Tax Institute welcomes the opportunity to make a submission to the Productivity Commission in respect of its consultation on Pillar 1: creating a more dynamic and resilient economy (**Consultation**).

We commend the Government for considering the role of our tax system and opening the door to changes that may need to be made to enhance productivity and create a more dynamic and resilient economy. We also thank the Productivity Commission for the opportunity to discuss our recommendations prior to making this submission.

In the development of this submission, we have consulted with our National Technical Committees to provide feedback that is representative of our broader membership.

Our preliminary comments in this submission focus on the role of the taxation system in shaping the Australian business landscape and fostering investment and productivity growth. We have addressed consultation questions regarding pillar 1: creating a more dynamic and resilient economy, and section 2: support business investment through corporate tax reform.

We welcome the Government's approach to identifying priority areas for reform and considering implementing meaningful and measurable productivity-enhancing reforms. Superficial legislative amendments are inefficient, leading to greater complexity and uncertainty for all Australians and undermine the fundamental principles of good tax policy and law design. Further, while we recognise that this Consultation is focused on corporate tax elements of the system, it will be necessary to consider other aspects of the broader system and Australia's overall tax mix in due course. This will be particularly important when considering shifts in revenue sources to account for any corporate tax concessions that may be made. Doing so will support the sustainability of our tax system into the future and ensure a lasting positive impact for the economy and all Australians.

Our 2021 landmark discussion paper, Case for Change, identifies the aspects of the Australian tax system that are performing well and those that are lacking. Looking at the system holistically, it proposes a range of options for reform aimed at stimulating investment to enhance Australia's productivity growth, reducing the compliance burden on taxpayers and ensuring a fairer system for all Australians. A bold tax reform strategy is essential for supporting Australia's economy and communities, now and in the future.

The Tax Institute has also recently released its Incoming Government Brief: June 2025 (**the Brief**), detailing key tax and superannuation measures announced by previous governments that remain unenacted before the 48th Parliament. It also identifies important measures not yet announced by the Government that we consider require prompt attention. The Brief aims to assist the Government to prioritise essential tax and superannuation measures, and in some cases, suggests amendments and further consultation before certain measures progress.

Our detailed response and recommendations are contained in **Appendix A**.

We look forward to providing further input as this Consultation progresses.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more information about The Tax Institute.

If you would like to discuss any of the above, please contact our Head of Tax & Legal, Julie Abdalla, at (02) 8223 0058.

Yours faithfully,

Julie Abdalla

Head of Tax & Legal

Tim Sandow

President

APPENDIX A

We have set out below our detailed comments and observations on certain questions asked in the Consultation.

Support business investment through corporate tax reform

1. What features of the Australian business environment have encouraged or restrained investment over the past 10 years?

Key features that have encouraged investment in Australia

Australia's tax treaty network

The ease of doing business encourages investment opportunities, as straightforward processes attracts investors. Tax policies, labour availability, and resource accessibility play a significant role in influencing the decisions that businesses make regarding their investments.

Australia's existing tax treaty network plays a crucial role in fostering investment by providing investors with relief from double taxation. In recent years, the Government has announced initiatives to expand this network, which currently consists of approximately 47 bilateral tax treaties. In 2021, plans were announced to establish 10 new or updated treaties by 2023, including a revised treaty with India and new agreements with Luxembourg and Iceland. Additional treaties were proposed with Greece, Portugal, and Slovenia. Among these, new or revised treaties are currently in force with India, Iceland, Portugal and Slovenia.

In 2022, the Government announced plans to negotiate with Bulgaria, Colombia, Croatia, Cyprus, Estonia, Latvia, and Lithuania, to further expand our tax treaty network. The following year, plans were announced for negotiations with Ukraine and Brazil, alongside updates to existing treaties with New Zealand, the Republic of Korea, and Sweden.

Notwithstanding these efforts, Australia still has significantly fewer tax treaties compared to major trading partners like the United Kingdom. Also, Australia still has existing tax treaties with several countries that have not been updated for an extended period. Many of these may now be outdated and may not account for recent changes in tax law in either or both jurisdictions, and potentially hinder foreign capital investment.

Recommendation 1

- A review and further expansion of Australia's tax treaty network is necessary.
- The Tax Institute's submission to the Treasury consultation on Expanding Australia's Tax Treaty Program recommended entering into or updating treaties with the following countries:
  - Hong Kong;
  - Netherlands;
  - Italy;
  - Mongolia; and
  - Peru.

- As outlined in the above submission, we consider that a new treaty with Hong Kong is necessary due to its financial significance and trade growth with Australia. The Netherlands is widely viewed as a gateway for European investment and there are a number of ways in which the existing treaty can be updated. The existing treaty with Italy is outdated and requires modernisation. It is also necessary to strengthen relations with emerging markets like Brazil, Mongolia and Peru to improve Australia's international tax framework and foster economic growth.

Key features that have restrained investment in Australia

In recent years, Australia has seen a decline in investment, influenced by several factors within both the local and global business, political and economic environments. Some of these factors are discussed below:

- the COVID-19 pandemic has been a significant contributor, instigating a period of uncertainty that has deterred potential investments, caused many businesses to suffer and some to collapse entirely, and has left many slow to recover;
- the introduction of tax measures targeting multinational enterprises, such as the new thin capitalisation rules, public country-by-country reporting, and Pillar Two measures, has exacerbated complexity in the system and increased compliance costs for affected taxpayers. While there is consensus on the importance of multinationals contributing an appropriate share of taxes, the rapid, and in some cases, retrospective, implementation of these measures without sufficient time for stakeholders to prepare may have led to decreased business tolerance and appetite to operate in Australia; and
- complicated regulatory laws like the *Corporation Act 2001* (Cth), which is roughly 4000 pages long, along with delays in obtaining regulatory approvals from the Foreign Investment Review Board (**FIRB**), also contribute to an unfavourable business environment.

In addition to the above, peculiar features of the Australian tax system contribute to limiting business investment in Australia. Some examples are outlined below.

Complex tax laws

Australian businesses and foreign investors are subject to a complex range of tax laws.

The tax laws are broad, in many cases, ambiguous, and are frequently amended, requiring businesses and investors to regularly consider the implications of their operations and investments and seek professional advice to navigate the continuously changing Australian tax landscape. The severity of penalties for non-compliance exacerbates the need for thorough understanding and compliance with these laws. The administrative burdens associated with tax compliance contribute to rising costs for taxpayers. Our members frequently advise that this often requires taxpayers to divert resources from the operations of their businesses to keep up with their tax affairs.

Since 1997, there have been two main income tax Acts: *the Income Tax Assessment Act 1936* (Cth) (**ITAA 1936**) and the *Income Tax Assessment Act 1997 (Cth)* (**ITAA 1997**), the result of an abandoned attempt to simplify the tax law. Though many duplicated or inoperative provisions were repealed from the ITAA 1936 in 2006, the complexity and the vastness (around a decade ago it was approximately more than 14,000 pages) of the tax legislation continue to worsen. We also note that in some cases, repealed provisions are taken to continue to apply or are used for certain calculations as if they were still law. For example, Part IIIAA of the ITAA 1936 ceased to have application from 1 July 2002. However, Division 1A of Part IIIAA, including subsection 160APHJ(2), continues to inform the operation of parts of the imputation system.

One significant example of complexity arises from the fact that multiple aggregated turnover thresholds apply in determining what is a small business for different purposes:

- small business capital gains tax (**CGT**) concessions ($2 million);
- small business income tax offset ($5 million);
- research and development tax incentive (**R&DTI**) and goods and services tax (**GST**) reporting (both $20 million, but calculated in different ways);
- income tax concessions (such as the prepayment rules, the simplified depreciation and trading stock rules and the base rate entity rules) ($50 million);
- thin capitalisation (less than $2 million of debt deductions);
- *Corporations Act 2001* (Cth) and reporting to the Australian Securities and Investments Commission (**ASIC**); and
- employment and industrial relations laws.

Lack of clarity in the law can lead to uncertainty regarding tax obligations and rights, complicating compliance efforts, and planning for individuals and businesses alike.

For instance, the Australian Taxation Office (**ATO**) has long held the view that an unpaid present entitlement (**UPE**) is ‘financial accommodation’ or a transaction that is ‘in substance’ a loan for the purposes of Division 7A of Part III of the ITAA 1936. Taxpayers have been following the ATO’s position to meet their compliance obligations. However, the recent decision of the Full Federal Court in *Commissioner of Taxation v Bendel* [2025] FCAFC 15 challenged the long-standing position of the ATO by finding that a UPE between a trust and a private company is not a loan. This change in position has introduced significant uncertainty for taxpayers, stemming from the ambiguous and unclear nature of the legislation. We note that on 19 March 2025, the ATO applied for special leave to appeal the FCAFC’s decision to the High Court of Australia and was granted special leave to appeal on 12 June 2025.

Further, feedback from our members suggests that significant measures, such as the Pillar Two rules and Payday Super, effective 1 July 2026, will further complicate compliance due to their fundamental changes. This pressure is exacerbated by the limited timeframe that businesses have to adapt to and comply with the new measures, some of which have not yet been enacted. The Joint Professional Bodies’ submission dated 8 May 2025 on the Payday Super exposure draft legislation consultation has recommended postponing the implementation of the measure ideally by 24 months, or at least 12 months, as stakeholders are not adequately prepared for the proposed commencement date.

While many tax laws are subject to frequent amendments, a number of laws that are in dire need of reform, remain static and not updated to reflect the current economic environment or contemporary business practices. An example of this is the payroll tax legislation across the States and Territories. The Tax Institute's submission to the NSW Parliament State Legislative Council's inquiry into the application of the contractor and employment agency provisions in the *Payroll Tax Act 2007* (NSW) (**Payroll Tax Act**) explains the outdated nature of certain provisions in the *Payroll Tax Act*.

We note that several states signed a joint harmonisation protocol on 28 July 2010 aimed at standardising legislation across eight specific areas. New South Wales, Victoria, Tasmania, Northern Territory, and South Australia have implemented similar payroll tax legislations, with generally only minor variations in their schedules, while Queensland has also passed legislation to support harmonisation. However, Western Australia has not aligned its contractor provisions with those of other jurisdictions. These efforts have reduced administrative costs and improved efficiency for payroll tax practitioners and businesses. However, feedback from our members indicates ongoing concerns regarding continuing discrepancies in payroll tax laws and their interpretation and administration across different states and territories.

We acknowledge that this is an issue for the States to consider. However, we would highlight this issue as part of the Consultation, as the complexity of payroll taxes and the burden of complying with each State's regime contribute significantly to the overall picture of restrained business investment.

Recommendation 2

Accordingly, The Tax Institute recommends that:

- comprehensive tax reform is necessary. To assist the Government in this endeavour, refer to our Case for Change, discussion paper for an in-depth analysis across the entire tax system and various options for reform. For priority areas for reform, we recommend considering the matters identified in the Brief;
- the legislative language of the Income Tax Acts be simplified and clarified to ensure that the objectives of the Act remain resilient to future changes and take into account the evolving needs of the business environment; and
- a comprehensive harmonisation of payroll tax laws, extending to rates, thresholds, and other legislative aspects be undertaken to facilitate simpler compliance for businesses operating across various States and Territories.

Retrospective tax legislation

The Tax Institute maintains that passing legislation prior to its start date is a crucial feature of a properly functioning legislative process. Traditionally, retrospective law application has been the exception rather than the rule. It has generally been limited to unique circumstances, and often coupled with grandfathering or transitional provisions.

Over the last few years, several laws have been introduced retrospectively. Examples include Acts introducing Public Country-by-Country reporting (*Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024*), and Pillar Two rules (*Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Act 2024*) which became law on 10 December 2024, both of which apply retrospectively from 1 July 2024 and 1 January 2024, respectively. The majority of the recent changes to the thin capitalisation rules also apply retrospectively from 1 July 2023, but the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023 containing the measure received Royal Assent on 8 April 2024. The enabling legislation that temporarily increased the Instant Asset Write-Off (**IAWO**) threshold for 2023–24 to $20,000 oscillated between the Senate and the House of Representatives for several months and became law on 28 June 2024, a mere two days before year end.

A strong, trusted government-taxpayer relationship is a crucial element in effective tax policy, and fairness and equity are essential to maintaining this relationship. The ability to rely on the law as it stands is a fundamental pillar of our legislative system. Taxpayers should be confident that they are making informed decisions based on existing law that is not subject to sudden or retrospective change that may jeopardise their economic viability or put them in a historically non-compliant position that is difficult and costly to rectify.

It is crucial to have a predictable tax framework in place to ensure Australia's appeal as an investment destination. Retrospective changes can exacerbate investment risks and can dissuade investors from venturing into business in Australia. This can lead to a decline in economic activity, hinder foreign investment and capital-intensive operations, reduce opportunities for job creation, and put Australia at a disadvantage in intense international competition in the industry.

Recommendation 3

Legislation with retrospective effect should apply only in very limited circumstances and should not be used as commonly as it has been in recent years. Any retrospective measures should be coupled with appropriate transitional and/or grandfathering provisions.

Lack of effective consultation

A lack of effective consultation is a barrier to creating a more coherent and business-friendly environment. This hinders the development of policies and practices that could better support business operations and growth.

For example, the recent changes to the thin capitalisation regime, effective 1 July 2023, have raised concerns regarding their influence on debt-funded investments and the nation's competitive standing in the global market. These updates have fundamentally altered how businesses can claim interest deductions, resulting in a significant change in corporate practices. Our understanding from our members is that some businesses are decreasing their dependence on debt to deal with the complexities and possible rejection of deductions under the new rules. This can have significant commercial implications for the viability of these businesses.

Significant technical gaps in the thin capitalisation legislation remain despite stakeholder feedback provided through consultation. While the ATO's thin capitalisation public advice and guidance webpage sets out a high-level summary of the topics raised by stakeholders in consultation as matters that would, in their view, benefit from PAG, it is clear that legislative amendment and clarity are still needed in some areas. As outlined in our submissions dated 3 November 2023 and 5 January 2024, the legislation requires further amendments to provide certainty to taxpayers and make compliance less burdensome for taxpayers.

Other significant examples where stakeholder feedback has not been taken into consideration to the detriment of taxpayers and the system more broadly include the proposed Division 296 measure, and the changes to the non-arm's length income (**NALI**) of superannuation funds. Below are the Tax Institute's submissions regarding each of these consultations:

- The Tax Institute's submission containing recommended alternative approaches dated 17 April 2023 on the Division 296 Consultation Paper and submission dated 18 October 2023 on the exposure draft legislation;
- The Tax Institute's submission offering alternative long-term solutions dated 22 February 2023 to the NALI Consultation Paper. The Tax Institute, along with the Joint Professional Bodies, provided a submission on the exposure draft and submission to the Senate Committee.

The design of superannuation measures can impact investment in businesses, which indirectly impacts productivity and economic growth. Superannuation funds invest in a wide range of sectors, commonly investing in startups, agriculture, and other entrepreneurial ventures. For the benefit of the national economy, it is important that policy settings continue to encourage accumulation of retirement savings as well as provide incentives to superannuation funds to invest in growth industries. The policy settings should also continue to strengthen investment in existing core or staple industries.

Encouraging the accumulation of retirement savings not only relieves the burden on the government to support our ageing population, it also provides vital capital for infrastructure and other research and development projects, which supports increased innovation and job creation. The withdrawal of such investment by superannuation funds, which is widely considered likely if the proposed Division 296 proceeds in its current form, would be detrimental to the economy.

Recommendation 4

Poor tax law design and a lack of effective consultation often leads to poor or unintended outcomes for everyone involved. Any amendments to the law must be considered holistically, genuinely take into consideration stakeholder feedback, and be based on sound and considered policy.

2. What elements of the corporate tax system encourage and/or discourage investment and risk-taking?

The framework of corporate taxation plays a vital role in influencing business investment decisions. Strong and well-structured tax policies that promote a favourable environment for businesses can significantly enhance their investment levels.

Factors fostering business investment in Australia

Australia's strategic location in the Asia-Pacific region offers access to emerging markets, facilitating trade and investment opportunities. Tax incentives in the form of tax concessions such as income tax exemptions, including the section 768-5 exemption for certain dividend income derived from foreign companies, Subdivision 768-G capital gains participating exemption, and Subdivision 802-A of the ITAA 1997, as well as accelerated depreciation, investment tax allowance, subsidy for investment costs and ease of doing business generally encourage investment. We note though, that some of these concessions, such as the conduit foreign income rules which allow foreign profits to flow through Australia to foreign shareholders exempt from withholding tax, rely on the foreign subsidiary being a foreign tax resident. This status depends on the definition of corporate tax residency, which, as outlined below, requires legislative amendment.

Some existing tax policies that are targeted toward or directly influence investment in innovation and infrastructure development include tax concessions for managed investment trusts, the R&DTI, and tax incentives for early-stage innovation companies.

Some other examples of tax policies that have encouraged investment in the past include, the small business technology investment boost, small business skills and training boost, digital games offset, temporary full expensing measure and the Global Financial Crisis investment tax credit.

Recommendation 5

We consider that certain tax concessions in the form of offsets, boosts, etc. have been beneficial and should be made a permanent feature of the system as they support the growth and development of businesses, and play a crucial role in addressing challenges such as skills shortages and the need for training within the workforce.

Instant asset write-off measure

The repeated temporary increase of the IAWO has created considerable uncertainty for taxpayers. Since 2015, the standard IAWO threshold of $1,000 in section 328-180 of the ITAA 1997 has remained in operation, as modified by subsection 328-180(4) of the *Income Tax (Transitional Provisions) Act 1997* (Cth). Regular amendments to extend the measure on a so-called 'temporary basis' have created ongoing uncertainty for businesses and are counterproductive to the policy of encouraging investment.

The trend of annually making temporary changes to the rules that determine whether a business can immediately deduct the cost of eligible depreciating assets is inefficient, complex and unnecessary. A once-off amendment to the legislation would provide greater certainty to businesses and allow the Government to focus on other key initiatives. A permanent measure would also better operate as an incentive for small businesses to invest in eligible assets. Delays in legislating annual changes late in each income year mean the law often only confirms the treatment of amounts already spent.

Recommendation 6

The Tax Institute considers that this measure should be a permanent feature of Australia's tax system. We recommend permanently increasing the IAWO threshold to $30,000 and expanding business eligibility to include businesses with an aggregated turnover of less than $50 million. These changes would reduce uncertainty for a significant number of businesses and encourage business investment in assets.

Factors discouraging business investment in Australia

High tax rates and taxpayer uncertainty are major factors discouraging business investment in Australia. The corporate tax framework is further complicated by outdated tax measures, such as the Fringe Benefit Tax (**FBT**) and Luxury Car Tax, which impose high compliance costs on businesses due to their complexity. Recent policy changes to deny deductions for the general interest charge (**GIC**) and shortfall interest charge (**SIC**) are expected to exacerbate the financial strain on businesses. This may contribute to an increased risk of business collapses driven by cash flow pressures, escalating operational costs, and widespread labour shortages. These outcomes ultimately discourage investment in the Australian market.

Fringe Benefits Tax

FBT was introduced as an integrity measure to ensure that tax was paid on non-cash benefits provided to employees in respect of their employment. However, it imposes a disproportionately high compliance cost on businesses, due to the underlying complexity in understanding, calculating, reporting, and paying FBT on relevant benefits.

FBT accounts for less than 1% of Australia’s net cash collections. The FBT tax gap is consistently one of the highest tax gaps, highlighting the inefficiency and complexity of the regime. For the 2021–22 income year, the estimated net FBT tax gap increased to 34.2% or $1.882 billion from a net gap of 31.2% in 2019–20.

As recommended by the Henry review (Recommendation 112) and noted in our Case for Change discussion paper, a principle-based approach would ensure that the laws governing the regime are aligned with its policy objectives, and encompass sufficient flexibility to allow for inevitable changes over time.

Recommendation 7

Adopting this approach would reduce the arduous record-keeping requirements, and mitigate the excessive compliance costs that are associated with the current regime. It presents an opportunity to alleviate the burdens currently faced by businesses. Such reforms can align with policy objectives while ensuring the integrity of the tax system is maintained. By addressing the complexities and challenges associated with the existing FBT framework, the Government can foster a more efficient and equitable environment for businesses, ultimately supporting broader economic goals.

High corporate tax rate

Australia's corporate income tax rate is among the highest in the OECD and poses a challenge for attracting foreign investment. This high rate, when compared to both OECD countries and regional neighbours in the Asia-Pacific, creates a competitive disadvantage for Australia, as multinational enterprises (**MNEs**) may opt for jurisdictions with lower tax rates, and Australian businesses may choose to relocate offshore to more attractive jurisdictions. The reliance on corporate taxes in Australia to generate revenue is also disproportionately high. This results in Australia significantly relying on revenues collected from income and corporate tax, with more than two-thirds of tax receipts coming through such taxes. This diminishes the attractiveness of Australia as an investment destination but also raises concerns about the sustainability of such a tax structure in encouraging economic growth.

The existence of dual corporate tax rates complicates the current tax structure: a standard rate of 30% for most companies and a lower rate for 'base rate entities' with specific turnover and income criteria. Unnecessary complexity exists due to the potential misalignment of a company's tax rate and its maximum franking rate, resulting in top-up tax or trapped franking credits where dividends flow between companies that are base rate entities and those that are not. The misalignment is compounded by companies being required to use current year figures to determine their tax rate but prior year figures to determine their franking rate. Further complexities arise where distributions flow through trusts.

This complexity, coupled with a lack of legislated incentives for innovation and intellectual property development onshore and Australia's controlled foreign company rules, hampers the growth potential of Australian businesses both domestically and internationally. While R&DTI exists, there is no inducement for businesses to collaborate with research organisations, unlike the more favourable R&DTI in countries such as France, which offer additional tax benefits for collaborative efforts and the employment of researchers. Further, the CFC rules are intended to protect the Australian tax system by limiting passive income accumulation abroad and preventing tax avoidance. However, changes in the international business environment and the rules themselves have created challenges for Australian businesses looking to expand globally. This misalignment puts Australian companies at a competitive disadvantage compared to international peers, as the CFC rules, while aimed at tax protection, inadvertently hinder their global growth.

Recommendation 8

The Tax Institute recommends the following:

- a single, lower corporate tax rate, no higher than 25%, should apply to all companies, irrespective of their aggregated turnover or proportion of passive income;
- incentivise the collaboration of businesses with researchers, so Australia is able to properly capitalise on its world-leading innovation; and
- the CFC rules are undoubtedly complex, and effective reform of the rules is necessary.

Corporate tax residency rules

Australia's corporate tax residency rules play a fundamental role in determining whether corporate entities are subject to tax in Australia regarding their operations here, and offshore. The rules are complex and uncertain, leading to disputes with the ATO. The ATO's interpretation following the High Court's 2016 decision in *Bywater Investments Ltd v Federal Commissioner of Taxation* [2016] HCA 45 departed from the long-held position on the definition of a corporate resident. Taxpayers are facing uncertainty when determining the central management and control aspects of a corporation. The absence of legislative clarity is costly for taxpayers and can hinder good corporate governance. This ambiguity particularly impacts the tax residency of foreign subsidiaries of Australian companies, hindering their international expansion and limiting job creation and economic growth.

Despite reform announcements in 2020 and 2021, no progress has been made towards enacting the technical amendments to the law. The rules remain unclear, resulting in high compliance costs and challenges in dealing with the ATO. The current interpretation by the ATO has resulted in significant uncertainty and additional compliance costs, particularly in relation to tax law provisions intended to promote investment, such as the interpretation of Australia's tax treaties and the application of specific exemptions under section 768-5 and Subdivision 768-G of the ITAA 1997. The ATO has acknowledged in *PCG 2018/9: Central management and control test of residency: identifying where a company's central management and control is located,* that its interpretation is unlikely to alter the overall tax payable in Australia. The imposition of these interpretations results in substantial costs and complexities, without delivering any tangible benefits, rendering the situation highly unproductive.

As of 1 July 2023, public companies must include a consolidated entity disclosure statement in their annual financial report that classifies entities as either Australian or foreign tax residents. This process is complicated by ambiguities concerning the tax residency of any foreign incorporated subsidiary.

In addition, we note that different rules currently govern the corporate tax residency of trusts and corporate limited partnerships (**CLPs**) compared with companies. The guidance relating to companies is not easily applied to trusts and CLPs, which can contribute to increased complexity for large corporate groups with various entity structures.

In addition to the corporate tax residency rules, Australia's individual tax residency rules are complex for those taxpayers who are at the margin. Australia has experienced a significant increase in the number of litigated disputes involving individual tax residency with the ATO in the period from 2010 to 2020 as compared to the previous 70 years, highlighting the need for further clarity and simplification of the residency rules. Many of the concepts relating to individual tax residency are elaborated in case law and apply on a case-by-case basis, making it difficult for taxpayers to understand the rules without the assistance of, and the cost associated with engaging, experienced tax professionals. This may disincentivise investment within Australia, as businesses may be disinclined to send workers to Australia in the event that they are not certain of their tax residency.

Recommendation 9

The Tax Institute recommends:

- implementing the changes to the corporate tax residency rules announced by the former government on 6 October 2020 and recommended by the Board of Taxation (**Board**) in its 2020 Corporate Tax Residency Review – Final report. This would provide greater clarity and certainty to taxpayers and reduce the number of private ruling requests and disputes with the ATO. The Board recommended amending the law so that a company incorporated offshore would be treated as an Australian resident for tax purposes only where it has a 'significant economic connection to Australia';
- adopting a single definition of corporate tax residency for companies, trusts and CLPs would promote greater consistency in the law and simplify the tax compliance process for international groups consisting of multiple types of entities; and

- the existing individual residency framework should be simplified and improved. Further consultation is required to ensure that any changes to the individual tax residency rules do not create new complexities and unintended consequences such as unfairly deeming expatriates with low connections to Australia as continuing to be tax resident for an extended period after they have left Australia. If the proposed four-factor test is to proceed, it needs to be refined to ensure it creates a fair outcome for individuals and does not merely replace one set of complexities with a new set of complexities without reducing the compliance burden.

Several and complex integrity measures

We have provided below a non-exhaustive list of highly complex integrity measures, including:

- anti-streaming rules;
- anti-avoidance rules such as the Part IVA general anti-avoidance rules, multinational anti-avoidance law and the diverted profits tax;
- Division 7A rules;
- thin capitalisation and debt deduction creation rules;
- franking credit schemes;
- benchmark franking rules; franking account return; franking deficit tax;
- debt/equity rules;
- 'exempting entity' and 'former exempting entity' rules;
- holding period and related payment rules; and
- share capital tainting rules.

We acknowledge and support the need for integrity provisions to preserve Australia's revenue base and ensure a level playing field for taxpayers. However, the complexity of these rules results in increased compliance costs, anomalies, errors and disputes with the ATO.

Recommendation 10

We recommend assessing the effectiveness of these integrity measures and considering opportunities to streamline them to ease taxpayer compliance.

3. Which parts of the corporate tax system do you find the hardest, or most time or cost-intensive to comply with? How could the compliance burden of the corporate tax system be reduced?

Tax systems characterised by simplicity, transparency, and efficiency foster voluntary compliance. When taxpayers find the process of managing their tax affairs straightforward and clear, they are more likely to fulfil their obligations accurately and promptly.

Based on feedback from our members, we have set out below the following non-exhaustive components of the corporate tax system as some of the most challenging, or time or cost-intensive:

- extended delays in obtaining private rulings, objections decisions and refunds for overpaid taxes from the ATO;
- significant delays experienced by taxpayers and tax agents in getting through to the ATO's call centre and registered agent phone lines;
- complex or ambiguous tax rules where limited ATO guidance is available, such as the new thin capitalisation and debt deduction creation rules, Pillar two rules, and Public by-country reporting rules. Also, measures such as the thin capitalisation and hybrid mismatch rules require a tracing exercise (which requires tracing through to other entities in the group) to be carried out to comply with the measures;
- perceived inconsistent administrative practices by the ATO, for example, in general interest charge remissions, and providing payment plans;
- retrospective application of and frequent amendments to tax law;
- prolonged uncertainty, which inhibits taxpayers from planning their tax affairs ahead of time. For example, the delays surrounding the IAWO measure;
- the level of information required to complete onerous tax return disclosures such as the 2025 International dealings schedule, and the duplication of tax disclosures such as for the purposes of country-by-country reporting, and the voluntary tax transparency code; and
- dealing with different levels of government for different taxes. For example, businesses have to deal with ATO in relation to employee taxes such as FBT, pay-as-you-go withholding tax and superannuation, while addressing payroll tax obligations with each State.

Recommendation 11

The Tax Institute recommends the following:

- allocating additional funding beyond the current approach of specific taskforce-based funding to the ATO to design and implement the systems necessary to efficiently develop guidance and administer the law, and improve the experience for all taxpayers and practitioners dealing with the tax system;
- limiting the enactment of retrospective tax laws to exceptional circumstances; and
- reviewing and streamlining tax return and related disclosures.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 9,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals