20 May 2022

Tax Treaties, Transfer Pricing and Financial Transactions Division
OECD/CTPA

By email: tfde@oecd.org

Dear Sir or Madam,

Pillar One – Amount A: Regulated Financial Services (RFS) Exclusions

The Insurance Council of Australia **(Insurance Council**) is the representative body of the general insurance industry in Australia and represents approximately 95% of private sector general insurers. As a foundational component of the Australian economy the general insurance industry employs approximately 60,000 people, generates gross written premium of A$59.2 billion per annum and on average pays out A$148.7 million in claims each working day (A$38.8 billion per year).

The Insurance Council welcomes the opportunity to respond to the Organisation for Economic Cooperation and Development's (**OECD**) Public Consultation Document regarding *Pillar One – Amount A: Regulated Financial Services (**RFS**) Exclusions*. The ICA fully supports the RFS exclusion from Amount A and thanks the OECD for working with the Financial Services industry during the consultation process.

As noted in the OECD's Consultation Document there is some debate relating to the inclusion of both reinsurance and asset management within the RFS carve out.

We believe that creating a distinction between primary insurance and reinsurance would create numerous issues, including but not limited to:

- impacting primary insurance market capacity;
- creating potential for double taxation;
- creating conflicts between regulators due to disagreement in the allocation of reinsurance profits; and
- practical tax accounting and implementation issues.

As such, we set out below several factors to support the continued inclusion of reinsurance within the broader RFI carve out.

1. Reinsurance is a fundamental part of the insurance industry and is by nature an international business

- Reinsurance is simply insurance for insurers, insurers similar to consumers enter into reinsurance to spread their risk exposure.
- Reinsurance is a business-driven commercial transaction that is both functionally and economically integrated with the writing of primary insurance.

- Most large multinational insurance groups provide both insurance and reinsurance products, providing further diversification and capacity to write new business.
- Pooling risks across jurisdictional markets, is the best way to mitigate losses due to major claims or natural catastrophes that arise in specific areas of the world.
- Certain locations are more frequently prone to major claims and natural catastrophes. Domestic insurers rely on foreign reinsurers to diversify these losses due to insufficient local capacity and to provide financial stability for the local area and insurance industry.
- Reinsurers, as compared to the local primary insurer, are typically much larger, have higher credit ratings, and are geographically more diverse due to their more global nature.
- Reinsurance is regulated by governments as a specific class of insurance business (the classes were originally defined by the OECD Insurance Committee). Regulation in both the primary insurer and reinsurer jurisdictions ensures there is locality of capital associated with each market.

2. Reinsurance is already subject to local taxes

- Many jurisdictions already impose local country taxes (such as indirect tax, insurance premium tax and withholding tax) to reinsurance.
- Indirect taxes imposed may be different from income taxes but there is a financial benefit recognised by the local country that should be considered.
- The imposition of tax on reinsurance to Amount A will subject reinsurance to double tax as home jurisdictions already impose tax on reinsurance to a company located in another jurisdiction.
- If reinsurance is not to be excluded from Amount A, rules would have to be developed to provide a credit for local taxes.

3. Practical challenges separating insurance and reinsurance

- It is common for regulated re/insurance entities to write various classes of business including direct insurance and reinsurance and since there is no accounting standard classification requiring separation, it would require extensive effort and resource to reconcile the financial reporting data to the regulatory filing classifications.
- It is not possible to break out reserves to be associated to each contract or set of contracts between primary insurance contracts and reinsurance contracts.
- Premiums generally have no relation to income or profit in the context of reinsurance. In this regard, it will be very difficult to determine the amount of profit allocable under Amount A. Reinsurance companies receive premiums, but often pay commission back to the primary insurer, any profit element should only be recognized on a net basis. Furthermore, profit is generally not known for several years as actual claims may not arise for many years, and in many cases may result in a loss for the reinsurance company.
- There may be unintended consequences.

We trust that our initial observations are of assistance. If you have any questions or comments in relation to our submission please contact Aparna Reddy, General Manager, Policy – Regulatory Affairs, on telephone: + 61 427 902 960 or email: areddy@insurancecouncil.com.au.

Yours sincerely

Kylie Macfarlane
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