Removing the preferential tax treatment for Offshore Banking Units Post-implementation Review

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Introduction

In October 2018, the OECD’s Forum on Harmful Tax Practices (FHTP) determined Australia’s Offshore Banking Unit (OBU) regime to be a harmful preferential tax regime. This reflected the regime’s concessional tax rate, which was ‘ring-fenced’ from the domestic economy (the concessional rate is generally only available in relation to transactions between parties that are foreign residents). On 26 October 2018, the former Treasurer, the Hon Josh Frydenberg MP, announced that the Government would consider options to reform the regime.

The former Treasurer subsequently announced on 12 March 2021 that the Morrison Government would introduce legislation to remove the preferential tax treatment for OBUs and close the regime to new entrants.

Relevant legislation was introduced on 17 March 2021 and subsequently enacted, effective from 13 September 2021, which:

- removed the concessional tax treatment for OBUs but provided grandfathering arrangements for existing participants which preserved their access to the concessional tax treatment until the end of their 2022-23 income year;
- removed the withholding tax exemption for OBUs on interest paid to foreign lenders from 1 January 2024; and
- repealed the ability of the Minister to admit new entrants to the regime from the day after Royal Assent of the legislation.

These amendments are contained in the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021.*

A regulation impact statement was not completed as the then Prime Minister granted an exemption from the requirement to complete a RIS.

The Australian Government’s regulatory impact analysis requirements stipulate that, under these circumstances, a post-implementation review (PIR) must be undertaken.

This PIR has been conducted in accordance with the Australian Government’s regulatory impact analysis requirements.

Background

Australia's OBU regime was introduced in 1987 to assist the Australian financial services sector to compete with financial services providers located in low tax jurisdictions in the Asia Pacific region. The regime initially provided an exemption from Australian withholding tax on interest paid to foreign lenders on certain borrowings by an OBU. When introducing the interest withholding tax exemption for OBUs in 1987 the then Treasurer stated that the exemption was 'intended to encourage offshore transactions and in particular on-lending to non-residents'.[1]

In 1992, the regime was expanded to introduce an effective concessionary 10 per cent tax rate on profits derived by an OBU from eligible offshore banking (OB) activities. This change was announced in the One Nation economic statement of 26 February 1992 by the then Prime Minister.[2] It acknowledged that the Government's decision was to 'provide further stimulus to the development of offshore banking in Australia at a time when such activity might be shifted from Hong Kong to elsewhere in the Asia Pacific region'. In effect, the regime was designed to attract the provision of highly mobile financial sector activities (which can be undertaken anywhere) to Australia. These activities broadly include services such as financial intermediation between non-residents or the provision of financial services to non-residents in respect of transactions that would not ordinarily have a connection with Australia.

To operate as an OBU, an entity must be declared an OBU by the Minister (typically the Treasurer), after approaching the Australian Taxation Office (ATO) for 'registration'.

Initially, the OBU regime applied only to banks and foreign exchange dealers. It was subsequently extended in 1999 to include insurance companies, fund managers and other companies the Treasurer determined to be an OBU. Further amendments were made to the regime in 2015, including modernising the list of eligible activities and addressing various integrity concerns.

At the time the regime was effectively closed to new participants, there were 136 'registered' OBUs and eligible OB activities included: [3]

- Borrowing or lending activity
- Guarantee-type activity
- Trading activity
- Eligible contract activity
- Investment activity
- Eligible advisory activity
- Hedging activity
- Eligible leasing activity.

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1 Explanatory Memorandum to Taxation Laws Amendment Bill (No. 5) 1987, p. 7. Available at: http://classic.austlii.edu.au/au/legis/cth/bill_em/tlab51987285/memo_0.html

2 One Nation, Statement By Prime Minister The Honourable PJ Keating, 26 February 1992, p. 77 5051390.pdf;fileType=application/pdf (aph.gov.au)

3 Income Tax Assessment Act 1936 – Section 121D. Available at: http://classic.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/s121d.html

What was the problem that the regulation was trying to solve?

The primary purpose of the regulation was to address concerns that the preferential tax treatment of OBUs did not comply with international expectations developed through the OECD/G20 Base Erosion and Profit Shifting (BEPS) project, which exposed Australia to reputational damage and possible defensive measures (sanctions) by the European Union (EU) or its members.[4]

As a member of the OECD's Inclusive Framework on BEPS, Australia has committed to implement certain BEPS recommendations and to participate in peer review processes designed to review its implementation of those commitments. The BEPS recommendations are designed to prevent multinational tax avoidance and evasion.

BEPS Action 5 (*Countering Harmful Tax Practices More Effectively*) features minimum standards that aim to prevent jurisdictions from using preferential tax regimes to attract financial and other geographically mobile activities to their jurisdiction. Such regimes can distort the international flow of capital and erode other jurisdictions' tax bases.

The OECD's FHTP uses five key factors (and an additional five other factors) to assess whether or not a preferential tax regime is harmful. The key factors are:

- The regime imposes no or low effective tax rates on income from geographically mobile financial and other service activities;
- The regime is ring-fenced from the domestic economy;
- The regime lacks transparency;
- There is no effective exchange of information with respect to the regime; and
- The regime fails to require substantial activities.

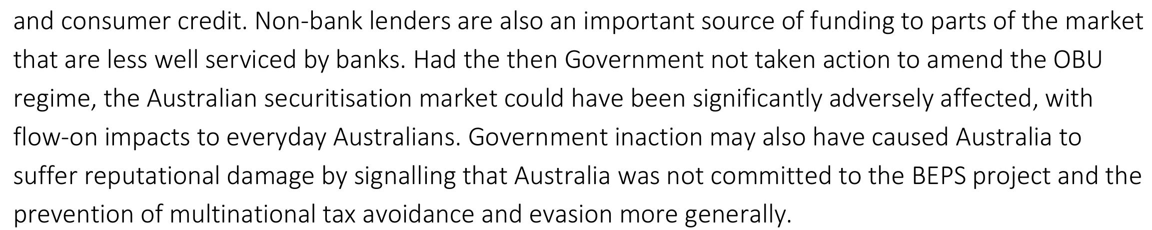
In October 2018, the FHTP found the OBU regime to be harmful due to the combination of: 1) the regime's low effective tax rate (10 per cent) compared to the general Australian corporate tax rate (30 per cent); and 2) the fact that the regime is ring-fenced to largely exclude domestic transactions from its scope. Under FHTP rules, preferential tax regimes should apply equally to income derived from within and from outside the domestic economy.

A consequence of the 2018 FHTP review was that Australia was included on the European Union's (EU) *list of non-cooperative jurisdictions for tax purposes* (the EU List) on 12 March 2019.[5] Australia was placed on Annex II (the 'grey-list') of the EU list, as a jurisdiction that had committed to amending or abolishing its harmful preferential tax regime but had not yet done so. Inclusion on the EU list exposed Australia to the possibility of EU defensive measures (sanctions).

This created significant uncertainty, in particular for financial markets, and had the potential to create significant disruption more generally. By way of illustration, in early 2021, draft EU regulations were developed which would have prevented certain EU-regulated investors from investing in the Australian securitisation markets, which is a key source of funding for non-bank lenders. Such lenders are a source of competition for banks and provide a diverse range of lending products, ranging from prime and non-prime residential mortgages, commercial mortgages, automobile, equipment, and SME

[4] The 15 OECD BEPS recommendations were endorsed by the G20 in November 2015. They aim to improve the integrity of the international tax system through a set of rules designed to ensure that profits are taxed where economic activities take place and value is created.

[5] The revised EU list of non-cooperative jurisdictions for tax purposes Available at: pdf (europa.eu)



and consumer credit. Non-bank lenders are also an important source of funding to parts of the market that are less well serviced by banks. Had the then Government not taken action to amend the OBU regime, the Australian securitisation market could have been significantly adversely affected, with flow-on impacts to everyday Australians. Government inaction may also have caused Australia to suffer reputational damage by signalling that Australia was not committed to the BEPS project and the prevention of multinational tax avoidance and evasion more generally.

Why was government action needed?

The problem identified in the previous section occurred because the preferential tax treatment afforded to OBUs, which comprise a relatively small component of Australia's financial sector, was inconsistent with international tax standards and Australia's commitment to the OECD/G20 BEPS initiative. The option presenting the lowest risk of economic and reputational damage open to Government was to remove that preferential treatment. This could only be done by Government making legislative changes to existing laws.

As noted earlier, two media statements on reforms to the OBU regime were made by the former Treasurer. The first, on 26 October 2018, announced the Government's intention to reform the regime and the second, on 12 March 2021 outlined the changes the Government intended to legislate to address the FHTP's concerns.[6]

The objectives of the Government action were to:

1. address the harmful features of the OBU regime (as identified by the OECD FHTP);
2. ensure Australia was removed from Annex II of the EU list (avoiding any potential resulting adverse consequences); and
3. provide as much flexibility and certainty to the OBU sector as possible whilst ensuring the OECD's (and the EU's) concerns were met.

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[6] Treasury, 2018 Announcement on Amending Australia's Offshore Banking Unit Regime. Available at: https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/amending-australias-offshore-banking-unit-regime

Treasury, 2021 Announcement on Amending Australia's Offshore Banking Unit Regime. Available at: https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/amending-australias-offshore-banking-unit-regime-0

What policy options were considered?

The OECD has issued guidance to jurisdictions on closing off and establishing grandfathering arrangements for existing harmful preferential tax regimes.[7] Jurisdictions are also able to liaise with the OECD FHTP Secretariat (ahead of representations to the FHTP itself) for advice on the application of this guidance in specific circumstances.

The OECD's FHTP Secretariat advised that removal of the OBU preferential tax rate would likely be supported by the FHTP and secure a favourable change in the OBU regime's status for FHTP purposes. Under FHTP guidelines, jurisdictions can amend their regimes to address their harmful features either by aligning the preferential tax rate with their general corporate tax rate, and/or by addressing the other harmful features (e.g. by ensuring that the concessions are equally available to domestic transactions).

Option 1 – Do nothing

This option would have allowed the OBU sector to continue to receive preferential tax treatment. It would have placed Australia at risk of EU sanctions that could have been highly disruptive, including to financial markets. The consequences of remaining on the EU list also posed other risks, including damage to Australia's international reputation and relationships.

Option 2 – Remove the preferential tax rate with grandfathering arrangements

This option would have involved:

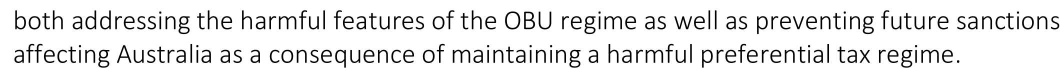
- removing the preferential 10 per cent tax rate on income from eligible OBU activities from the beginning of existing participants' 2023-24 income year and aligning the tax rate for OBU activities with the general tax rate(s) that apply to corporations;
- closing the regime to new entrants; and
- removing the withholding tax exemption for OBUs on interest paid on or after 1 January 2024.

This option would have addressed the regime's harmful features by aligning the preferential tax rate with the general corporate tax rate and provided existing participants with the most generous grandfathering arrangements permissible - by allowing them until their 2023-24 income year (around two years) to transition to new arrangements.

While legislation closing the OBU regime to new entrants would apply from the day after Royal Assent of the relevant legislation, no new OBUs had been approved since 26 October 2018, when the former Treasurer announced that the OBU regime would be amended. Closing the regime to new entrants before the OECD FHTP's decision was published on 13 November 2018 was a requirement to prevent additional taxpayers from taking advantage of a harmful tax regime.

While removing the withholding tax exemption for OBUs on interest paid to foreign lenders was not identified by the FHTP as a harmful feature of the OBU regime, removing the exemption component ensured Australia's commitment to addressing the OECD FHTP's concerns was put beyond doubt. Inclusion of this element in the package was considered complementary to achieving the objectives of

[7] See the OECD/G20 Base Erosion and Profit Shifting Project Harmful Tax Practices – 2017 Progress Report on Preferential Regimes (Annex B).



both addressing the harmful features of the OBU regime as well as preventing future sanctions affecting Australia as a consequence of maintaining a harmful preferential tax regime.

Together the components of this option would have addressed the concerns raised by the OECD FHTP following the end of the grandfathering period and was consistent with OECD guidance.

Option 3 – Remove the preferential tax rate with no grandfathering arrangements

This option would have:

- Removed the preferential 10 per cent effective tax rate on income from eligible OB activities from existing participants' 2021-22 income year and aligned the tax rate for OB activities with the general tax rate(s) that apply to corporations.
- Closed the regime to new entrants.
- Removed the withholding tax exemption for OBUs on interest paid to foreign lenders from 1 January 2024.

In effect, this option contains the same elements as Option 2, but without the provision of grandfathering arrangements.

As a result, it would have addressed the preferential tax treatment concerns raised by the FHTP in the shortest possible time, but at the same time created greater disruptions for OBUs, as they would have had a limited period to adjust to the change in tax rate.

Outcome after considering options

The then Government implemented Option 2 with the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021*.

Option 2 was preferred as it ensured Australia complied with the OECD's FHTP criteria for assessing harmful preferential tax regimes and removed the risk of Australia being added to Annex 1 of the EU list (the 'black-list').

Option 2 also provided two years of grandfathering, to assist impacted firms adjust to the new tax rate. This transition period also provided the Government with time to consult affected parties and to consider the possibility of alternative measures.[8]

[8] The then Treasurer's 12 March 2021 media statement notes that 'The Government will use this time to consult with industry on alternative measures to support the industry and ensure activity remains in Australia once the two year grandfathering period ends.'

What have the impacts of regulation been?

Prevention of economic sanctions against Australia

Following the enactment of legislation on 13 September 2021, the OECD updated the status of the OBU regime on its public website on 17 September 2021 to – *grandfathering in accordance with FHTP timelines*. Australia was also subsequently removed from Annex II of the EU list (the 'grey-list') on 5 October 2021. The legislation therefore addressed the concerns of the OECD FHTP and eliminated Australia's exposure to possible sanctions by the EU and/or its members.

Ensuring Australia remains free from potential sanctions has provided certainty for Australia's financial sector around continued accessibility by EU investors. At the same time, overseas investors' confidence in the Australian market as a potential source for continued investment has been maintained. Such economic benefits are difficult to quantify.

Had the 2021 draft EU regulations been implemented, certain EU investors could have been prevented from investing in the Australian securitisation market. This would have been much broader than a sanction on OBUs and their activities, and would have affected other participants in the Australian financial system, with further spill-over impacts domestically.

The limited availability of detailed securitisation data makes it difficult to estimate the amount of additional funding capacity and investment European banks and investors provide. European banks also provide a range of other important services to the Australian market, such as structuring and underwriting securitisation transactions, distribution to investors, secondary market liquidity and hedging services. If they were required to exit, it would have caused significant disruption to the Australian securitisation market, including:

- reduced funding options for lenders,
- increased cost of funding for lenders,
- significantly reduced liquidity in the asset-backed-securities (ABS) market, and
- increased price and reduced availability of ancillary services to securitisation vehicles such as swaps and liquidity facilities.

These costs could have flowed through to higher lending costs for borrowers. Reform to the OBU regime helped ensure the avoidance of potential disruptions in the Australian financial sector and, through contagion, negative perceptions of the broader Australian financial system.

Both the benefits of maintaining a positive perception of Australia's financial system, and the impact of a potential deterioration in confidence extending beyond the scope of the OBU participants, are unquantifiable. These impacts were likely to depend on the interaction between the responses of many market participants.

Commitment to addressing multinational tax avoidance

The legislation also delivered other benefits that are difficult to quantify: the revisions to the OBU regime are consistent with Australia's commitment to contribute to maintaining the integrity of the international tax system. It signalled Australia's firm commitment to the work of the OECD/G20 BEPS agenda and assisted Australia to maintain its international standing and relationships with other jurisdictions.

Loss of OBU activity

As noted earlier, the EU sanctions that could have been imposed as a result of not addressing OECD FHTP concerns would have affected domestic financial institutions, not just registered OBUs, with significant flow on costs. Removal of the preferential tax rate affects registered OBUs only.

At the time the concessional tax rate was removed, 136 OBUs were registered, although many did not regularly undertake OB activities. For example, in the 2019-20 income year, 42 registered OBUs reported positive net OB income (Table 1). Around 30 per cent of OBUs are operated by foreign financial institutions.

OBUs are unlikely to continue operating within the regime considering it currently still involves specific administrative and compliance requirements, but no longer provides concessional tax treatment. As a result, it is expected that eligible OB activity within the OBU regime will substantially decrease over time.

The impacts of the amendments are likely to differ across the OBU population due to differences in their relative size of individual OBUs, the nature of their activities and the proportion of their income derived from OB activities. For example, the major banks were potentially better placed to absorb the additional tax costs than smaller organisations, with the OB activity potentially remaining within Australia, but no longer reported through the specific OBU regime. On the other hand, algorithmic traders or foreign financial institutions may be disproportionately impacted if their Australian operations are largely or wholly focused on OB activities.

Previous Treasury consultation indicated that some foreign OBUs would investigate downsizing or moving their entire operations to jurisdictions with lower effective tax rates (such as Singapore and Hong Kong) following the conclusion of the transitional arrangements (and if there was no replacement regime). To date, Treasury is not aware of any relocations that have occurred or that have been announced. That said, transitional arrangements may still be accessible to some OBUs depending on when their 2022-23 income years conclude. Where firms ultimately choose to stay in Australia and pay the headline corporate tax rate (instead of the concessional rate), there could be a positive revenue impact. However, should firms relocate offshore or reduce their OB activity, this decrease could have negative consequences for Commonwealth revenue. In the 2021-22 Budget, the measure was estimated to decrease receipts by $160 million over the period 2022-23 to 2024-25.

Employment opportunities in firms that relocate would be expected to decrease. However, the highly skilled staff employed in the financial sector are likely to be in demand in other firms. Estimates of the number of employees directly engaged by OBUs vary, but one industry estimate suggested at least 1,500 employees.

Businesses that choose to relocate their OBU operations to other jurisdictions will also incur the costs of moving.

Table 1 below shows the number of OBUs that have included positive net OB income in their income tax returns and their total combined OB assessable income for the income years 2019-20 to 2022-23. It indicates a decrease in the number of OBUs reporting positive OB income since the Treasurer's 2018 announcement, together with a decrease total net income.

Table 1: OBU income

Income year	*No. of taxpayers with positive net OB income*	*OB Assessable Income - taxpayers with positive net OB income - $ billion*
2012/13	46	2.8
2013/14	48	3.4
2014/15	45	4.6
2015/16	46	6.9
2016/17	44	5.9
2017/18	45	7.2
2018/19	44	8.9
2019/20	42	7.5
2020/21	41	7.7
2021/22	34	5.6
2022/23	No data available	No data available

With respect to the specific tax concessions available to OBUs it is also noted that removal of the interest withholding tax exemption is not expected to have a substantial effect on OBUs as equivalent concessions may otherwise be available. For example, several of Australia's tax treaties operate to reduce rates of interest withholding tax in certain circumstances. Further, the exemption mainly benefited OBUs engaged in borrowing and lending, which is only one of eight activities eligible for concessional tax treatment.

Regulatory and compliance impacts

The amendments to the OBU regime did not require OBUs to change their operations.

However, as a result of the amendments, it is reasonable to assume OBUs could choose to change their operations, for example by relocating some or all of their OB activities from Australia to jurisdictions that apply a lower tax rate. As noted earlier, businesses are unlikely to continue operating within the regime considering it involves specific administrative and compliance requirements, but no longer provides a tax advantage.

When the legislation to remove the concessional OBU tax rate was introduced, it was expected that some initial transitional costs associated with seeking tax advice would be incurred. However, these were considered likely to be minimal as the changes were limited to reducing the effective tax rate. No ATO tax rulings were required to explain the changes and the enactment of the amendments would have provided certainty for industry. Further, OBUs are sophisticated taxpayers with established links to tax advisory firms and the ATO.

The ATO provided a compliance cost assessment before the amendments were enacted in 2021 which determined the magnitude of the 'learning and education' impact to be 'minor or non-measurable'. The compliance assessment noted that affected entities will need to be aware of and familiar with the changes, but this is expected to be relatively straightforward and potentially part of their existing taxation update processes. This assessment estimated that approximately 20 tax agents would be affected by the proposal. In the short term, increased advice from tax agents is likely as a result of initial evaluation and planning costs for the transition. However, in the long term, advice sought from affected tax agents is likely to reduce as entities will no longer need to distinguish between OB and non-OB activities or report this information to the ATO. It also concluded that a 'low increase' in evaluation and planning resources would be required for firms to respond to the changes.

Entities will need to consider any impacts on their business and whether to conduct OBU activities at the non-concessional rate. OBUs will incur a once-off increase in compliance costs associated with moving from their current taxation treatment to the updated treatment, typically occurring in the first income year following commencement, but potentially extending over several income years. Over the longer term, OBUs will benefit from subsequent and ongoing compliance cost savings because they no longer need to distinguish between OB and non-OB activities when reporting to the ATO. For this reason, the ATO compliance cost assessment states that on-going impacts on the OBU sector will decrease in terms of:

- record keeping of systems and procedures
- forms and payments
- equipment and software.

The ATO compliance cost assessment estimated that approximately 65 companies will be affected by the proposal. The ATO's tax regulation impact assessment outlined in Table 2 indicates the estimated implementation and ongoing impacts resulting from the changes at both the client and aggregate level. The table indicates companies will face initial transitional costs as they seek tax advice to undertake some evaluation and planning. The amendments are projected to result in ongoing cost savings as OBUs no longer incur costs arising from specific administrative and compliance requirements.

Table 2: Estimated compliance costs to OBUs as a result of amendments to the OBU regime

	Total	Per client
Implementation	$550,000	$8,400
Ongoing (p.a.)	-$380,000	-$5,900
Aggregate impact over 10-year duration	-$3,300,000	
Per year (10 years)	-$330,000	

In 2021 and 2022 the ATO provided OBUs with targeted information on transitional issues relating to the cessation of the regime. The information was designed to assist OBUs in their understanding of the changes to the regime and various in which those changes could impact on OBUs' tax obligations.

Which stakeholders have been consulted for this review?

Consultation on a possible replacement regime

When announcing the OBU reforms with grandfathering arrangements on 12 March 2021, the former Treasurer also noted that the Government intended to use the transition period as a 'time to consult with industry on alternative measures to support the industry and ensure activity remains in Australia once the two-year grandfathering period ends.'

Consultation with industry participants on a possible replacement regime predominantly took place between July and November 2021. Views were canvassed in eight meetings (teleconferences) involving 13 organisations, including from the industry associations Australian Financial Markets Association (AFMA), Australian Banking Association (ABA) and the Financial Services Council (FSC). Subsequent discussions and meetings also took place in 2022 and 2023, mostly involving a subset of the initial 13 participants.

Most stakeholders acknowledged the reason for the removal of the concessional tax rate and agreed it was necessary in the circumstances but nevertheless sought a replacement tax concession, with some indicating that they would consider relocating offshore without a timely Government commitment to a replacement regime. Options put forward included bespoke proposals tailored to specific activities as well more general options.

At the time of writing, no replacement regime has been announced. Any replacement regime that focuses on preferential tax treatment would need to be cognisant of the OECD FHTP requirements. The OECD FHTP annually monitors and assesses Australia's implementation of the grandfathering arrangements that accompanied its removal of the OBU tax concession. Should a decision be taken to introduce an alternative regime, draft legislation would ideally be 'endorsed' by the FHTP prior to passage in Australia, to avoid returning to a situation where the FHTP considers this regime harmful and the potential for negative consequences such as sanctions re-emerges.

The G20/OECD Two Pillars Solution (which proposes a minimum 15 per cent tax rate for multinational enterprises with revenue above €750 million from 2023) may also result in changes to the FHTP's work over time. The Two Pillars work is focussed on reviewing international taxation rules ensure that multinational enterprises pay a fair share of tax wherever they operate.

Some stakeholders raised the expectation that the Two Pillars solution would mean that any regime with a tax rate of at least 15 per cent would not meet the 'low or no tax criterion'. That is, they asserted that a further amendment to the OBU regime to introduce a 15 per cent tax rate on OB activities would meet international standards (inferring that the 'no ringfencing' criteria would no longer be relevant for tax rates above 15 per cent). However, there is no indication that such changes to the harmful tax practice guidelines will eventuate. Should the FHTP mandate change in light of the Two Pillars solution, new alternative tax options may be possible in the future.

Consultation also took place prior to the former Treasurer's announcement on 12 March 2021, specifically in relation to the risk posed by potential EU regulations (and the ensuing EU sanctions) to the Australian securitisation sector. Stakeholders represented by the Australian Securitisation Forum who participated in that consultation strongly supported the proposed amendments to the OBU regime on the grounds that the benefits of this approach outweighed the costs of doing nothing. Relevant discussions were also undertaken with the OECD Secretariat and the European Commission.

Has the regulation delivered a net benefit?

The OBU reforms delivered a benefit to the Australian community by:

- Addressing the harmful features of the OBU regime identified by the OECD.
  - This was achieved by aligning the OBU preferential tax rate with the general corporate tax rate(s) and implementing transitional arrangements that were consistent with OECD guidelines. The Government's actions also signalled Australia's firm commitment to the work of the OECD/G20 Base Erosion and Profit Shifting agenda and helped Australia maintain its international standing and relationships with other jurisdictions.
- Preventing future sanctions affecting Australia as a result of maintaining a harmful tax regime.
  - By addressing the harmful features of the OBU regime, the potential for EU sanctions was removed, providing stability and improving confidence in Australia's financial system, with unquantifiable, but significant flow-on benefits to the economy.
  - On 17 September 2021, the OECD updated its public website to reflect the OBU regime's status as – *grandfathering in accordance with FHTP timelines* on 17 September 2021 and the EU removed Australia from Annex II of the EU list (the 'grey-list') on 5 October 2021.
- Providing as much flexibility to the OBU sector as possible.
  - Grandfathering arrangements provided existing OBUs with the maximum timeframe permissible within the OECD guidelines to adjust to the new arrangements. The legislation was clear and unambiguous, and provided certainty in this respect.

The OBU regime provided tax benefits to a small group of entities but posed much larger risks to the broader Australian economy. Removing the regime's concessional tax rate has resulted in a net benefit to the Australian community, which no longer faces potential economic sanctions and reputational damage as a result of the regime's continued operation.

How was the regulation implemented and evaluated?

Amendments to the OBU regime were implemented through the *Treasury Laws Amendment (2021 Measures No. 2) Act 2021*.

As a result of that legislation receiving Royal Assent on 13 September 2021, the OECD updated the status of the OBU regime on its public website to – *grandfathering in accordance with FHTP timelines* on 17 September 2021. Additionally, the EU removed Australia from its 'grey-list' on 5 October 2021. The legislation therefore addressed the concerns of the OECD FHTP and removed Australia from exposure to possible EU sanctions on jurisdictions included on the EU List.

Grandfathering arrangements remain in place (and depend on participants' income year) and will not conclude for all registered OBUs until 31 December 2023.

The OECD FHTP annually monitors and assesses Australia's implementation of removing the OBU regime and its related grandfathering arrangements. This monitoring will continue until the conclusion of those arrangements.