
TAXATION LAWS AMENDMENT (MEASURES FOR FUTURE BILLS) BILL
2023: MULTINATIONAL TAX TRANSPARENCY – TAX CHANGES

EXPOSURE DRAFT EXPLANATORY MATERIALS

DRAFT

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ATO	Australian Taxation Office
CBC	country by country
Commissioner	Commissioner of Taxation
GRI 207	Global Reporting Initiative's Sustainability Reporting Standards GRI 207:Tax (2019)
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
OECD	Organisation for Economic Cooperation and Development
OECD CBC reporting guidance	Chapter V set out in the Guidance on Transfer Pricing Documentation and Country by country Reporting of the Organisation for Economic Cooperation and Development and the Group of 20
TAA	<i>Taxation Administration Act 1953</i>

Chapter 1: *Multinational tax transparency reporting*

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Outline of chapter

- 1.1 Schedule 1 to the Bill amends the TAA to require certain large multinational enterprises (defined as CBC reporting parents) to publish selected tax information on a CBC basis. The information is to be published on an Australian government website, with publication facilitated by the Commissioner. The objective of these amendments is to improve information flows to help investors and the public compare entity tax disclosures, to better assess whether an entity’s economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction.

Context of amendments

- 1.2 The Australian Government announced in the October 2022-23 Budget a package of targeted measures to improve corporate tax transparency disclosures. The measures form part of the Government’s multinational tax integrity election commitment package, helping to ensure a fairer and more sustainable tax system.

- 1.3 The tax transparency measures complement the Government's broader regulatory mix to improve corporate disclosures and reflects the shifting public sentiment for greater transparency and accountability on corporate activity, particularly from large businesses. This includes from investors and capital providers.
- 1.4 The shifting attitude for enhanced corporate disclosures is observed across the corporate governance landscape, including environmental and sustainability marketing claims and on climate related financial disclosures.
- 1.5 Tax transparency has generally lagged other forms of corporate disclosures. But there is momentum internationally to improve this, with the European Union's public CBC reporting Directive (EU Directive 2021/2101) and GRI 207 constituting two examples of schemes intended to enhance the tax transparency of multinational enterprises.
- 1.6 It is in this broader context that the Government is committed to improving the quality and comparability of tax disclosures by large businesses in Australia, by introducing standardised reporting requirements for large businesses.
- 1.7 Currently, large multinational enterprises are subject to confidential CBC reporting (in accordance with Action 13 of the OECD's base erosion and profit shifting project). In addition, some companies voluntarily disclose some CBC information but disclosures are fragmented leading to inconsistencies and difficulties interpreting and comparing the information
- 1.8 To enhance transparency, as well as improve comparability and accessibility, these amendments will require certain large multinationals to publicly disclose selected tax information on a CBC basis. This builds on global trends to help inform the public debate on the tax affairs of large multinationals. The information will be reported in a standardised format and be centrally hosted to facilitate comparability across entities, jurisdictions, and reporting periods – building up a database that will increase in value over time for the public to access.

Summary of new law

- 1.9 Schedule 1 to the Bill amends the TAA to impose a new reporting obligation on certain large multinational enterprises.
- 1.10 Unless otherwise exempt, the reporting obligation applies to CBC reporting parents that are certain types of constitutional corporations, partnerships or trusts, and that are members of a CBC reporting group. The CBC reporting parent is required to publish selected tax information on an Australian government website in the approved form, with the Commissioner facilitating publication. Penalties apply for non-compliance.

Detailed explanation of new law

Entities covered by the amendments

1.11 The requirement to publish selected tax information applies to entities that are a CBC reporting parent within the meaning provided by section 815-375 of the ITAA 1997 and:

- if the CBC reporting parent is a company, it is a constitutional corporation; or
- if the CBC reporting parent is a trust, each of the trustees is a constitutional corporation; or
- if the CBC reporting parent is a partnership, each of the partners is a constitutional corporation.

Constitutional corporation is defined in section 995-1 of the ITAA 1997.

[Schedule 1, item 1, paragraph 3D(1)(a) of the TAA]

1.12 In addition, the CBC reporting parent is only required to report in relation to an income year if:

- they are a CBC reporting parent for the income year; and
[Schedule 1, item 1, paragraphs 3D(1)(b) of the TAA]
- they are a member of a CBC reporting group at any time during the income year; and
[Schedule 1, item 1, paragraphs 3D(1)(c) of the TAA]
- at any point during the income year, they, or a member of their CBC reporting group, is an Australian resident or foreign resident with an Australian permanent establishment; and
[Schedule 1, item 1, paragraphs 3D(1)(d) of the TAA]
- they are not an exempt entity or included in a class of exempt entities.
[Schedule 1, item 1, paragraphs 3D(1)(e) and (f) of the TAA]

Exemptions

1.13 The Commissioner may exclude specific entities from having to publish the selected tax information through a written notice. Such a notice is not a legislative instrument as it is of administrative character.
[Schedule 1, item 1, paragraph 3D(1)(f) and subsections 3D(14) and (16) of the TAA]

- 1.14 The Commissioner may also exclude specific entities from having to publish selected tax information of a particular kind through a written notice. Such a notice is not a legislative instrument as it is of administrative character. This may be appropriate in situations such as where entities have limited international dealings.
[Schedule 1, item 1, paragraph 3D(4)(a) subsections 3D(15) and (16) of the TAA]
- 1.15 In addition, a class of entities may be exempt from having to publish the selected tax information. This can either be by way of the Commissioner specifying the class of entity as exempt by legislative instrument, or the class of entity being prescribed by regulation. Section 18 of the TAA provides that the Governor-General may prescribe matters that the TAA permits to be prescribed.
[Schedule 1, item 1, paragraph 3D(1)(e) and subsection 3D(13) of the TAA]
- 1.16 As the requirement to publish the selected tax information will cover a wide range of entities, there is a chance that it may apply to government entities that are subject to alternative disclosure or accountability regimes through government budget processes. The Commissioner may exempt government related entities from this requirement. This ensures that the Commissioner has flexibility to ensure that the application of this rule does not inappropriately affect these entities.
[Schedule 1, item 1, subsections 3D(17) and (18) of the TAA]

Information that must be published

- 1.17 The CBC reporting parent is required to publish selected tax information that relates to itself and its CBC reporting group. Broadly, the information required to be published relates to presence and tax dealings across jurisdictions and should provide a picture of how the entity structures its tax affairs in Australia and globally.
- 1.18 The CBC reporting parent is required to publish the names of each entity in the CBC reporting group and a description of the group's approach to tax. In addition, for each jurisdiction the CBC reporting group operates in, the CBC reporting parent must publish, at a group level:
- a description of main business activities;
 - number of employees;
 - revenue from unrelated parties;
 - revenue from related parties;
 - expenses from related party transactions;
 - profit and loss before income tax;
 - a list (including the value of) intangible assets;

- a list (including the value of) tangible assets;
- income tax paid (on cash basis);
- income tax accrued (current year);
- effective tax rate;
- the reasons for the difference between income tax accrued (current year) and the amount of income tax due if the income tax rate applicable to the jurisdiction were applied to profit and loss before income tax; and
- the currency used in calculating and presenting the above information.

[Schedule 1, item 1, subsections 3D(5) and (6) of the TAA]

- 1.19 These disclosures have predominantly been adopted from the GRI 207, which also covers a number of disclosure items that form part of the OECD recommendations for CBC reporting. Three additional disclosures not included in the GRI 207 are required under these amendments. These are: effective tax rates, expenses from related party transactions, and details of intangible assets. These have been included to further enhance the CBC disclosures. The presence of related party transactions and increases in intangible assets are specific indicators of corporate governance risk and would complement the GRI 207 disclosures.
- 1.20 In addition, the currency used in calculating and presenting the information is required to provide necessary context and assist in comparing disclosures.
- 1.21 The combination of information required to be published is intended to provide the public with a comprehensive picture of the CBC reporting group's tax affairs while minimising the compliance and administrative burden imposed on the CBC reporting parent.
- 1.22 There is significant overlap between the requirements in the GRI 207 and the requirements in the OECD CBC reporting guidance. Where relevant, regard should be had to both the OECD CBC reporting guidance and GRI 207 in interpreting the requirements entities must publish under these amendments. The inclusion of the OECD CBC reporting guidance should reduce the compliance burden on entities as they are already familiar with its interpretation as it is used by these entities in meeting their existing obligations for confidential CBC reporting under paragraph 815-355(3)(c) of the ITAA 1997.

[Schedule 1, item 1, subsection 3D(7) of the TAA]

- 1.23 The selected tax information must be published within 12 months after the end of the income year to which it relates. The Commissioner may, by written notice, approve an alternative 12 month period as the entity's income year. This is designed to provide flexibility to CBC reporting parents that are subject to reporting obligations in other jurisdictions where timing of the fiscal year is different to that in Australia.

[Schedule 1, item 1, subsections 3D(2)-(4) of the TAA]

- 1.24 Where relevant, the selected tax information published by the reporting entity must be sourced from audited consolidated financial statements. This is consistent with the EU Directive 2021/2101. The intent is for the data to be reconcilable and verifiable, and of a generally high standard for public release, without necessitating additional auditing.

[Schedule 1, item 1, subsection 3D(8) of the TAA]

Regulation making power for additional requirements

- 1.25 The amendments include a power to make regulations to prescribe further tax information the reporting entity must publish in addition to the requirements set out above. This will enable information not captured by these amendments to be included through regulations in the future, if required.

[Schedule 1, item 1, paragraph 3D(5)(d) of the TAA]

- 1.26 The regulation-making power will allow the Government flexibility to ensure the requirements are kept up to date and aligned with the most recent international reporting standards. For example, if an additional requirement were added to the GRI 207, the Government may include this in the regulations if it were determined as important in improving tax transparency. This would provide taxpayers with certainty on their reporting obligations in a timely manner. The regulations would be subject to disallowance and therefore will be subject to appropriate parliamentary scrutiny.

Interaction with confidential CBC reporting

- 1.27 Most of the information required to be published under these amendments will already be reported by entities in the ‘CBC report’ required to be provided to the Commissioner under paragraph 815-355(3)(c) of the ITAA 1997. The CBC report is subject to strict confidentiality and cannot be publicly disclosed under Australia’s international obligations in the OECD/G20 Base Erosion and Profit Shifting Project report on Action 13. Therefore, these amendments create a separate public reporting obligation.
- 1.28 The existing confidential CBC reporting obligations required under Subdivision 815-E of the ITAA and the new public CBC reporting obligations introduced in these amendments will operate in parallel, but they are distinct and separate reporting regimes. The information in the CBC report that is given to the Commissioner under Subdivision 815-E, or that is received on exchange pursuant to international exchange agreements, will not be published. This principle applies even in the event that a CBC reporting parent fails to publish the information required under these amendments.

Publication facilitated by the Commissioner

- 1.29 The CBC reporting parent will fulfil its requirement to publish the selected information by providing the information in the approved form to the Commissioner, for the purpose of the information being made public. The

Commissioner will then make the information available on an Australian government website as soon as practicable.

[Schedule 1, item 1, subsections 3D(9) and (10) of the TAA]

- 1.30 The Commissioner's role is limited to facilitating the publication of the selected tax information. The Commissioner cannot amend or modify any of the information provided by the entity before it is published.
- 1.31 The concept of approved forms is used in the tax laws to provide administrative flexibility to specify the precise form of information required and the manner of providing it.

Correction of errors

- 1.32 If a CBC reporting parent becomes aware of an error contained in any of the selected tax information that has been published, the CBC reporting parent must, as soon as practicable, provide the Commissioner a notice (in the approved form) correcting the error. This may cover a range of circumstances such as where an entity makes a further, special or amended tax return.

[Schedule 1, item 1, subsections 3D(11) of the TAA]

- 1.33 Upon receiving the notice from the CBC reporting parent, the Commissioner must make the notice available on an Australian government website as soon as practicable.

[Schedule 1, item 1, subsections 3D(12) of the TAA]

Disclosure of protected information

- 1.34 Secrecy provisions in Division 355 of Schedule 1 to the TAA apply to protected information of entities. These provisions make it an offence for a taxation officer to disclose protected information, except in certain circumstances.
- 1.35 Subsection 355-50(1) of the TAA provides an exception to this offence where the taxation officer discloses protected information in performing their duties as a taxation officer. This exception applies to a taxation officer making the information provided by the CBC reporting parent publicly available on an Australian government website, in accordance with the obligations imposed on the Commissioner under these amendments.

[Schedule 1, item 1, subsections 3D(10) and (12) of the TAA]

Penalties for non-compliance

- 1.36 Australia's tax laws have a number of existing general offence and penalty provisions. Australian resident entities will be subject to the penalties under section 8E of the TAA if they commit an offence under section 8C of the TAA by refusing or failing to comply with their obligation to publish the selected tax

information. Section 8C of the TAA has been amended to ensure it applies to this obligation.

[Schedule 1, item 2, paragraph 8C(1)(ab) of the TAA]

Commencement, application, and transitional provisions

- 1.37 The amendments commence on the first 1 January, 1 April, 1 July or 1 October to occur after Royal Assent.
- 1.38 The amendments apply to reporting obligations for income years commencing on or after 1 July 2023.

[Schedule 1, item 3]