Minerals Council of Australia

27 April 2023

By email: MNETaxTransparency@treasury.gov.au

Dear Sir/Madam

Submission in relation to public country by country reporting

The Minerals Council of Australia (MCA) welcomes the opportunity to consult in relation to Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency-Tax changes Exposure Draft (ED) and Explanatory Memorandum (EM).

The MCA is the peak industry body representing Australian mining companies. We support transparency of tax reporting and indeed are founding supporters of the Extractive Industries Transparency Initiative (EITI). In addition, our member companies recognise the value of tax transparency and have produced detailed voluntary annual taxation transparency reports that are world leading in terms of matters included and details provided. Our member companies provide relevant taxation information through the Australian Voluntary Tax Transparency Code and financial reports. Globally, member companies also report taxation information in line with EITI, EU Reporting requirements, Canadian Extractive Sector Transparency Measures Act and in a number of cases have implemented or transitioning to implement reporting in line with GRI 207:Tax, which includes full country by country reporting.

Given the above mentioned existing Australian and global reporting requirements, there is no case for Australia to introduce additional reporting requirements that go beyond existing standards. The EM is simply incorrect when it states that tax transparency has generally lagged other forms of corporate disclosures. If the government has a genuine desire to improve tax transparency, then it needs to undertake a more systematic consultation process that considers existing reporting regimes, the benefits to be achieved through additional reporting requirements and the compliance cost imposed on reporting entities. The ED contains a list of additional transparency requirements that were not previously flagged, create significant additional compliance requirements (which are in some cases near impossible to meet), generate no commensurate improvement in understanding the tax outcomes of the business and in a number of cases are unclear.

We note below some specific concerns with the ED/EM, all of which are important and need to be addressed.

Commencement date- the ED refers to the 2023-24 income year as the commencement year whilst the EM refers to application for income years starting on or after 1 July 2023. The EM is in line with the original Government announcement. Either way, there needs to be a later commencement date given the need to implement information gathering, reporting and auditing processes within companies. The stated commencement date is unrealistic.

Materiality thresholds-company financial reports have materiality thresholds and the process for setting them is well established in Accounting Standards. Given the information to which these new transparency measures apply will be made publicly available for the purpose of shedding more light on taxation information, the same materiality provisions that apply to public disclosure in financial reports should apply to these new public disclosures.

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Reporting period- companies that adopt a substituted accounting period for tax (for example year ending 31 December) should automatically qualify to use that same reporting period for the purposes of this new reporting requirement.

Expenses arising from transactions with related parties that are not tax residents of the jurisdiction-This information requirement is onerous and also is more relevant to taxpayer/Revenue Authority disclosures than public reporting. It should be removed.

List of tangible and intangible assets-the requirement to list these assets (some of which may be commercially sensitive) will amount to an onerous obligation for little benefit to the audience. It is unclear what level of detail is required and what definitions will apply? The book value of intangible assets is of no value to the reader. This disclosure requirement should be removed.

Pillar 2 Effective tax rates-The requirement to calculate an effective tax rate by reference to OECD Model Pillar 2 rules that are in design, not necessarily applicable nor implemented is perplexing. Does Treasury understand what it is asking companies to prepare and the degree of difficulty associated with the requirement? This requirement is particularly difficult to comprehend given the proposed start date for the CBCR public disclosure and yet to be announced/ released legislative timetable for Pillar 2. The proposed Pillar 2 ETR differs from ETRs that are disclosed under GRI:207 and the ETRs currently prepared and disclosed by companies which are readily understood by readers. Furthermore, the OECD Pillar 2 rules envisage lodgement of Pillar 2 returns 15 months after the last day of the reporting fiscal year which does not align with the proposed reporting deadline in the ED.

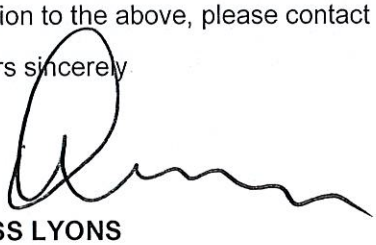
Corrections- The requirement to correct errors needs to have a materiality threshold to ensure only material changes must be notified.

ATO Hosted Database- The insertion of the ATO to host a database adds no value to the process. Indeed, given the legal requirement for companies to disclose this additional financial information in relation to tax, the manner in which it is made public should follow the same process as published financial reports that companies are required to make available. This will enable the company to provide narrative and in some-cases additional financial data to provide readers with context and better understanding of the tax material.

Inadequate Cost/Benefit Analysis- Our member companies voluntarily publish detailed and relevant reports in relation to their taxation payments and their approach to taxation compliance. Therefore, they have significant experience in relation to determining the taxation information that readers, analysts, investors and the public seek. The consistent message provided to Treasury in relation to this policy has been to align with existing EU standards, allow sufficient time for companies to transition and allow companies to report the information. Surely it is incumbent upon Treasury/Government to clearly define the rationale for establishing a new compliance burden on business including evaluating the cost, the impact in terms of new information gathering and the net benefits.

We would welcome the opportunity to engage in constructive consultation to ensure the design and implementation of these measures is practical and proportionate. Should you have any questions in relation to the above, please contact Ross Lyons (ross.lyons@minerals.org.au).

Yours sincerely



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