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Director
International Tax Branch
Corporate and International Tax Division
Treasury
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Dear Director

SUBMISSION TO CONSULTATION ON PUBLIC COUNTRY-BY-COUNTRY REPORTING

Thank you for the opportunity to provide feedback on the Federal Government's proposed enhancements to tax reporting by multinational entities, focusing on the public disclosure of country-by-country (CbC) reporting.

AIA Australia is a life and health insurer, and part of the AIA Group, which is listed and headquartered in Hong Kong, and operates in 18 markets throughout Asia-Pacific.

We support the Government's intention to ensure multinational enterprises pay the correct amount of tax.

We note the objective of the amendments in question is to help investors and the public compare entities' 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."*

We have two key concerns. First, we question whether this is the right objective for tax reporting, specifically whether it is the responsibility of the public to ensure companies are doing the right thing; taxation can be highly technical and in our view is more appropriately handled by government agencies with the necessary expertise and authority.

Second, we are of the view that the proposed reporting is unlikely to achieve its stated objective, and will create unintended consequences including material compliance issues for multinationals and competitive distortions due to the publication of commercially sensitive information. We have elaborated on these concerns below.

Australia should not be a global outlier

The proposals go beyond the requirements of other global standards, including existing OECD CbC reporting, the EU's CbC reporting directive (EU CbCR), and Global Reporting Initiatives' (GRI) Sustainability Reporting Standards. This has a real cost for multinational enterprises, both in terms of additional compliance burden and competitiveness (discussed further below). We understand that the proposals require the disclosure of the following information over and above the EU CbCR:

- revenue from third parties and related parties by jurisdiction
- lists of tangible and intangible assets by jurisdiction
- effective tax rate by jurisdiction under the OECD's Global Base Erosion (GloBE) Model Rules and an explanation of the reasons for differences between the corporate income tax expense accrued for a jurisdiction and the statutory rate of income tax in that jurisdiction applied to its profit (or loss).

Some information would be required to be broken out by jurisdiction under the proposals, whereas under the EU CbCR, where that information is required to be disclosed it is aggregated (except in the case of certain specified jurisdictions that the EU considers to be non-compliant).

There are issues of commercial sensitivity with the publication of CbC information

The existing CbC reports are subject to strict confidentiality and may only be exchanged between jurisdictions if this confidentiality is safeguarded. As a result, the proposals intend to create a new regime for public disclosure of similar CbC information to circumvent confidentiality safeguards, as the disclosure of existing CbC reports would be prohibited.

There are legitimate reasons for confidentiality safeguards; if CbC reporting information is made public, competitors of the disclosing multinational enterprise could exploit the information to obtain an unfair competitive advantage. For instance, if the disclosing multinational enterprise offers a single product or service in a market, it would be relatively straightforward to determine its profit margins and pricing strategy from the publicly disclosed information, which would be valuable to its competitors. The identification and valuation of all of a multinational enterprise's tangible and intangible assets in each jurisdiction would also be invaluable to its competitors.

The potential competitive disadvantage will be even greater where a disclosing multinational enterprise has competitors that do not operate in Australia and are therefore not subject to the proposed public CbC reporting requirements. Those competitors will benefit from the commercially sensitive information regarding the disclosing multinational enterprise without having to disclose similar commercially sensitive information themselves. This could even be the case for a competitor with no Australian operations, but which is still subject to the EU CbCR, as the greater disclosure requirements under the proposals (such as to break out certain information by jurisdiction) will give them an informational advantage.

To some extent, the EU CbCR addresses this concern by providing an opportunity to defer the disclosure of commercially sensitive information (i.e., information seriously prejudicial to the commercial position of the companies to which it relates) for a maximum period of five years.

Information published should be clear and meaningful to the public

If the objective of public disclosure is so that the public can assess whether an entity's economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction, then the information published needs to be simple, clear and meaningful to the public. Without having expertise or technical knowledge in interpreting the data, there is a risk of the results being misunderstood.

The existing CbC reporting regime clearly recognises that the information reported is only of use for high-level tax risk assessment. There are limitations to how tax authorities may use the information, as it is accepted that the CbC information alone is not sufficient to determine if tax has been properly assessed under the law.

If tax authorities, which have the expertise and technical knowledge to interpret the data, do not use it as the sole basis to determine if the correct amount of tax has been paid by a multinational enterprise, it is not apparent how the public will be able to use it for this purpose.

There is a real risk that incorrect conclusions are drawn by the public with the benefit of only part of the story (in contrast with tax authorities using existing CbC information, as such authorities have broad powers to obtain further information from entities).

There are some areas that we are concerned will directly result in incorrect assessments by the public. For example, the proposals require disclosure of multinational enterprises' effective tax rates by jurisdiction. This is to be determined under the OECD's GloBE Model Rules. Under those rules, top-up taxes that will apply by the time the public CbC proposals are in effect will not be included in the disclosed effective tax rate. Therefore, there could be instances where a jurisdiction that a multinational enterprise operates in has a low effective tax rate under these rules but actually pays 15% tax (including top-up taxes).

Our proposed solution: Align reporting and publication requirements with overseas jurisdictions

Noting our reservations on the proposals, should the Government still wish to pursue public disclosure of CbC information, we are of the view that rules modelled on the EU CbCR would achieve the Government's aims, while avoiding the issues outlined above including suitability of the information disclosed to the public, competitive disadvantages from disclosure of commercially sensitive information, and significant additional compliance burden.

Timing of changes must be considered further

The new requirements are proposed to apply from the 2023/24 financial year. Based on the concerns outlined above, we would suggest further time for industry discussion on these proposals before a Bill is introduced to Parliament.

We would welcome the opportunity for further discussions and consultation on the proposals, and can provide insight and input from our global counterparts within the AIA Group. For any discussions, please contact in the first instance Sarah Phillips, GM Communications and Corporate Affairs, sarah.phillips@aia.com, 0498 494 791.

Yours faithfully

A handwritten signature in black ink, appearing to be 'DM', with a stylized flourish at the end.

Damien Mu
CEO and Managing Director