



April 28, 2023

Director
International Tax Branch
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

RE: Draft Amendments, Public country-by-country reporting

On behalf of National Taxpayers Union (NTU), the oldest taxpayer advocacy organization in the United States, we thank you for the opportunity to offer comments on the exposure draft legislation dated April 4, 2023, and titled, "Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes."¹

NTU was founded in 1969 to serve as the "Voice of America's Taxpayers." Our mission is to achieve favorable policy outcomes using the most effective pro-taxpayer team in Washington, D.C. and in the 50 states of the U.S. We are also leaders in the World Taxpayers Associations (WTA), which was formed in 1988 to stimulate efficiency and economy in the public sector.² One of this letter's co-authors, NTU President Pete Sepp, currently serves on the Executive Committee for the WTA. The WTA is proud to count leaders from both the Australian Taxpayers' Alliance (ATA) and Tax & Super Australia as participants in WTA. ATA founder Tim Andrews serves on WTA's Advisory Board, while Tax & Super Australia's Vice-President Mark Dodds serves as WTA's Treasurer. We caution, however, that the views expressed in this letter by NTU do not necessarily constitute the views or opinions of the WTA, Tax & Super Australia, or the ATA.

NTU has also offered regular commentary on the Organisation for Economic Co-operation and Development (OECD) Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy,³ ongoing negotiations among OECD/G20 Inclusive Framework members,⁴ and U.S. efforts to implement Pillars One and Two of the OECD Two-Pillar Solution.⁵

¹ Australian Department of Treasury. (April 5, 2023). "Exposure Draft: Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes." Retrieved from: https://treasury.gov.au/sites/default/files/2023-04/c2023-383896-ed_0.pdf (Accessed April 27, 2023.)

² "History." World Taxpayers Associations. Retrieved from: <https://worldtaxpayers.org/about-us/history/> (Accessed April 27, 2023.)

³ Sepp, Pete. "Comments to the OECD Centre for Tax Policy and Administration." NTU, December 14, 2020. Retrieved from: <https://www.ntu.org/publications/detail/comments-to-the-oecd-centre-for-tax-policy-and-administration> (Accessed April 27, 2023.)

⁴ Lautz, Andrew. "Treasury, Congress Should Keep U.S. Businesses and Workers at Front of Global Tax Talks." NTU, August 24, 2021. Retrieved from: <https://www.ntu.org/publications/detail/treasury-congress-should-keep-us-businesses-and-workers-at-front-of-global-tax-talks> (Accessed April 27, 2023.)

⁵ Lautz, Andrew. "Outstanding Issues for Congress on Pillars One and Two Following October Agreement." NTU, October 14, 2021. Retrieved from:

We write to you with significant concerns about the exposure draft. The draft legislation would significantly increase reporting and compliance burdens for multinational companies, many of which are based in the U.S., and would divulge sensitive business information that could easily be misinterpreted or manipulated by policymakers or commenters with interests that may lie far outside those of the general taxpaying public.

Increased Reporting and Compliance Burdens

The exposure draft legislation would require multinational companies with any presence in Australia to publish global, country-by-country information for each entity in its reporting group. The reporting requirements include, but are not limited to (emphases ours):

- “Description of main business activities”;
- “Revenue from unrelated parties”;
- “Revenue from related parties”;
- **“Expenses from related party transactions”;**
- **“A list (including the value of) intangible assets”;**
- **“A list (including the value of) tangible assets”;** and
- **“Effective tax rate.”**⁶

NTU wishes to focus on the bolded items above. Three of the four (i.e., all but a list of tangible assets) are, as the exposure draft explanatory materials acknowledge, “additional disclosures not included in the GRI [Global Reporting Initiative] 207.” The explanatory materials defend their inclusion in the exposure draft as “further enhanc[ing] the CBC disclosures” and “provid[ing] 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.”

We strongly believe the exposure draft must give a great deal of additional consideration to the compliance and administrative burdens imposed by these additional disclosure requirements. For multinational companies with hundreds of entities and thousands of employees around the world, determining and then listing all related party transactions and all tangible and intangible assets (along with an assigned value for both tangibles and intangibles) – for *each* reporting entity under the parent’s umbrella – will be a significant undertaking. As experts at Deloitte noted, “[t]he reference to tangible and intangible assets means that practically entities will be required to disclose all their assets for their global group.”⁷ And as noted by Ernst & Young, “[i]mpacted groups will need to ensure systems are in place to comply with these new reporting obligations.”⁸

<https://www.ntu.org/publications/detail/outstanding-issues-for-congress-on-pillars-one-and-two-following-october-agreement> (Accessed April 27, 2023.)

⁶ Australian Department of Treasury. (April 2023). “Taxation Laws Amendment (Measures for Future Bills) Bill 2023: Multinational Tax Transparency – Tax Changes; Exposure Draft Explanatory Materials.” Retrieved from: <https://treasury.gov.au/sites/default/files/2023-04/c2023-383896-em.pdf> (Accessed April 27, 2023.)

⁷ “Tax Insights: Australia proposes public tax reporting for Australian and foreign headquartered multinationals.” Deloitte, April 11, 2023. Retrieved from: <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/tax/deloitte-au-tax-insights-7-australia-introduces-public-tax-reporting-australian-foreign-headquartered-multinationals-120423.pdf> (Accessed April 27, 2023.)

⁸ “Australian Treasury releases Exposure Draft Bill — Multinational tax transparency public country-by-country reporting.” EY, April 12, 2023. Retrieved from: <https://globaltaxnews.ey.com/news/2023-0702-australian-treasury-releases-exposure-draft-bill-multinational-tax-transparency-public-country-by-country-reporting> (Accessed April 27, 2023.)

Policymakers in Australia and elsewhere should not assume that multinational companies have the technical capacity, manpower, and resources readily available to comply with these reporting requirements in short order. NTU also believes that such significant, global, and public country-by-country and entity-by-entity reporting requirements should be negotiated and agreed upon at a global and public level – with consultation from affected stakeholders that lasts longer than a few short weeks – rather than implemented by one country on just a few months’ notice. In fact, the OECD/G20 Inclusive Framework and associated Base Erosion and Profit Shifting project have spent thousands of hours doing just that, and should continue to be the primary forum in which major changes to country-by-country reporting are considered or agreed to.

Access to Sensitive Business Information

Stakeholders have noted that the draft exposure legislation “would be the first unrestricted world-wide mandated public reporting of all CBC report data combined with additional information by jurisdiction.”⁹ Deloitte wrote, “[t]his proposed regime goes beyond any legislated existing public tax transparency regime in Australia or elsewhere in the world and indeed goes further than the European [public country-by-country reporting] directive.”¹⁰

Policymakers should pause to consider the unintended consequences of over-disclosure in public reporting, especially for actors who could misinterpret or manipulate the data to be shared.

The pricing of intangible assets in particular is incredibly complicated, and difficult for the public and even tax administrators to understand. As the U.S. Congressional Research Service has reported, “[t]he complication stems from the uniqueness of intangible assets and lack of reference to market values” that also make it difficult for tax administrators to “enforce rules specifying how the transfer of intangible assets or the rights to them between foreign related entities should be valued for purposes of profit and tax determination.”¹¹

The threat of misinterpretation of public data – or worse yet, manipulation of data by policymakers or stakeholders with a particular agenda – is very real. NTU has witnessed this problem firsthand in the United States, where some commenters have distorted publicly-traded companies’ mandated disclosures to the U.S. Securities and Exchange Commission to imply or even directly accuse U.S. companies of cheating on their taxes. The simple fact is that financial data reported in one regulatory context – e.g., earnings statements to shareholders – often cannot translate into taxable profits for tax law purposes.

As NTU wrote in December 2021:

“According to Senator [Elizabeth] Warren, President [Joe] Biden, and some other stakeholders, a corporate minimum tax is a simple, cut-and-dry matter of ‘tax fairness.’ Their argument goes something

⁹ Vanderkley, Chris et al.. “Proposed new Public Country by Country Reporting.” PwC Australia, April 11, 2023. Retrieved from: <https://www.pwc.com.au/tax-alerts/proposed-new-public-country-by-country-reporting.html> (Accessed April 27, 2023.)

¹⁰ “Tax Insights: Australia proposes public tax reporting for Australian and foreign headquartered multinationals.” Deloitte, April 11, 2023. Retrieved from: <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/tax/deloitte-au-tax-insights-7-australia-introduces-public-tax-reporting-australian-foreign-headquartered-multinationals-120423.pdf> (Accessed April 27, 2023.)

¹¹ Gravelle, Jane G.; Marples, Donald J.; and Keightley, Mark P. “Corporate Income Taxation in a Global Economy.” Congressional Research Service, January 4, 2022. Retrieved from: <https://crsreports.congress.gov/product/pdf/R/R47003> (Accessed April 27, 2023.)

like this: corporations and their armies of lobbyists have paid for a tax code rigged in their favor, and they play accounting games to artificially reduce their tax obligations while reporting significant profits to shareholders.

In contrast, NTU and NTU Foundation have long noted that there are important reasons why a company's financial statement (or 'book') income and their taxable income may differ. Some of those differences are temporary and due to the timing of income and expenses (e.g., how accounting standards and the tax code treat cost recovery periods for business investments). Some differences are permanent, such as differences due to popular and bipartisan tax credits available to businesses like the research tax credit and the low-income housing tax credit.”¹²

The draft exposure legislation could put the problems NTU has seen in the U.S. – in particular with regards to differences between financial statement and taxable income – into overdrive on a global scale.

Conclusion

To reiterate one of our comments above, we strongly believe that global, public, country-by-country and entity-by-entity reporting requirements for multinational companies should be negotiated at the global level and include significant, lengthy consultation with affected parties. The draft exposure legislation was released publicly on April 6 and the Australian Treasury has given the public just 23 days to respond. We encourage Australia to pause any additional steps to implement this legislation and consult with stakeholders in global fora, such as the OECD/G20 Inclusive Framework. Thank you for your consideration of our comments.

Sincerely,

Pete Sepp
President, NTU

Andrew Lautz
Director of Federal Policy, NTU

¹² Lautz, Andrew. “Senator Warren’s Corporate Minimum Tax Analysis Is Deeply Flawed.” December 6, 2021. Retrieved from: <https://www.ntu.org/publications/detail/senator-warrens-corporate-minimum-tax-analysis-is-deeply-flawed> (Accessed April 27, 2023.)