KPMG

Multinational Tax Transparency & Public Country-by-Country Reporting Exposure Draft

KPMG submission

KPMG Australia, 28 April 2023

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Contents

Executive summary

As a leading professional services firm, KPMG Australia (KPMG) is committed to meeting the requirements of all our stakeholders – not only the organisations we audit and advise, but also employees, governments, regulators and the wider community. We strive to contribute to the debate that is shaping the Australian economy and welcome the opportunity to respond to Treasury's Multinational Tax Transparency Exposure Draft.

KPMG supports transparency of tax information to help build trust between organisations, their stakeholders and the communities in which they operate. It is important for Australia's proposals to align with existing global transparency frameworks. Further consultation is required to better achieve balance between the significant compliance costs and the public benefit of deviations from global standards.

We appreciate the opportunity to comment on the Multinational Tax Transparency Exposure Draft (ED) released on 6 April 2023 containing the mandatory public country-by-country (CbC) rules and the requirements for multinational enterprise (MNE) groups to publish an approach to taxation. We address the policy matters in this section of our submission.

Australia's proposed rules set out in the ED represent a substantial shift in the approach of tax transparency reporting requirements globally. Firstly, Australia's CbC proposal for mandatory public CbC reporting leverages from the GRI 207 framework, which currently is a voluntary global ESG reporting tax standard. Australia has gone further in its approach to tax transparency by not only mandating public CbC reporting but also requiring additional granular data points that are likely to substantially increase compliance costs for limited public benefit.

Furthermore, the scope of Australia's CbC proposals is wide, capturing Australian and foreign headquartered MNEs, even if they only have a very small presence in Australia. With a far-reaching measure that has such a large impact on an organisation's systems, resources, processes and business generally for many groups in Australia and offshore, KPMG considers further consultation is required to fully assess the impact of these new measures.

KPMG looks forward to continued engagement with the Federal Government as it implements these rules.

If you would like to discuss the contents of this submission further, please do not hesitate to reach out to the authors and contacts at the back of this submission.

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Background

About KPMG

KPMG is a global organisation of independent professional firms, providing a full range of services to organisations across a wide range of industries, governments and not-for-profit sectors. We operate in 146 countries and territories and have more than 227,000 people working in member firms around the world. In Australia, KPMG has a long tradition of professionalism and integrity combined with our dynamic approach to advising clients in a digital-driven world.

KPMG International Tax practice

KPMG's International Tax practice works with multinational organisations to provide commercially focused advice on cross-border tax matters. We help companies manage the complexities of meeting their tax obligations relating to multiple tax systems and supranational regulation around the world.

We partner with our clients to advise on and manage the tax implications relating to their cross-border arrangements, structures and transactions. We also help businesses manage the tax impact and drive efficiency relating to complex events, including cross-border mergers and acquisitions, divestments, international expansion, cross-border financing, and business change. By drawing not only on our network of tax professionals around the world, but also on our specialists in other areas of taxation, we provide a complete, multi-disciplined perspective to any tax challenge.

Section 1:
KPMG recommendations

RECOMMENDATION 1:

We strongly recommend that Treasury select one of the existing global reporting frameworks (GRI 207, OECD CbC or EU public CbC) and align the data requirements with the selected standard. Mixing the requirements of the different global reporting frameworks and adding additional data requirements makes it challenging for groups to achieve global consistency for their tax transparency reporting obligations.

RECOMMENDATION 2:

The proposed Australian public CbC rules include additional data requirements that do not currently exist in any global reporting framework. For many multinational groups, each new data requirement added can give rise to significant work to compile (with additional checks, reconciliations and sign off procedures needed where such data is to be made public).

Given the significant additional compliance burden for adding on additional data requirements for public CbC reporting, there needs to be a very strong policy rationale for an Australian specific requirement in mandatory public CbC rules that deviates from the current global tax transparency frameworks. In particular, we have significant concerns around the requirement to disclose a list of intangible assets and disclose BEPS Pillar Two effective tax rates.

Absent a strong policy rationale for the inclusion of these additional data requirements, we recommend that they be removed (or alternatively, delayed and consulted on fully).

Any additional data requirements in excess of existing global reporting frameworks should ideally be agreed at a global level, such as through the OECD, to ensure jurisdictions do not introduce inconsistent regimes.

RECOMMENDATION 3:

Consistent with global frameworks such as the GRI 207 and the EU CbC Directive, public tax transparency measures should have regard to reasonable commercial confidentiality and possible legal restriction concerns that multinational groups may have (for example in relation to the development of new products and entry into new markets).

We recommend a similar ‘confidentiality’ exclusion be included in the Australian public CbC regime with the expectation for organisations to explain the reasons for non-disclosure.

RECOMMENDATION 4:

Treasury should consider limiting the disclosures for foreign headquartered groups to the Australian operations of that group only (or requiring reduced or aggregated disclosures in line with EU CbC reporting), at least for a transitional period of time.

The compliance burden that these measures impose should not be underestimated. There will be foreign owned MNE groups with a small presence in Australia that will now be required to report tax information for each jurisdiction that it operates in. This would seem to be a disproportionate administrative burden which is likely to serve as a disincentive to continue business or set up operations in Australia. We recommend a de-minimis test to exempt foreign headquartered groups with a small Australian presence, in line with the approach taken by the EU public CbC measures.

RECOMMENDATION 5:

Given the 1 July 2023 start date is fast approaching and the significant change proposed, Treasury should consider delaying the implementation of the measures for 12 months. A delayed implementation date would provide the opportunity to properly consult with Australian headquartered and foreign headquartered groups on the public tax transparency reporting measures.

If the 1 July 2023 start date proceeds, Treasury should consider the following transitional measures:

- We strongly recommend that the requirement for the additional CbC data points that do not appear in any other global reporting frameworks are delayed at least 12 months to provide an opportunity to consult properly on the proposals and to give in-scope groups time to make the systems and process changes needed to comply (should it ultimately be decided that such additional data requirements are required);

- Organisations should be allowed flexibility to adopt either OECD CbC reporting, EU public CbC reporting or the GRI 207 approach to CbC reporting in the transitional period provided MNE groups are clear on their basis of preparation;

Section 2:
KPMG insights

Response to consultation

Introduction

We appreciate the opportunity to comment on the Multinational Tax Transparency Exposure Draft (ED) released on 6 April 2023 containing the mandatory public country-by-country (CbC) rules and the requirements for multinational enterprise (MNE) groups to publish an approach to taxation. We address the policy matters in this section of our submission.

We acknowledge the importance of public transparency of tax information to help build trust between organisations, their stakeholders (including investors and regulators) and the communities where they operate. Tax transparency for an organisation allows for an assessment of whether economic presence aligns with an organisation's tax contribution and profile. Taxes that organisations pay enable governments to finance and deliver on national development plans for the benefit of the broader community to promote sustainable economic growth.

Australia's proposed rules set out in the ED represent a substantial shift in the approach of tax transparency reporting requirements globally. Firstly, Australia's CbC proposal for mandatory public CbC reporting leverages from the GRI 207 framework, which currently is a voluntary global ESG reporting tax standard. Australia has gone further in its approach to tax transparency by not only mandating public CbC reporting but also requiring additional granular data points. Our concern is that some of these data points appear to be for revenue authority tax compliance purposes and in our view, are too technical and granular for general stakeholder interest. As such, they do not materially advance the policy intent of the Government, but may substantially increase compliance costs.

Furthermore, the scope of Australia's CbC proposals is wide, capturing Australian and foreign headquartered MNEs, even if they only have a very small presence in Australia. With a far-reaching measure that has such a large impact on an organisation's systems, resources, processes and business generally for many groups in Australia and offshore, KPMG considers further consultation is required to fully assess the impact of these new measures.

Our feedback below is provided in this context and is categorised into a number of key areas.

The need for global consistency

The public reporting of CbC information, as a matter of policy, should be a standardised, clear framework which uses information that MNEs are already required to compile, keeps additional compliance costs within reasonable limits, and promotes the publication of genuinely useful information which is at low risk of misinterpretation and is in the public interest.

It is therefore important the Australian public CbC framework be consistent with existing global tax transparency frameworks. Many MNEs are already preparing private CbC reports modelled under the OECD BEPS Action 13 Guidelines (OECD CbC reporting), and in more recent years, some MNE groups have voluntarily moved towards reporting under the GRI 207 sustainability framework including public CbC disclosures under GRI 207-4. There will also be a number of groups required to comply with the EU public CbC requirements.

We strongly recommend that Treasury select one of the existing global reporting frameworks (GRI 207, OECD CbC or EU public CbC) and align the data requirements with the selected standard. Mixing the requirements of the different global reporting frameworks and adding additional data requirements makes it challenging for groups to achieve global consistency for their tax transparency reporting obligations.

The additional CbC data points

The proposed Australian public CbC rules include additional data requirements that do not currently exist in any global reporting framework. These include:

- listing of individual intangible and tangible assets and their book values;
- expenses from transactions with related parties that are not tax residents of the jurisdiction; and
- effective tax rates prepared in accordance with the BEPS Pillar Two model rules.

For many multinational groups, each new data requirement added can give rise to significant work to compile (with additional checks, reconciliations and sign off procedures needed where such data is to be made public).

Given the significant additional compliance burden for adding on additional data requirements for public CbC reporting, there needs to be a very strong policy rationale for an Australian specific requirement in mandatory public CbC rules that deviates from the current global tax transparency frameworks.

It is also unclear how the additional information noted above aligns to the objective noted in the exposure draft explanatory memorandum. In this regard, Treasury has indicated that

"*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*".[1]

For example, with respect to intangible assets, it is noted that the recognition of intangible assets may differ across economically identical organisations; for example, acquired assets may be recognised whilst internally generated assets may not be. We are unclear how such potential material differences in recognition may allow an objective comparison by investors and the public.

Whilst it is recognised that additional information *could* provide additional context, we question whether mandating the abovementioned additional disclosures, which are inconsistent with existing global tax transparency frameworks, is relevant, useful, will be easy to interpret correctly and will enhance the general public's understanding of the organisation's tax affairs. The benefit of public disclosure of this information needs to be assessed against material compliance costs.

In addition, the deviation from global standards sets a precedent for other countries seeking to introduce their own mandatory public CbC rules to add their own specific disclosure requirements. This will result in numerous incremental obligations globally, which will make global compliance extremely challenging. Such an approach must be contrasted against globally coordinated and implemented measures such as the existing CbC reporting regime, where rates of compliance by MNEs are extremely high.

Treasury should also consider whether a materiality threshold should apply or consider an optional disclosure mechanism in a similar manner to the approach adopted by GRI 207 where there are 'reporting requirements' and 'reporting recommendations'.

Any additional data requirements in excess of existing global reporting frameworks should ideally be agreed at a global level, such as through the OECD, to ensure jurisdictions do not introduce inconsistent regimes.

We provide more specific comments on the additional data points below.

List of tangible and intangible assets and book values

On the requirement to list tangible and intangible assets, it is not clear what level of detail is to be provided in the "list" of assets:

- **Tangible assets:** In other global reporting frameworks, tangible assets are not required to be individually itemised and the disclosed book value is an aggregated amount for the jurisdiction in question. For the Australian public CbC measures, it is unclear the level of detail required for this disclosure (such as inclusion of fixed asset registers to satisfy disclosure requirements for the list of tangible assets). If tangible assets need to be itemised (even in categories) and listed for public disclosure, we are uncertain of the rationale and the benefit of such granularity of disclosure compared to the cost of compliance. It would be beneficial for Treasury to articulate the usefulness of such information to the general public. It is also not clear what integrity concerns might arise from individual types of tangible assets (the existing total tangible assets disclosures in current tax transparency give users a sense of the level of substance in a jurisdiction – it is not clear how listing individual tangible assets would provide greater understanding relative to the compliance burden).
- **Intangible assets:** Clarity should be provided on whether details regarding all intangible assets recognised in financial data that comprises the global audited accounts should be listed (or for example, only assets post-consolidation entries).

There is also a question of what "intangible assets" under the public CbC proposals means particularly in light of the draft legislation released on 31 March, *Treasury Laws Amendment (Measures 4 for Consultation) Bill 2023: Deductions for payments relating to intangible assets connected with low corporate tax jurisdictions.* The requirement for this

[1] Exposure Draft EM, paragraph 1.1.

disclosure is likely to give rise to significant uncertainty and a significant compliance burden where a broad interpretation of intangibles is taken (noting that many of the intangibles held by a group will have no connection with Australia).

We also comment later in this submission on the commercial sensitivities for disclosing specific tangible and intangible assets.

For these reasons, we strongly recommend the requirements to disclose intangible balances and listing tangible assets are removed. If this recommendation is not accepted, then in the alternative:

- To minimise compliance costs for MNEs, we would recommend that that the requirement for lists of tangible and intangible assets be removed and an aggregate figure be required for each jurisdiction.
- We would also recommend that further guidance be provided regarding the definition of intangible assets to provide greater certainty to taxpayers.

Expenses from transactions with related parties

On the requirement to disclose expenses from transactions with related parties that are not tax residents of the jurisdiction, we consider the nexus of this incremental information to the objective of Treasury (noted above) is very low.

In our view, the economic presence of an entity and the tax it pays is better understood by its third party and related party revenues, its profits and its tax paid; these data points are all provided under existing CbC measures. Incremental information regarding related party expenses adds little further context that assists in satisfying Treasury's objective but will materially deviate from current global standards and add compliance costs.

We also note that detailed information regarding the related party expenses of an Australian taxpayer is available to the Australian Taxation Office through the Australian Local File under current CbC reporting measures. If the concern relates to related party transactions with low tax jurisdictions, then Treasury should consider whether other disclosures required under the ED, such as providing the reasons for the difference between income tax accrued and the amount of income tax due if the income tax rate applicable in the jurisdiction were applied to profit and loss before income tax (which leverages from GRI 207-4 b.x.), already addresses this concern. This explanation under GRI 207-4 is intended to 'call out' tax reliefs, allowances, incentives, or any special tax provisions where an entity benefits from preferential tax treatment in a particular jurisdiction (see the commentary to GRI 207-4 b.x)

For these reasons, we recommend the requirements to disclose expenses from transactions with related parties that are not tax residents of the jurisdiction are removed.

BEPS effective tax rate disclosures and timing

Whilst existing reporting such as the GRI 207 provides data points for a MNE group to calculate a current tax effective tax rate (ETR), the Australian public CbC rules require the effective tax rate disclosures should be determined in accordance with the Article 5.1 of the BEPS Pillar Two Model Rules.

We have a number of concerns with the requirement to disclose BEPS Pillar Two effective tax rates:

- Such a disclosure will require multinational groups to accelerate preparation of their Pillar Two effective tax rates for each jurisdiction by up to six months. This is because the Australian public CbC disclosures are required to be filed within 12 months after the relevant year end, whereas the GloBE Information Return including all Pillar Two effective tax rates is due 18 months after year end for the transitional year, then 15 months after year end for subsequent years. The GloBE Information Return deadlines were negotiated and agreed by the OECD Inclusive Framework members, including Australia. It would seem to be circumventing these globally agreed filing deadlines by one country forcing all multinational groups with an Australian presence (of any size) to prepare and file on an earlier timeline.
- The disclosure of the effective tax rate prepared in accordance with Article 5.1 does not take into account the fact that top-up taxes may have been paid under the Pillar Two rules or under a qualified domestic minimum top up tax. This gives rise to a high potential for misinterpretation by users as it does not fully reflect the total taxes paid. Further, the BEPS Pillar Two ETR is a complicated tax technical concept/calculation that may not be well understood by users, and is inconsistent with the other financial metrics such as accounting ETRs (which are all based on audited consolidated financial statements) so has the potential to create confusion/ inconsistencies. For example, the

requirement to recast deferred tax movements from the statutory tax rate to the minimum tax rate of 15 percent means that an entity with large deferred tax balances may have a BEPS Pillar Two ETR significantly lower than its accounting ETR.

- The BEPS Pillar Two ETR calculation may capture data from entities that may not be CbC reporting constituent entities under the current CbC rules.
- It is not clear what will be required to be disclosed for the 2023-24 income year for multinational groups where the Pillar 2 GloBE rules are not yet in effect (this is also an issue for later years for jurisdictions that adopt the rules in 2025 or later).
- If the BEPS Pillar Two ETR is required to be disclosed, it would need to be clarified that the disclosures can be in accordance with the temporary CbC safe harbours in the Pillar Two rules where applicable (e.g., for the first three years of operation where conditions are met).
- It is not clear what disclosures would be required where a group includes entities that are not required to prepare a BEPS Pillar Two ETR calculation (for example, Excluded Entities such as pension funds or investment funds).
- Where a jurisdiction is in a GloBE Loss position (e.g., adjusted accounting loss), no BEPS Pillar Two ETR calculation is required under the model rules. Disclosing a nil ETR in such cases might give rise to misinterpretation (as the accounting ETR may be much higher).

Currently, the BEPS Pillar Two rules and guidance materials do not require public disclosure of BEPS Pillar Two ETRs. Any such requirement by Australia should be done in consultation with the OECD and as part of a globally agreed approach.

As noted above, there are a number of concerns that arise from requiring disclosures of BEPS Pillar Two ETRs in Australian public CbC reporting. As such, there should be no such disclosure required and instead, the tax disclosure should be limited to current taxes paid and accrued in line with existing global tax transparency reporting. However, if this recommendation is not accepted and if a tax disclosure that removes timing differences is required, then consideration should be given to either using accounting ETRs for each jurisdiction or using an ETR prepared using the same methodology as the OECD's Pillar Two "simplified ETR" under the temporary CbC safe harbour proposal (broadly, income tax expense per the financial statements / profit before tax as disclosed in the group's CbC report for each jurisdiction).

Disclosure of confidential information

Consistent with global frameworks such as the GRI 207 and the EU CbC Directive, public tax transparency measures should, as a general rule, have regard to reasonable commercial confidentiality and possible legal restriction concerns that MNE groups may have, for example in relation to the development of new products and entry into new markets.

Under the EU CbC Directive, the possibility to omit commercially sensitive information is provided under Article 48c, para 6:

6.

Member States may allow for one or more specific items of information otherwise required to be disclosed in accordance with paragraph 2 or 3 to be temporarily omitted from the report where their disclosure would be seriously prejudicial to the commercial position of the undertakings to which the report relates. Any omission shall be clearly indicated in the report together with a duly reasoned explanation regarding the reasons therefor.

Under the GRI, organisations can provide reasons for omission for disclosures and requirements that the organisation cannot comply with including:

- **Legal prohibitions:** The organisation provides 'legal prohibitions' as the reason for omission when the law forbids collecting the required information or reporting it publicly.
- **Confidentiality constraints:** There may be cases where the law does not forbid collecting or reporting the required information, but the organisation considers the information confidential and cannot report it publicly. In such cases, the organization provides 'confidentiality constraints' as the reason for omission.

The proposed CbC measures in the ED have the potential to create a competitive disadvantage for organisations operating in Australia, as their competitors will have access to information to their data on a CbC basis and be able to assess level of activity and pricing in particular countries. This will particular be the case in instances where:

- Organisations have limited operations in a particular country (allowing competitors to understand/calculate their pricing metrics for that particular country).
- Pricing models/basis are determined based on a return on assets, day/month rates, employee numbers, etc.
- Competitors who are of a smaller size, or who do not have operations in Australia, and therefore do not have an obligation to report similar data.

Given the commercial sensitivities, we recommend a similar 'confidentiality' exclusion be included with the expectation for organisations to explain the reasons for non-disclosure.

Application to inbound groups and de-minimis test for MNE with 'insignificant Australian presence'

The scope of MNE groups subject to the mandatory tax transparency proposals is wide as it applies to both Australian and foreign headquartered MNE groups.

Many foreign headquartered MNE groups have been very surprised that the measures extend to them, especially given the breadth of the measures and the short timeline before commencement. Treasury should consider limiting the disclosures for foreign headquartered groups to the Australian operations of that group only (or requiring reduced or aggregated disclosures in line with EU CbC reporting), at least for a transitional period of time.

The compliance burden that these measures impose should not be underestimated. There will be foreign owned MNE groups with a small presence in Australia that will now be required to report tax information for each jurisdiction that it operates in. This would seem to be a disproportionate administrative burden which is likely to serve as a disincentive to continue business or set up operations in Australia. We note the EU CbC Directive only applies if there is a 'significant EU presence' defined by certain quantitative threshold tests. Broadly, significant presence in the EU is defined as an entity satisfying two of the three threshold requirements in the relevant EU Member State: balance sheet exceeding EUR 4 million, net turnover of EUR 8 million, or more than 50 employees.

Given this, we recommend including a similar de-minimis test to exempt groups from the Australian public CbC rules to foreign groups with a small Australian presence.

Transitional period

Given the 1 July 2023 start date is fast approaching, Treasury should consider delaying the implementation of the measures for 12 months. A delayed implementation date would provide the opportunity to properly consult with Australian headquartered and foreign headquartered groups on the public tax transparency reporting measures.

If such a delay is not accepted, Treasury should consider the following transitional measures:

- KPMG recommends that the requirement for the additional CbC data points that do not appear in any other global reporting frameworks are delayed at least 12 months to provide an opportunity to consult properly on the proposals and to give in-scope groups time to make the systems and process changes needed to comply (should it ultimately be decided that such additional data requirements are required). This additional period of consultation can better test whether the additional data points for disclosure achieve the objectives of relevance, usefulness (and to who) that is not subject to misinterpretation by the public as mentioned above;
- Whilst ideally organisations should do public CbC reporting under the same framework, to ease compliance costs during a transitional period, organisations should be allowed flexibility to adopt either the OECD CbC reporting, EU public CbC reporting or the GRI 207 approach to CbC reporting provided MNE groups are clear on their basis of preparation.

Specific comments

We set out below some additional issues arising from the ED.

"IDENTIFYING INFORMATION ... SO BEST TO ACHIEVE CONSISTENCY"

For the purposes of the requirement to disclose the quantitative on a CbC basis, the ED provides "identify information mentioned … so as to best to achieve consistency with the following documents". There are references to both the OECD CbC guidance and the GRI 207-4 reporting standards.

Whilst some of the disclosure items under both standards are similar, the actual name of some of the data points are different under both standards.

For example:

- OECD CbC guidelines refers to Unrelated Party Revenues and Related Party Revenues whereas the GRI 207 refers to Revenues from third-party sales; Revenues from intra-group transactions with other tax jurisdictions.
- OECD CbC guidelines refers to Income Tax Paid and Income Tax Accrued, whereas GRI 207 refers to Corporate income tax paid on a cash basis and corporate income tax accrued on profit/loss.

We expect in identifying the information, there will be consistency between OECD CbC guidelines and the GRI 207, however there can be differences in the basis of preparation between the two guidelines.

Under the OECD CbC guidelines where there is more than one Constituent Entity in a jurisdiction, data should be reported on an 'aggregated basis' i.e., there are no eliminations of intra-jurisdiction transactions between Constituent Entities in that jurisdiction.

However, the OECD CbC guidelines also provides the flexibility that where the jurisdiction of the ultimate parent entity has a system of taxation for corporate groups which includes consolidated reporting for tax purposes, and the consolidation eliminates intra-group transactions at the level of individual line items, that jurisdiction may allow taxpayers an option to complete the CbC report using consolidated data at the jurisdictional level, as long as consolidated data are reported for each jurisdiction consistently across the years.

In contrast, under GRI 207-4, a 'consolidated basis' is taken at each jurisdictional basis. The GRI 207-4 disclosures require the organisation to report revenues from third-party sales for each tax jurisdiction and from intra-group transactions between that jurisdiction and other tax jurisdictions. Intra-group transactions within the same tax jurisdiction are not required, but the organisation can report this information separately. Intra-group transactions between jurisdictions can influence the tax bases of the organisation in the jurisdictions involved in these transactions. Intra-group transactions within the same tax jurisdiction do not affect the tax base of the organisation within that jurisdiction. For this reason, GRI 207-4 provides that revenues from third-party sales and intra-group transactions with other jurisdictions are a more appropriate indicator of an organisation's scale of activity in a tax jurisdiction than aggregated revenues. Aggregated revenues could result in local revenues being double-counted, which might create a misleading impression about the organisation's scale of activity in a jurisdiction (see Guidance for Disclosures 207-4-b-iv and 207-4-b-v).

We recommend that Treasury clarifies in the ED whether "identify information mentioned … so as to best to achieve consistency with the following documents" relates to the definitional elements of the data points to be disclosed (as opposed to the basis of preparation) and make it clear which standard should be referred to in interpreting the proposed new CbC legislation.

'PUBLISHING' IN AN APPROVED FORM

The ED imposes the reporting obligation on the CbC reporting parent. The CbC reporting parent is required to provide a document containing the required information in the ED to the Commissioner in the 'approved form'. The CbC reporting parent can be a foreign resident entity that is not a taxpayer in Australia.

There are concerns around the practicality of imposing reporting obligations on a foreign resident entity, and how a foreign resident CbC reporting parent should 'publish' the information in an approved form to the Commissioner where it does not have an Australian presence itself for tax purposes. Also, similar issues arise on how penalties and recovery action will apply to a foreign resident CbC parent entity.

We recommend the EM or the ATO provide further administrative guidance on the practicalities of imposing a reporting obligation on a foreign resident CbC parent entity.

TIMING OF LEGISLATION

The ED provides the tax transparency proposals will apply in relation to the 2023-2024 income year and later income years. The Explanatory Memorandum and the original Government announcement both refer to application for income years starting on or after 1 July 2023. This discrepancy means the start date for early balancing 31 December year ends is currently unclear – under the ED the new proposals will apply for the 31 December 2023 income year (being the 2024 income year) with filings required by 31 December 2024; whereas under the EM, the new proposals will apply for the 31 December 2024 income year with filings required by 31 December 2025.

We recommend Treasury clarify the commencement date of the CbC proposals in the ED.

PENALTIES THAT APPLY

In terms of penalties that apply for non-compliance with the tax transparency proposals, the EM provides that 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 *Taxation Administration Act 1953* (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 multinational tax transparency reporting information. Section 8C of the TAA has been amended to ensure it applies to this obligation. It is not clear whether the 'significant global entity' penalties will apply for non-compliance with these new tax transparency proposals. In addition, as noted above it unclear how penalties will apply to foreign residents.

We recommend the ED and EM clarify the position on administrative penalties that can apply for non-compliance.

ADDITIONAL GUIDANCE AND CONSULTATION

Additional guidance and consultation should be provided by Treasury and the ATO to provide further information on how taxpayers can complete and comply with the public CbC disclosures. As an illustration, the OECD has published additional guidance on the implementation of CbCR. This guidance is extensive and has been updated numerous times since the publication of BEPS Action 13.

We recommend this material should be made available to taxpayers at the same time legislation is introduced to give ample time for taxpayers to prepare.

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