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Director
International Tax Branch
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Treasury
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Dear Sir / Madam

Submission on multinational tax transparency – tax changes (public CbC reporting)

This submission provides our comments on the Exposure Draft of the *Treasury Laws Amendment (Measures for Future Bills) Bill 2023* ***Multinational tax transparency – Tax changes*** issued on 6 April 2023 (**Exposure Draft**), together with its accompanying draft explanatory materials (**Draft EM**).

Our submission comments are in the attached appendix. We would be pleased to discuss any aspect further. Please contact any of Sharon Murray, David Letos or David Watkins (0498 344 000).

Yours faithfully

David Watkins
Partner

Deloitte.

Appendix

Key submission points

Our key submissions on the Exposure Draft are in summary:

- A public CbC reporting regime that applies to groups beyond Australian based groups is best established on a multilateral basis rather than established pursuant to Australian domestic law;
- If however Australia does proceed to establish a regime based on the Exposure Draft, the Australian approach to public CbC reporting should be **fully harmonised and aligned with existing** Organisation for Economic Co-operation and Development (**OECD**) Country by Country (**CbC**) reporting and guidance on CbC reporting obligations. It should **not** extend to requiring the preparation of **additional or different** data compared to that required under existing obligations;
- The start date for the measures do not allow sufficient time for in-scope entities to prepare for the substantial exercise of reporting any additional and different required data;
- At the very least (and based on existing policy settings in the Exposure Draft), the Bill should clarify that the measures only apply to income years commencing on or after 1 July 2023. Further, we submit that the measure should commence no earlier than income years commencing on or after 1 July 2024 so as to align with the reporting based on the European Union Directive 2021/2101 (**EU Directive**);
- The due date to publish any CbC data that includes the paragraph 3D(6)(k) effective tax rate should be aligned to the Global Anti-Base Erosion (**GloBE**) information returns and be required to be lodged within 15 months after the end of the income year (or any other transitional timeline established under the Pillar Two reporting framework);
- The drafting of the publishing requirements in proposed section 3D(4) should be clarified;
- The measures should contain a *de minimis* exemption which excludes groups with a limited presence in Australia; and
- The measures should clarify the scope of further applicable exemptions.

Overview

Deloitte recognises and supports the critical importance of strong community confidence in the Australian tax system and in the roles performed by the various key participants in that system. Such confidence is based upon a vast array of laws, practices and institutions. We acknowledge that an appropriate level of tax transparency is one of the elements amongst many in maintaining and enhancing that confidence.

It is however also important to balance the need for appropriate confidentiality versus the need for appropriate transparency. The ATO states that "an important feature of the Australian tax system is that the details of income earned and taxes paid by taxpayers are kept confidential. This applies for both people and entities. We believe this confidentiality supports full and honest disclosure to us"[1]. The balance between confidentiality and transparency has evolved in Australia over the last 10 years, and we recognise that this debate may shift over time.

Equally, it should be expected that other countries are also debating their applicable balance as between confidentiality and transparency. However, the approach adopted in the Exposure Draft effectively imposes a unilateral Australian-based decision on those other countries, in that tax related data applicable to those countries, that would otherwise be confidential, will become public.

[1] https://www.ato.gov.au/General/Tax-and-Corporate-Australia/In-detail/Publicly-available-data-to-help-understand-tax-compliance/

The approach adopted represents a unilateral, Australia based approach to impose a public CbC reporting regime on groups, whether headquartered in Australia or outside of Australia, to provide public tax disclosures in relation to countries other than Australia, in relation to taxes other than Australian taxes.

We submit that any such global reach public CbC regime should not be adopted on a unilateral basis, but rather should be pursued on a multilateral basis, or at the least, on the basis of cooperation by Australia with at least some other key jurisdictions. There is much to be gained by proceeding on a multilateral basis, and there are risks of proceeding on a unilateral basis, such as retaliatory responses, whether on tax or other matters, and other unintended consequences.

Without diminishing our principal submission in the previous paragraph, we appreciate the electoral and political circumstances of this policy measure and in light of that, make a number of submissions and suggestions below as to how best implement the measure if the Government proceeds.

Background

Existing CbC reporting was established as part of OECD BEPS Action 13, which stated that "Tax administrations should take all reasonable steps to ensure that there is no public disclosure of confidential information (trade secrets, scientific secrets, etc.) and other commercially sensitive information contained in the documentation package (master file, local file and country-by-country report). Tax administrations should also assure taxpayers that the information presented in transfer pricing documentation will remain confidential"[2].

CbC reporting to date has remained non-public.

There are currently no jurisdictions that have a mandatory public CbC reporting regime in force, and no jurisdictions that have a transparency measure applicable to entities outside of that jurisdiction. At present, the prevailing mandatory global approach to the publication of such data is represented by the requirements of EU Directive, which, importantly, has been adopted into the domestic law of each of the participating jurisdictions. Broadly, the European Union (**EU**) proposals take effect from 2024, and are focussed on EU related jurisdictions and tax disclosures.

Given that in-scope multinational enterprises (**MNE**) are required to comply with existing OECD based CbC reporting, the EU Directive is designed to impose minimal additional administrative or compliance burden on taxpayers, other than the public disclosure of certain of that information.

The Australian approach represents a significant shift away from status quo: given that and also that this establishes a regime with reach well beyond Australia, this measure would have been better done on a multilateral basis, or as stated above at least a coalition of key jurisdictions to avoid the perception that Australia has imposed its own judgement on foreign entities without balancing the foreign entities or foreign jurisdictions needs for confidentiality.

We acknowledge that increased public tax reporting and potentially increased demands for public CbC reporting is part of a growing trend of broader global tax transparency measures[3]. It is foreseeable that other jurisdictions, other than the EU, may follow suit with equivalent measures. Should each jurisdiction seek to impose its own set of unique requirements, the result would be a vast set of overlapping disclosure requirements in respect of each jurisdiction in which the MNE operates. Such an outcome would be directly contrary to the OECD's intended aim of cooperative global tax reform and would not achieve the stated objectives of 'quality and comparability of tax disclosures'.

[2] OECD BEPS Action 13: 2015 Final Report, Transfer Pricing Documentation and Country-by-Country Reporting, page 19

[3] Note also the *Global Sustainability Standards Board's* GRI 207 standards (**GRI 207**).

Additional administrative or compliance burden is imposed where transparency disclosure requirements deviate from existing CbC reporting compliance requirements. The additional burden is multiplied for each jurisdiction in which the MNE operates. For some large MNEs, this may mean in excess of 100 jurisdictions.

We recommend an approach where any Australian based public CbC reporting is **fully harmonised and aligned with global standards**, more specifically those established by the OECD, which involved global cooperation and a considered approach by member countries.

The implementation of the existing CbC reporting has required intensive MNE resources to comply, including (but not limited to) time, people, and costs. Introducing new elements or requirements, additional to OECD based CbC reporting, will require the dedication of significant resources at a time when MNEs are already dealing with new impending global guidance and legislative change including, but not limited to, the adoption of OECD Global Anti-Base Erosion Model Rules (**Pillar 2**).

Under the Exposure Draft, there are different and additional data points required. Specific comments on each of these items are provided below.

We note that the Exposure Draft includes a power to make regulations that prescribe that further information be published. We recommend that if the Government proceeds with this measure, it should **initially apply only** to information reported under the existing CbC reporting regime, and that any different or additional data points be removed. Such different or additional reporting could be added in due course either by legislative amendment or regulation.

We question whether the elements of the proposed reporting requirements which go beyond the OECD CbC reporting requirements will provide sufficient additional meaningful insights to public stakeholders to justify the significant additional compliance burden on in-scope entities. It is important to ensure that the information being sought and reported publicly achieves the stated objectives of transparency and investor certainty. We note that information required by the ATO can be sought under the existing tax laws and is, appropriately, subject to strict secrecy laws to safeguard an entity's confidential information.

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1 Alignment with existing OECD CbC requirements

Additional data and information requirements beyond OECD CbC reporting requirements

Whilst some of the information to be reported under the Exposure Draft broadly matches with existing OECD CbC reporting requirements (although in some cases is somewhat different), there are specific **additional data requirements** in the Exposure Draft, including the following proposed provisions:

- paragraph 3D(6)(e) – expenses arising from transactions with related parties that are not resident of the jurisdiction;
- paragraph 3D(6)(g) – list of tangible and intangible assets at the end of the income year;
- paragraph 3D(6)(h) – book value at the end of the income year of intangible assets;
- paragraph 3D(6)(k) – effective tax rate; and
- paragraph 3D(6)(l) – reasons for the difference between income tax accrued (current year) and the amount of income tax due if the income tax rate applicable in the jurisdiction were applied to profit or loss before income tax.

Comments on each of these items are provided below.

We recommend that if the Government proceeds with this measure, it should **initially apply only** to information reported under the existing CbC reporting regime, and that any different or additional data points be removed at first instance.

This can be done by replicating the existing drafting approach taken in Subdivision 815-E which deals with non-public CbC reporting, and does so without listing out specific matters to be reported. The proposed section 3D can adopt similar statutory language as is in section 815-355(3)(c) of the ITAA 1997, so as to effectively import the OECD CbC regime, rather than listing out specific items as currently drafted.

Section 3D(6)(e) – Expenses from transactions with related parties

The reporting of expenses from transactions with related parties is not required as part of the OECD CbC reporting requirements, nor the EU Directive or the GRI 207. For large MNE groups, this additional requirement may necessitate accounting system reporting changes that take substantial time to develop and implement, creating a significant additional administrative requirement to collate this information on a jurisdictional basis. This is particularly so when considered in light of the proposed commencement date of the regime (as further discussed below).

It is noted that the merits of including certain related party expense information were considered as part of the OECD's 2020 review of CbC reporting, with several challenges of such an approach noted. In particular, the potential for costly reconfiguration of taxpayer systems to provide such information, and the acknowledgement that the requirement to report related party expense information could have a correspondingly greater impact on MNEs than the requirement to report related party revenues.[4]

We encourage Treasury to reconsider the introduction of this additional data point and refer to our principal submission regarding alignment with existing OECD CbC reporting requirements.

For completeness, we also note that there is no specific guidance on this data point in the Exposure Draft or Draft EM, given that the various guidance documents referred to in subsection 3D(7) do not contemplate the reporting

[4] OECD/G20 Base Erosion and Profit Shifting Project, Public Consultation document: Review of Country-by-Country Reporting (BEPS Action 13), 6 February 2020 – 6 March 2020, paras 122 and 123).

of related party expense information. To the extent that this data point is included in the reporting requirements, additional guidance will be required.

Section 3D(6)(g) – List of tangible and intangible assets / Section 3D(6)(h) - Book value of intangible assets

As noted above, we recommend that the proposed reporting requirements are kept consistent with, and do not exceed, the existing CbC reporting requirements. On this basis, we recommend that the proposed requirements in respect of the listing of tangible and intangible assets be removed.

Alternatively, we recommend that at least the listing of intangible assets be removed.

It is evident from the other measure that is presently subject to consultation and part of the Multinational Tax Integrity and Transparency package (denying deductions for payments relating to intangible assets connected with low corporate tax jurisdictions) that, depending upon the definition or concept adopted, the scope of intangible assets could be vast, and include databases, algorithms, contracts, etc. As presently drafted, the term " intangible asset" takes its normal meaning under Australian law, which could potentially differ to the concept in other jurisdictions.

It is therefore unclear as to what is the proposed scope and what specific information is to be included in the list. To the extent that the listing requirement is not intended to be limited to the intangible assets reported in the group's consolidated financial statements, this could result in:

- significant ambiguity and inconsistency in respect of the information to be reported;
- commercial sensitivities in respect of the information to be reported;
- a detailed listing of intangible assets, many of which may be of limited or no commercial value;
- potential misuse / misinterpretation of the information reported; and
- a significant additional compliance requirement to collate such a global listing by country.

If a listing of intangible assets is retained, we recommend that Treasury confirm that the list of intangible assets (per paragraph 3D(6)(g)) is intended to be based on, and limited to, intangible assets reported in the group's consolidated financial statements. This would be consistent with proposed paragraph 3D(6)(h) and proposed section 3D(8).

It is also unclear from the current drafting what level of detail is required to be provided in respect of the listing of tangible assets, over and above the book value details required by paragraph 3D(6)(h).

Section 3D(6)(k) and (l) – Effective tax rate and reasons for the difference between ETR and income tax accrued (current year) if the statutory rate applied

As outlined in the ATO's corporate tax transparency report for the 2020-21 income year in respect of Australia, there are many deliberate features of a jurisdiction's tax system which can drive legitimate differences between an entity's effective tax rate in that jurisdiction as against the statutory rate.

Some of these features include, for example, prior year loss utilisation, the utilisation of incentives and tax expenditure programs, and the recognition of deferred tax assets and deferred tax liabilities.

Some jurisdictions may not have a readily available statutory rate, or may have multiple statutory rates, which makes this requirement uncertain and difficult to comply with.

In particular, paragraph 3D(6)(k) requires regard to be had to Article 5.1 of the OECD Pillar Two Inclusive Framework. Putting aside the fact that Australia has yet to legislate to give effect to its obligations under the OECD Inclusive Framework and particularly Pillar Two in Australia, it is fair to assume that the application of Pillar Two to Australian entities that are in scope (and indeed most MNEs globally) will only apply for years of income after the proposed commencement date for this measure. Further, the guidance to Pillar Two on the GloBE information

returns requires the returns to be filed 15 months after the end of the income year with the first year extended to 18 months after the end of the income year. By contrast, the Exposure Draft is requiring publication of in-scope information including the paragraph 3D(6)(k) effective tax rate within 12 months of the end of the year of income.

Further, in connection with the commencement of Pillar Two, some MNEs will elect to apply the transitional safe harbour and therefore would not have had to prepare the Pillar Two effective tax rate calculation.

As a result, requiring both the publication of an ETR as well as a statement of reasons on a jurisdiction-by-jurisdiction basis for the difference from the income tax due if the statutory rate applied is a compliance-heavy exercise that has a high likelihood of being misunderstood or misinterpreted by the general public.

It is for these reasons that we recommend that the publication of the paragraph 3D(6)(k) effective tax rate be removed from the initial iteration of the regime. If the Government does not accept that submission, the paragraph 3D(6)(k) effective tax rate should not be included before the finalisation of Pillar Two rules and incorporation into Australian legislation, given potential room for inconsistencies and MNEs have been awaiting domestic legislation as part of system and data readiness.

Further, the due date to publish any CbC data that includes the paragraph 3D(6)(k) effective tax rate should be aligned to the GloBE information returns and be required to be lodged within 15 months after the end of the income year (or any other transitional timeline established under the Pillar Two reporting framework).

2 Inconsistencies with OECD CbC reporting for similar items

Whilst there is some overlap between the reporting requirements in the Exposure Draft and the OECD CbC reporting requirements, there are various differences for some items, whether intended or unintended, in the specific information to be reported, including those noted below.

We reiterate our submission that any Australian based public CbC reporting is fully harmonised and aligned with OECD CbC requirements. Any deviation creates additional costly and time consuming data gathering processes and system reconfigurations, the costs of which likely outweigh any benefit. Further, alignment between the two regimes would mean that there is less uncertainty regarding the requirements resulting in higher quality and consistent data.

Related party revenues

The Exposure Draft at paragraph 3D(6)(d) proposes the reporting of revenues from related parties that are not tax residents of the jurisdiction (of the entity). In contrast, the OECD CbC reporting of related party revenues (in table 1, column 3) includes revenues from all other constituent entities, including constituent entities in the same jurisdiction. It is also not clear from the Exposure Draft what is to be reported at this item in certain circumstances. For example:

- do transactions with an offshore permanent establishment of a resident in the same jurisdiction need to be excluded from revenue amounts reported under paragraph 3D(6)(d)?
- do transactions between two permanent establishments in the same jurisdiction, but with head offices in different jurisdictions, need to be reported under paragraph 3D(6)(d)?

Any differences in the proposed approach to reporting related party revenues under the Exposure Draft will create a significant additional compliance requirement for in-scope MNEs. As with earlier comments in respect of the incremental reporting requirements, this too will likely necessitate a time consuming and costly reconfiguration of reporting systems to capture and report this information on a CbC basis.

In addition, it is noted that requiring reporting (through paragraph 3D(6)(d)), which is different to the 'related party revenues' reporting requirement under the OECD CbC reporting, is in conflict with section 3D(7), which

requires that for the purposes of determining the effect of subsection (6), the information is to be identified so as to best achieve consistency with various OECD guidance materials.

Number of employees

The Exposure Draft at paragraph 3D(6)(b), proposes the reporting of the number of employees **as at the end of the income year**. By contrast, OECD CbC reporting requires the reporting of the total number of employees on a full-time equivalent (FTE) basis and provides **options** for reporting this data, including as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year-to-year.[5]

The 'number of employees' information being requested in the Exposure Draft may create a further incremental reporting requirement, depending on the approach in-scope MNEs are adopting for OECD CbC reporting purposes, with no apparent additional benefit in terms of the quality of the information to be reported or stated policy objectives.

As with the above comments in respect of related party revenue, this approach is at odds with the requirement under subsection 3D(7) to identify the information so as to best achieve consistency with the relevant OECD guidance material referred to in paragraphs 3D(7)(a) and (b). It is further noted that GRI 207 provides an alternative basis for reporting this information, which creates further inconsistency with the guidance material referenced in subsection 3D(7).

3 Data to be used as the basis for reporting (consistency with other reporting requirements)

The Exposure Draft states (at subsection 3D(8)) that the information reported is to be based on *"amounts as shown in the audited consolidated financial statements for the entity for the period that corresponds to the income year"*.

Further, the Draft EM explains at paragraph 1.24 that *"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"*.

Together, subsection 3D(8) and paragraph 1.24 of the Draft EM suggest that the published data under these measures is to be compiled based on consolidated financial statements.

Conversely, the OECD CbC reporting requirements provide various options for the source of data reported, which also include (per the Definitions in the General Instructions for Annex III to Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, January 2022):

- separate entity statutory financial statements;
- regulatory financial statements; and
- internal management accounts.

Importantly, the OECD CbC reporting guidance indicates a preference for aggregated data to be reported at a jurisdictional level (per the Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13 (2022) of the OECD, Section 3.1), but allows for in country consolidation for MNEs headquartered in a jurisdiction

[5] Annex III to Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, January 2022.

that has a system of tax consolidated reporting for tax purposes, with notes to be used to explain any differences between this data and what the data would be if aggregated data was reported.

Moreover, the OECD CbC reporting requirements note that *'it is not necessary to reconcile the revenue, profit and tax reporting in the template to the consolidated financial statements' (*per the General Instructions for Annex III to Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, January 2022).

To the extent that a reporting entity's OECD CbC report is based on data other than the group consolidated financial statements, the Exposure Draft approach creates significant additional data reporting requirements, and potential inconsistencies in the data reported by certain groups across similar CbC reporting requirements. As outlined above, we recommend that the reporting requirements under the Exposure Draft are aligned with the OECD CbC reporting requirements, which otherwise appears to be the intent of the Exposure Draft given the requirement in paragraphs 3D(7)(a) and (b).

OECD reference materials

Section 3D(7) refers to inter alia:

- Chapter V of *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting (2014) of the OECD* (per paragraph 3D(7)(a)); and
- *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13 (2022)* of the OECD (per paragraph 3D(7)(b)).

We note that:

- the 2014 document referred to was a draft document, with the final document finalised in October 2015;
- the reference to Chapter V should be a reference to Chapter V of the OECD Transfer Pricing Guidelines, which incorporate the final Action 13 report, and not Chapter V of the 2014 draft report;
- reference could be made to the January 2022 edition of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022.

4 Appropriate use of information contained in CbC reports

As mentioned above, the development of Action 13 in respect of CbC reporting was a well-considered process that resulted in global cooperation for the current non-public reporting regime. A number of reasons which were expressed and acknowledged by MNEs during the development process were accepted or acknowledged by OECD member countries, including Australia.

Relevantly, these included concerns around the confidentiality of the information contained in CbC reports and the misuse of such information should the information be made public. These concerns are still very much relevant. The publication of confidential financial information can detrimentally impact competitive behaviour in markets around the world. This is a core tenet of trade secret protections that exist in most common and civil law jurisdictions and amongst OECD member countries. Furthermore, public disclosure also leads to the potential misuse / misinterpretation of the information as the CbC report was not intended to be treated as a standalone document. Hence, the practice is to have the CbC reports shared amongst tax authorities on a confidential basis. Introducing the CbC report as a public measure effectively disregards these concerns raised by MNEs and the multilateral agreement reached by the OECD BEPS process.

CbC reports are currently exchanged between competent authorities under the OECD's *Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports.* Under the agreement, jurisdictions which exchange information are expected to have in place appropriate safeguards to ensure the information remains confidential and used subject to the confidentiality rules and other safeguards provided for in the *Convention on*

Mutual Administrative Assistance in Tax Matters. These include the provisions limiting the use of the information exchanged.[6]

We encourage Treasury to consider whether the publication of worldwide CbC data in this way is consistent with the confidentiality rules and safeguards agreed upon by OECD members, and whether undesirable use of that data (as determined by the OECD) is thereby facilitated or seen by other OECD members to be facilitated by this measure.

5 Start date

Income years starting on or after 1 July 2023

The Exposure Draft states in item 3 that the proposed measures 'apply in relation to the **2023-24 income year** and later income years'. As drafted, this would have the effect that the measures are applicable to years of income that have already commenced (eg, early balancers may have 2023-24 income years that commenced as early as 1 January 2023).

However, the Draft EM states that the measures are intended to apply to income years commencing on or after 1 July 2023.[7] Further, the October 2022 Budget announcement also stated that the measure will apply "for income years commencing from 1 July 2023".[8]

MNEs should not be required to comply with reporting obligations commencing prior to the date of the Exposure Draft.

Subject to our further comments below, the Bill should provide that the measures apply to **years starting on or after** 1 July 2023.

Alignment with subdivision 815-E

The Exposure Draft imposes publishing obligations in respect of a year of income, where the relevant conditions are met, on an entity that is a CbC reporting parent for the income year. This in turn requires that the entity's annual global income for the income year is AUD1 billion or more. By contrast, the existing CbC regime in subdivision 815-E of the *Income Tax Assessment Act 1997* (Cth) imposes reporting obligations in respect of a year of income, where the relevant conditions are met, on an entity that is a CbC reporting entity for the **preceding income year**.

By way of simple example, a group that has annual global income of greater than AUD1 billion for the first time in the year ended say 30 June 2026 will be required to comply with proposed section 3D in respect of the year ended 30 June 2026, and yet will not be required to comply with subdivision 815-E until the year ended 30 June 2027.The Exposure Draft should be aligned with subdivision 815-E. We assume that the proposed section 3D requirements will be modified to **align with existing subdivision 815-E requirements**.

Alignment with the EU Directive

The EU Directive as implemented domestically by the EU member countries generally commences from the first financial year starting on or after 22 June 2024 (excluding member countries that have applied the rules sooner). Commencing the measures proposed in the Exposure Draft from the 2023-24 year represents a considerable, and

[6] See also BEPS Action 13 on Country-by-Country Reporting – Guidance on the appropriate use of information contained in CbC reports

[7] Paragraph 1.38 of the Draft EM

[8] October 2022-23 Budget Paper No 2, page 17

in some cases impractical, acceleration to the work being done by multinational groups to comply with the EU Directive.

The Exposure Draft should be **aligned with the commencement of the EU Directive**, so as to apply to years starting on or after 1 July 2024.

6 Global revenue thresholds

In its current form, the Exposure Draft imposes public reporting obligations on groups on the basis of the Australian specifc concept of a global turnover threshold of AUD 1 billion. At the prevailing exchange rates, this threshold is significantly lower than the existing CbC threshold in many other jurisdictions.

In the absence of any modification, the proposed measures have the potential to impose public CbC reporting obligations on groups which are not currently required to prepare CbC reports under the rules in their home jurisdictions. For example, AUD 1 billion is equivalent to approximately EUR 610 million, whereas the relevant threshold in European jurisdictions is EUR 750 million.

Currently, the ATO exercises a general discretion to provide an exemption from the subdivision 815-E requirement to provide a CbC report where the group exceeds AUD 1 billion but falls below the relevant threshold in the parent jurisdiction[9].

We do not consider that dealing with this mismatch should be a matter left to the discretion of the Commissioner. Rather, we recommend that for non-Australian headquartered groups, the proposed measures should only apply where such a group exceeds the relevant CbC reporting threshold in the parent jurisdiction.

7 De minimis exemption

Under the proposed measures, the full breadth of global disclosure is necessary for CbC reporting parents where an entity within the CbC reporting group is either an Australian resident or a foreign resident who "operates" an Australian permanent establishment, regardless of the materiality of the Australian presence.

Given the significant reach and consequences of the proposed measures, we recommend that Treasury considers incorporating a *de minimis* exemption into the rules, such that they are triggered only where the group's Australian presence exceeds a defined materiality threshold such as 20% of relevant annual global income.

8 Publishing per s3D(4)

It is not clear whether proposed section 3D(4) imposes two separate obligations on an entity – being to publish (in a general sense) under paragraph (a) and to provide a document to the Commissioner under paragraph (b) and section 3D(9) – or whether it is imposing a single obligation: to publish by way of providing a document to the Commissioner.

We submit that this should be clarified.

[9] Refer https://www.ato.gov.au/business/international-tax-for-business/in-detail/transfer-pricing/country-by-country-reporting/country-by-country-reporting-guidance/?page=2#Lodginganexemptionrequest, Fast-track exemption, scenario 3 "The annual global income of your foreign CBC reporting parent is A$1 billion or more but falls below the CBC reporting foreign currency threshold in the jurisdiction of the foreign CBC reporting parent".

9 Exemptions from disclosure

We acknowledge that subsections 3D(13) through (18) of the Exposure Draft provide for certain exemptions from the publication of information which can be granted by the Commissioner or by regulation. We further note that paragraph 1.16 of the Draft EM contemplates that an exemption may be granted to a 'government related entity' which is subject to alternative disclosure or accountability regimes, and this is reflected in subsection 3D(17) of the Exposure Draft. The meaning of 'government related entity' for the purposes of the Exposure Draft refers to the meaning of that term contained in the *A New Tax System (Goods and Services Tax) Act 1999*, which appears to be ultimately limited to Australian government related entities.

On the other hand, the broad scope of the proposed measures means they have potential *prima facie* application to, for example, certain foreign government related entities which are unlike the corporate ultimate parent entity of a multinational business.[10]

We recommend that careful consideration be given to whether requiring foreign government related entities to disclose the data contained in subsection 3D(6) of the Exposure Draft is consistent with the principles of international comity.

Further, entities which contract with government related entities (whether domestic or foreign) in certain industries, such as defence, should be exempt from the public disclosure of data to the extent the data provides material insights into its relevant operations and sensitive data.

This could potentially also include sensitivities within reporting groups (for example, in joint venture arrangements). We recommend that that further clarity is provided on scope for exemptions in respect of commercially sensitive information.

We observe that many of the factors relevant to whether disclosure by foreign government entities, or other entities whose operations carry sensitive information relating to government entities, are not tax matters and query whether the Commissioner is the most appropriate officer to make decisions about applicable exemptions from disclosure.

We recommend that Treasury considers clarifying the applicable exemptions in these circumstances.

[10] See, for example, paragraph 1.4.1.2 of the *Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two).*