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Dear Corporate and International Tax Division

## **1. INTRODUCTION**

Thank you for the opportunity to provide comments on the exposure draft legislation *Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational Tax Transparency – Tax changes (Exposure Draft)*.

Ashurst is a leading global law firm and in Australia (formerly known as Blake Dawson) is one of Australia's largest law firms. The Ashurst tax practice is one of the largest tax practices among the law firms. Ashurst advises clients across all industry sectors, including ASX-listed companies, large multinationals, private companies, funds, financial institutions, and governments.

This letter sets out our submissions on the Exposure Draft including drafting issues identified in relation to the Exposure Draft.

## **1. GENERAL COMMENTS**

In our Submission on 6 September 2022 on *Consultation Paper – Government election commitments: Multinational integrity and enhanced tax transparency*, we raised a number of concerns in relation to the proposed consultations with respect to public country-by-country (CBC) reporting.

In addition to those concerns, we further note the following with respect to the Exposure Draft:

- It is imperative to preface that confidentiality of tax information is a key principle and foundation of the tax system to encourage compliance and any violation of such a core principle should only occur where there is some demonstrable and overriding interest in the public disclosure. The OECD, for example, recognises that "*Confidentiality of taxpayer information has always been a fundamental cornerstone of tax systems. In order to have confidence in their tax system and comply with their obligations under the law, taxpayers need to have confidence that the often sensitive financial information is not disclosed inappropriately, whether intentionally or by accident.*" In our view, the extent and scope of the proposed disclosure measures have not been sufficiently and demonstratively justified or supported by any clear objectives, in particular in respect of disclosure of items unrelated to the Australian tax system (for example, location of intangible assets, number of employees in foreign jurisdictions, taxes paid or accrued in a foreign jurisdiction, and income earned and expenses incurred by entities in a foreign jurisdiction in respect of arrangements with related entities in other foreign jurisdictions). Such disclosures would in our view erode the trust that taxpayers have in the Australian tax system and goes against the fundamental principle of confidentiality of tax information.
- The Exposure Draft in its current form is much broader than and requires additional information beyond the Global Reporting Initiative's Sustainability Reporting Standards GRI 207: Tax (2019 ) (**GRI 207**). It also has a scope beyond other global standards on public CBC reporting, such as the EU Directive 2021/2101. This poses a further compliance burden and gives rise to material commercial sensitivities for multinational entities (particularly, the requirement to list all relevant intangible assets by country), and does not bear any necessary relationship to the relevant Australian tax affairs of the group (noting the relevant interest identified in support of public disclosure is the role of public tax transparency in insuring multinationals pay "their fair share of tax"). The EU framework was adapted from initial OECD public consultation in 2014 and, in our view, it is unnecessary to adopt a measure that goes beyond a framework that is in line with the OECD recommendations.
- The Exposure Draft and Explanatory Memorandum list out the required information to be published. In the Explanatory Memorandum, it is stated that these have predominantly been adopted from the GRI 207. It is noted:

*Three additional disclosures not included in the GRI 207 are required under these amendments. These are: effective tax rates, expenses from related party transactions, and details of intangible assets. These have been included to further enhance the CBC disclosures. The presence of related party transactions and increases in intangible assets are specific indicators of corporate governance risk and would complement the GRI 207 disclosures.*

The requirement to publicly report this additional information is unique globally and more onerous than expected for taxpayers to have to comply with. Taken as a whole, the currently drafted suite of reporting requirements are excessive, bear no relationship to the intended effect of the measures (e.g., to build trust in the tax system), and also present operational challenges. Careful consideration should be given as to the rationale for implementing measures that extend far beyond the equivalent regimes or even the voluntary GRI 207 framework as this may reduce the attractiveness of Australia as an investment jurisdiction.

Furthermore, some of the additional disclosures may require multinationals to publicly disclose sensitive financial and tax information. This may raise concerns among multinationals about the confidentiality of their business strategies and operations.

- In relation to the effective tax rates (**ETR**) for each jurisdiction, paragraph 3D(7)(d) of the Exposure Draft provides that it is to be calculated so as to be achieve consistency with Article 5.1 of the of the *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS (2021)* of the OECD. Given that Pillar Two GloBE rules are not yet in effect, this will present operational difficulties to comply with this requirement, and may give rise to risk of misinterpretation. We further note that the more general disclosures are to be made to achieve consistency with a range of other measures promulgated by the OECD and the Global Reporting Initiative, and it is not clear how these documents can necessarily be determined in any consistent or cohesive manner. Further clarification is required to be given to the interactions of the public CBC reporting requirements with Pillar Two at a minimum, but also the approach that should be taken to the interactions between all four identified documents.
- As set out in the Exposure Draft, publication of the CBC information and the approach to tax will need to occur within 12 months after the end of the income year, which is aligned to existing CBC reporting requirements. It is worth noting that multinationals will have existing CBC requirements to comply with but in addition now will need to prepare additional disclosures in parallel. This may not provide sufficient time for multinational entities to adjust their reporting systems and processes to comply with the new requirements. We submit providing an additional 6 month period for taxpayers will allow for the increased resources to be marshalled in order to satisfy the increased compliance obligations in the Exposure Draft.
- General further guidance should be provided by the Australian Taxation Office in relation to the content required to be submitted to comply with the proposed Exposure Draft.

- The new reporting obligations are proposed to apply for the 2023-24 and later income years. We note that the proposed start date as set out in the Exposure Draft is inconsistent with the commencement date as indicated in the Explanatory Memorandum, being for income years commencing on or after 1 July 2023. If the Exposure Draft is enacted in its current state this could mean early balancing taxpayers are in scope of the proposed measures from 1 January 2023. We further note that in Budget 2022-23, it was also announced that the public reporting requirements would apply for income years commencing from 1 July 2023. We submit that this should be amended to be in line with the Explanatory Memorandum.

If you have any queries on any of our comments above, please contact Vanja Podinic on 02 9258 5932.

Yours faithfully,

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