

28 April 2023

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

By email: MNETaxTransparency@treasury.gov.au

Dear Sir / Madam,

## **Public Country-by-Country Reporting and Multinational Tax Transparency**

### **Background**

BAE systems provides some of the world's most advanced, technology-led defence, aerospace and security solutions. BAE Systems employs a skilled workforce of 90,500 people in more than 40 countries.

BAE Systems Australia (BAESA or We) employs 4,700 people. Working with customers and local partners, BAE Systems Australia develops, engineers, manufactures and supports products and systems to deliver military capability, protect national security and people, and keep critical information and infrastructure secure.

BAE Systems Australia welcomes the opportunity to make a submission on the Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency – Tax changes Exposure Draft (ED) and accompanying Explanatory Materials (EM).

BAE Systems Australia is a supporter of public tax transparency and has voluntarily adopted the Board of Taxation's Voluntary Tax Transparency Code. We accept public tax transparency plays an important part in generating public confidence in Australia's tax system and how it applies to multinational enterprises.

BAE Systems Australia has a number of concerns with the new tax transparency measures as set out in the ED and the EM. We are providing this submission to work with you to improve the legislation to achieve the best outcomes for Australia. This can be achieved by a commitment to a set of clear principles for the tax system, listed below.

1. **Certainty** – government should set out its vision for the business tax system, and steps with clear timelines to achieve this, so that businesses can plan for the longer term. Certainty does not mean that tax rates and policy never change – it means that changes should be in line with a clearly articulated and coherent vision. Any changes should be signalled in good time and government should be clear about the reasons behind them, so businesses can prepare and respond to make sure proposals are fit for purposes.
2. **Simplicity** – Simplicity should be a guiding principle throughout the tax system. It should be backed up by a comprehensive, transparent and independent system for assessing whether a proposal adds or reduces complexity, and whether any additional compliance burden introduced is proportionate to the additional revenue generated. Alignment with international norms is a key form of simplification, particularly for multinational groups and international investors.
3. **Proportionality** – businesses pay two costs in relation to tax: the tax itself and the business time and financial burden of understanding and applying the rules – including time spent engaging with the tax authorities. Tax policy design needs to take into account these compliance costs as they affect Australia's attractiveness as a place to build and invest in businesses.
4. **International Competitiveness** – Australia competes for business investment with many other world economies and tax is a key lever that affects the attractiveness of Australia. Changes should be made where possible to make the Australia more competitive

## Summary

BAE Systems Australia has been engaged with the Corporate Taxpayers Association and The Tax Institute consultation response, and we support their response to this consultation. The points raised below reflect that support and emphasise areas where BAE Systems Australia wishes to expand on that response.

The key points raised in our response are:

- As the implementation of public CBCR develops in different jurisdictions, the simplicity, clarity and consistency of publicly available information is critical to ensuring the effectiveness of public disclosed information. The structure of the public CBCR in Australia should reflect the OECD standard CBCR disclosures in order to provide the most benefit to Australia.
- The proposed disclosure of a list (and value) of intangible assets is outside the OECD standard requirement and therefore would be a new reporting requirement for MNEs.

- An exemption for defence companies from the proposal to disclose a list (and value) of potentially sensitive tangible and intangible assets of each reporting should be made available on the grounds of national security.
- To ensure simplicity and clarity of information the effective tax rate (ETR) calculation disclosure should be consistent with other OECD public CBCR proposals. The proposal to disclose, uniquely in Australia, an ETR calculation based on Pillar II framework principles disproportionately increases the compliance burden but also decreases the clarity of the information to the public user of the CBCR.
- The timing of the implementation of the public CBCR should provide businesses with sufficient time to adapt to new reporting requirements, and should be aligned with the implementation of Pillar II legislation in Australia.

## **Consultation Response**

### **Alignment with OECD Standard**

BAE Systems Australia supports the Government of Australia's commitment to improving the quality and comparability of tax disclosures by large businesses in Australia, by introducing standardised reporting requirements for large businesses (para 1.6 EM).

This commitment follows from other corporate disclosure announcements, such as the European Union CbC Directive (EU Directive 2021/2101).

It therefore would be beneficial to Australia to follow, as closely as possible, the existing public disclosure requirements to ensure the reporting position for large businesses is standardised. Deviation from the standardised reporting position risks undermining the value of the reported data, and ultimately deter investment into Australia.

### **Requirement to List Tangible and Intangible Assets**

Where the proposed disclosure requirements deviate from the EU/OECD standard model, there is a particular concern with the proposal to report a list, and book values, of tangible and intangible assets.

The listing of tangible and intangible assets would be a new reporting requirement for large businesses and the cost to collect and report the data would be disproportionate to the benefit to the public reader of the information. The listing of tangible and intangible assets is likely to contain commercially sensitive information that may not add any value to the public but would be of interest to a business competitor.

### **Exemption from Listing Tangible and Intangible Assets on National Security Grounds**

For companies involved in sensitive, national security and defence work, there will be additional layers of regulatory and government approvals necessary before such information could be

provided for public publication – if it ever would get permission to be published. Therefore, due to the nature of BAE Systems' business, there is a significant risk that we would be not be able to comply with this proposed legislation.

Therefore, the requirement to list tangible and intangible assets should be removed from the final reporting requirements, or the Minister for Defence should be provided with the ability to grant an exemption from complying with this legislation or reporting this information for businesses involved in sensitive or national security activities.

### **Simplify the Effective Tax Rate Calculation**

Another deviation from the OECD/EU standard model of public reporting is the proposal to calculate (and then disclose) the effective tax rate using OECD Pillar II principles rather than a simple ETR formula using data from the public CBCR. This means that similar public filings by a multinational in the EU and Australia would have the same profit/loss figures and the same income tax figures but different ETRs. This cannot be helpful to the public understanding in Australia of how multinational enterprises are taxed.

BAE Systems Australia considers that the use of unique ETR calculations in the public disclosures in Australia is likely to confuse the readers of the public information and deter investment into Australia.

The Pillar II ETR calculations are complex and detailed, and were designed with the intention of ensuring that multinational enterprises pay a minimum ETR of 15% in jurisdictions in which they have a presence. Calculating ETR using Pillar II rules is a disproportionately burdensome obligation for a reporting requirement.

### **Align Legislative Timetable with Pillar II**

The general trend has been for countries to introduce Pillar II legislation before introducing public CBCR. Australia has not yet enacted or published Pillar II legislation. Should Australia insist on an ETR calculation in the public CBCR the compliance burden on business would be reduced if the filing deadline for first public CBCR were linked to the timetable for the implementation of Pillar II rules in Australia.

Under the OECD Pillar II framework, the first Pillar II GLoBE returns are due 18 months after the end of the first in-scope accounting period. For most multinational enterprises the first in-scope year for Pillar II will 2024-2025 meaning that Australia is proposing that Pillar II calculations will be required for its public CBCR before they are required for under Pillar II legislation.

Should Australia maintain the proposal to use a Pillar II based ETR calculation for the public CBCR, the requirement to file a CBCR using Pillar II calculations should follow the Pillar II filing timetable for simplicity and to ease the compliance burden.

Should you have any questions, please do not hesitate to contact Matthew Nicholls on 0403 043 484.

Yours sincerely,

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