

By email: MNETaxIntegrity@treasury.gov.au

28 April 2023

International Tax Unit
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

PUBLIC COUNTRY-BY-COUNTRY REPORTING - BDO SUBMISSION

BDO refers to the invitation by the Treasury to provide comments on the Exposure Draft *Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes (Draft Bill)* and accompanying Explanatory Memorandum (EM). BDO is pleased to provide feedback and comments in relation to the Draft Bill.

The proposed changes require certain multinational enterprises (CBC reporting parents) to publish certain tax related information on an Australian government website, facilitated by the Commissioner for Taxation. The objective of the measures is to improve information flow to help investors and the public compare entity tax disclosures and to allow these groups the opportunity to make an assessment as to whether an entity's tax contribution to a jurisdiction aligns with their economic presence.

BDO views the proposed country-by-country reporting requirements being overly burdensome for Significant Global Entities (SGEs), particularly given the many existing reporting requirements, including the current country-by-country transfer pricing reporting framework. The guidelines provided by Treasury also lack detail in terms of what information is required to be publicly disclosed, specifically in relation to related party income and expenditure and tangible and intangible asset holdings. Additionally, BDO is concerned that publication of this data may disadvantage multinational businesses trading in Australia in commercially sensitive data being published, potentially resulting in a withdrawal of capital and business from the Australian economy by multinationals.

BDO also has concerns in relation to the compliance cost to be borne by SGEs in preparing the proposed disclosures, given that some elements fall outside the existing country-by-country reporting framework. The data published is likely to require expert knowledge for effective interpretation. As such, the data published may be of minimal public use. This is a concern given the additional cost and compliance burden to be placed on SGEs to make the disclosures.



Please see the attached Appendix for more detailed comments.

Should you have any questions or wish to discuss any of the comments made in our submission, please do not hesitate to contact me on 02 9240 9736 or lance.cunningham@bdo.com.au.

Yours sincerely

Lance Cunningham

BDO National Tax Technical Leader

BDO Submission to the Treasury

Multinational tax integrity - Tax changes - Country-by-Country Reporting

BDO has considered the government's Exposure Draft legislation on *Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency - Tax changes (Draft Bill)*. The proposed changes require certain multinational enterprises (CBC reporting parents) to publish certain tax related information on an Australian government website, facilitated by the Commissioner for Taxation.

The new disclosure requirements stem from GRI 207, published by the Global Sustainability Standards Board (GSSB), noting that Treasury have included three additional disclosures to those included in the GRI 207 guidelines. These are effective tax rates, expenses from related party transactions, and details of intangible assets. The Explanatory Memorandum (EM) notes that these additional disclosures have been included due to being indicators of corporate governance risk. BDO's feedback in relation to the proposed disclosure measures are set out below. Our feedback focuses on the additional compliance burden worn by Significant Global Entities (SGEs) in order to comply with the requirements, the resourcing constraints for SGEs in order to comply, public availability of sensitive data, the impact on Australia's place as an attractive jurisdiction to do business and the lack of clarity provided by Treasury to date in terms of the information to be disclosed. BDO views the requirement for SGEs to make public country-by-country reporting requirements where the CBC reporting parent is a non-resident overly onerous. These measures are over and above those recommended by the Organisation for Economic Cooperation & Development (OECD), European Union (EU) and GRI 207.

System and resourcing considerations

The proposed CBC reporting requirements set out in the draft Bill will require organisations to make adjustments to their financial reporting systems and processes. We note that the reporting requirements in the draft Bill does not consider the practical implications for CBC reporting parents in compiling the required information, particularly where this information is not already included in the audited financial statements or their precursors.

BDO notes that much of the information requiring disclosure is already provided to the Commissioner by SGEs when lodging Master Files and Local Files for transfer pricing purposes and income tax returns. Additionally, Australia has mechanisms to share tax information with OECD member nations and some non-OECD jurisdictions. Consequently, the Australian Taxation Office (ATO) currently has access to a large pool of country-by-country tax information. Given the complexity of the information being published and the ATO's existing access to much of this information, public availability of this information appears to be of little benefit when compared to the additional compliance burden. Effective comprehension of the data made publicly available under these measures will require expert financial and tax knowledge to interpret effectively. BDO submits that the disclosure requirements are too detailed for effective public use and this combined with the additional resources required to prepare the disclosures discounts their merit.

BDO appreciates that particular transactions and assets such as the location of and payments in relation to intangibles are inherently of higher risk to the Australian tax net and that these arrangements need to be monitored. BDO does however feel that this need should be balanced with not creating an excessive compliance burden for SGEs. BDO views the requirement for SGEs to make public country-by-country reporting requirements where the CBC reporting parent is a non-resident overly onerous. These measures are significantly over and above those recommended by the OECD, EU and GRI 207. Treasury should look to align its approach to country-by-country reporting with the OECD, EU, GRI and other global reporting initiatives.

If tax transparency is to be achieved on a global scale, cooperation and cohesion is required between governments and global standard setters. BDO recommends that Treasury look to align any published country-by-country reporting requirements with those operating globally, to improve information exchange between the ATO and other tax authorities and to consult multinational businesses operating in Australia more extensively as to the impact of any changes to country-by-country reporting, whether published or not.

Additionally, BDO recommends that Treasury consider a de minimus threshold for information that has not already been provided or available to the ATO. Without a de minimus threshold the relevant disclosures will create additional compliance burdens for CBC reporting parents, and in some cases for a very small marginal information gain. The requirements appear to extend further than global country-by-country reporting requirements and guidelines, including those published by the OECD and EU Country-By-Country Reporting Directive (the Directive). As an example, disclosures may be required on a country-by-country basis regarding revenue and expenditure for entities that may not be accounted for in the consolidated financial statements by virtue of the accounting standards. SGEs will be required to allocate further staff and financial system resources to collating this data, where in some cases the public benefit of publishing such data on a country-by-country basis is minimal.

The proposed requirements in a global context

A number of country-by-country reporting regimes exist around the world, many of which were instated following extensive consultation processes and feedback. As an example, the (EU) Directive requires group reporting covering all members of the group (including non-EU members). Disclosure requirements on a jurisdictional basis include a description of activities undertaken, employee headcount, net turnover (including related party turnover), profit or loss before tax, tax accrued and paid, and accumulated earnings. The Directive does provide some relief to multinational corporations (MNCs) in only requiring reporting in relation to EU member states and entities that are included in the EU's listing of non-cooperative tax jurisdictions or jurisdictions that are monitored by the EU but have made commitments towards implementing good tax governance principles.

BDO recommends that Treasury consider relieving SGEs from further reporting requirements in Australia where public country-by-country reporting is mandated in the parent entity's jurisdiction. Treasury may wish to incorporate an exemption from public CBC reporting where a SGE makes public country-by-country reporting disclosures under an established framework in another jurisdiction. In order for Australia to be an attractive destination for business investment and activity, Australia's

financial and tax reporting requirements must not be unnecessarily burdensome, particularly when compared to other jurisdictions.

The reporting requirements appear to be incongruous with the BEPS Action 13 approach to transparency in relation to country-by-country reporting. BEPS Action 13 includes an undertaking that jurisdictions have in place appropriate safeguards to ensure that information received remains confidential and is used for the purpose of assessing high-level risks in relation to transfer pricing, base erosion and profit shifting. The disclosures required, particularly those in relation to the location and quantum of tangible and intangible assets and mandating their publication appear to contradict this understanding.

Reporting and disclosure requirements

The draft EM confirms that the disclosure requirements contained in the draft Bill have been adopted from GRI 207 with some modifications. Treasury have included three additional disclosures to those included in the GRI 207 guidelines being effective tax rates, expenses from related party transactions, and details of intangible assets. We understand that the inclusion of disclosures in relation to related party expenditure and market values of intangibles is due to Treasury viewing these as indicators of corporate governance risk, and therefore being complementary to the GRI 207 disclosures. BDO does however note that these disclosures are over and above those currently included in existing standard country-by-country reporting to the ATO. This means the public reporting will require additional information collation and compliance burden for SGEs.

Whilst information basis for some of the disclosures will be available using existing accounting systems and processes and/or from the audited financial statements, additional disclosures are required which may require additional resources to prepare. BDO is concerned that the disclosures include commercially sensitive information, particularly the required disclosures in relation to tangible and intangible assets, related party and third-party revenue and related party expenditure on a country-by-country basis. The publication of this information may disadvantage SGEs with business operations in Australia due to such public disclosures broadly not being required in other jurisdictions. If entities are required to make public disclosures of commercially sensitive information, it will serve as a disincentive for SGEs to operate in Australia.

The draft Bill and EM provide little detail in relation to the form and substance required in making disclosures. BDO acknowledges that extraction from the audited financial statements will be possible in some cases. Practical complexity however arises, particularly in relation to disclosures in relation to the value and location of tangible and intangible assets. BDO recommends that Treasury provide further detail in relation to the disclosure requirements and the expected form. Some examples include the expected granularity of information required (i.e. a listing of all assets or a summary listing of assets), level of detail required in asset or category descriptions.

BDO recognises the tax risk associated with intangible assets, however, practical challenges arise in relation to internally generated intangible assets such as goodwill and those recognised on consolidation, particularly in assigning these to a particular jurisdiction.

BDO recommends that Treasury revise the asset disclosure requirements two-fold. The first recommendation is making disclosures category based, resulting in a less burdensome compilation

process whilst maximising simplicity for the audience. The second recommendation is imposing exclusions from reporting for intangible assets that are not owned, as an example, internally generated goodwill, given that they generally present a low profit-shifting risk and therefore present little risk to the Australian tax net.

Practical challenges will arise for taxpayers in ascertaining appropriate values for intangible assets not currently included in the audited financial statements, those based on historical transactions or values in the financial statements and those recognised as a function on consolidation accounting. For example, internally generated goodwill. BDO recommends that Treasury provide further guidance for taxpayers in making disclosures in relation to intangible assets, particularly those recognised based on historical values, those not currently recognised and those where ownership is difficult to determine by virtue of being recognised on consolidation. Consideration should be given to the tax risk associated with these assets and where a particular asset is low risk to the Australian tax net, excluded from the reporting regime.

The penalty regime applicable to SGEs in Australia for late lodgements in relation to tax obligations is stringent with large financial penalties. The current SGE penalty regime may be inappropriate in situations where a foreign parent company does not or cannot instruct a subsidiary entity such that it controls decision making and course of action. Application of the current SGE penalty regime in this scenario may undermine local and international directors' responsibilities to the company and shareholders.