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28 April 2023

Director
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Via email: MNETaxTransparency@treasury.gov.au

RE: Public Country-by-Country Reporting Consultation

Dear Sir or Madam:

The Australian government (the “Government”) announced a transparency measure for multinational entities to prepare for public release certain tax information on a country-by-country (“CBC”) basis and a statement on their approach to taxation, as part of the October 2022-23 Budget (the “Exposure Draft”). The transparency measure is intended to enhance the tax information entities disclose to the public and would be effective for income years commencing from 1 July 2023. The Government seeks stakeholders’ views on the Exposure Draft no later than 28 April 2023. On behalf of Tax Executives Institute, Inc. (“TEI”), I am pleased to respond to the Government’s request for input.

About TEI¹

TEI was founded in 1944 to serve the needs of in-house tax professionals. Today, the organisation spans the globe with 56 chapters, including membership in Australia. As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting fair tax policy at all levels of government. Our nearly 6,500 members represent 2,800 of the largest companies in Asia, Europe, and North and South America.

TEI’s members work for companies operating across all industries and market segments, including many companies who must currently file confidential CBC

¹ TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6) of the Internal Revenue Code of 1986, as amended.

reports pursuant to BEPS Action 13. We thus believe our perspective brings a balanced view of Exposure Draft's requirement that certain CBC information be made publicly available.

TEI Comments

TEI appreciates the opportunity to provide its views on the proposed requirement for large multinational enterprises ("MNEs") with operations in Australia to disclose certain tax information on a CBC basis. As noted in the Exposure Draft Explanatory Materials, large multinational enterprises are subject to confidential CBC reporting, in accordance with Action 13 of the OECD's base erosion and profit shifting ("BEPS") project. The Explanatory Materials go on to state, however, "some companies voluntarily disclose some CBC information but disclosures are fragmented leading to inconsistencies and difficulties interpreting and comparing the information."² Thus the Exposure Draft's requirement that certain MNEs publicly disclose CBC information is intended to "enhance transparency, as well as improve comparability and accessibility"³ of such information.

General Comment

Before discussing the details of the information of the CBC information the Exposure Draft proposes to make public, TEI is concerned that the Draft would apply extraterritorially, requiring non-Australian parent companies to disclose the requested information globally. This will trigger conflicts in terms of competence/authority as it renders certain elements of other jurisdictions' legislation ineffective. Other jurisdictions, however, have acknowledged that extraterritorial application of information reporting requirements is difficult and thus provided for an exception in such case. The EU public CBC reporting Directive, for example, provides for the possibility that EU subsidiaries of non-EU MNE may not have all the information the Directive requires to be reported. In such event, the Directive permits the EU subsidiary to draw up, publish, and make accessible a report on all the income tax information in its possession, obtained, or acquired, and a statement indicating that the ultimate parent entity or the standalone undertaking did not make the necessary information available. We recommend any final Australian legislation requiring publication of CBC information include this exception.

Specific Comments

The key objective of tax transparency is for the public, the ESG community, NGOs, and governmental jurisdictions to have insight into where MNEs pay taxes in relation to their profits and substance. Tax transparency seeks to discourage inappropriate profit shifting and tax avoidance by highlighting likely characteristics indicative of such practices. Information obtained from such transparency can also be used as a risk assessment tool to further assess any inappropriate practices. Tax transparency enables dialogue on the design and implementation of tax policies and practices, promotes

² Explanatory Materials at paragraph 1.7.

³ *Id.*

trust between governments and taxpayers, and facilitates an understanding of the role of government in advancing social and economic goals. We support transparency where it is beneficial and informative.

However, TEI believes the structure of the Exposure Draft does not meet these stated aims in a balanced manner, and we question whether it is in line with Australia's international commitments, such as those under BEPS Action 13. Indeed, it is our strong view that any obligation to publish CBC information must be coordinated through a multinational organisation such as the OECD. It is worrisome enough that the EU has created its own standards for publishing CBC information, but if every country follows suit – as Australia proposed to do here – enormous complexity will be introduced into the production of the required CBC information under the various standards. Varying CBC information reporting requirements will require MNEs to expend significant resources explaining why a number reported in Australia is different from a number reported in, *e.g.*, the EU or under paragraphs 1 and 4 of the Global Reporting Initiative's ("GRI") Standard 207. A simpler approach would be to require MNEs to publish CBC information under a single standard or to report information already prepared under BEPS Action 13, which could then be implemented into Australian law by reference to such standard.

In many places the Exposure Draft may result in less transparency and additional confusion given both the type of data requested and the Draft's definitions varying from non-public and public CBC standards / legislation in the rest of the world. Adoption of the Exposure Draft is likely to lead to several different versions of public CBC information existing for the same MNE for the same time-period and even different data for the same measure under the implementation regulations published by different tax authorities. Thus, while more data might be published, there may also be more confusion, leading to additional ambiguity and effectively less transparency, which would be contrary to the Exposure Draft's stated goals and is likely to require the expenditure of additional resources by both the tax authorities and taxpayers futilely reconciling such information. We highlight some of these issues below.

Paragraph 1.6 of the Explanatory Materials notes that the Government is "committed to improving the quality and comparability of tax disclosures by large businesses in Australia, by introducing standardised reporting requirements for large businesses." However, certain proposals in the Exposure Draft are inconsistent with the internationally agreed OECD CBC reporting requirements, Australian Pillar 2 legislation, and GRI Standard 207 paragraphs 1 & 4 – as the Draft includes different measures and different definitions. In addition, given the deviations from the information currently included on non-public CBC reports, we believe it is not accurate to state in paragraph 1.27 of the Explanatory Materials that "[m]ost of the information required to be published under these amendments will already be reported by entities in the 'CBC report' required to be provided" to the Government.⁴ The Exposure Draft is therefore at odds with the OECD's effort to seek global alignment and consistent standard by requiring publication of additional and different information than what is included in the

⁴ In the Appendix we provide a table summarizing the key differences between the Australia draft proposals and the existing internationally agreed non-public CbC, proposed EU public CbC and GRI 207.

current non-public CBC. Australia, as an OECD member, should respect this process and align to the international standards to which it agreed.

To reap the benefits of tax transparency, the amount of information disclosed needs to be assimilated, easily understood, and drive some value-added understanding. The content of the disclosure should be focused on the appropriate level of data for public information and assessment, which does not require an audit-like quantity of data or data that is competitively sensitive. In this regard, data should be limited to only high-level data points to determine compliance and risk assessment. Providing detailed listings of tangible and intangible assets and their values in every jurisdiction in which an MNE operates, as the Exposure Draft requires, would not seem to pass this test.

In addition, much of the data the Exposure Draft requests is competitively sensitive, such as the role and location of every entity, and the specific details of all an MNE's tangible and intangible assets. This may affect both the ability and likelihood of MNEs providing the information required by the Exposure Draft and may, at worst, affect the attractiveness of Australian investment if such broad ranging disclosures are required. Regarding such commercially sensitive information, TEI recommends the Government adopt the EU approach that permits an MNE to defer the disclosure of specific items of information for five years, provided the MNE clearly disclose the existence of the deferral, give a reasoned explanation for it in the report, and document the basis for the reasoning.

The Exposure Draft would also require publication of an MNE's effective tax rate ("ETR"). The Exposure Draft refers to Article 5.1 of the OECD's Global Anti-Base Erosion Model Rules for purposes of determining an MNE's ETR. However, an MNE's ETR under the OECD's model rules is calculated based upon data that differs from that proposed to be disclosed in the Exposure Draft. This will only lead to confusion and raise unwarranted questions. In addition, none of the non-public CBC reports, EU public CBC Directive, and GRI 207 require disclosure of an MNE's ETR. For these reasons, TEI recommends the Government remove the Exposure Draft's requirement that MNE's publicly disclose an ETR.

Overall, as a suggested direction, and to support the stated objectives whilst being balanced in the information requested, and to avoid the unintended consequence of multiple versions of CBC reporting information being made public, we recommend the Government adopt the approach of the EU Public CBC Directive for purposes of the kind of information reported as well as how the information is made available publicly, with the same definitions and format.

The Exposure Draft requires the CBC information to be published on a website maintained by the Government. The Draft does not, however, state how long that information would remain on such a site. Publishing such information on a Government website is inconsistent with the EU's approach of requiring publication on the relevant MNE's website and for only five years. TEI recommends the Government follow the EU's approach.

There should also be a *de minimis* exception for MNEs who only do a small amount of business in Australia. The exception should be based on a percentage of an MNE's worldwide revenue, *i.e.*, only if an MNE has a certain percentage or greater of its revenue from Australian sources should it be required

to file a public CBC report. TEI would be pleased to assist with the calibration of any *de minimis* exemptions that would be appropriate for various global groups, including financial groups.

Finally, on timing, we suggest that to allow for readiness for implementation, and to be in step with MNE's already preparing for the EU implementation, the legislation should be applicable from 1 July 2024 (a one year delay), for publication 12 months after the end of the relevant period. This will also put the publication in line with the implementation of Pillar 2.

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TEI appreciates the opportunity to comment on the Exposure Draft. Should you have any questions regarding TEI's comments, please do not hesitate to contact Benjamin R. Shreck of TEI's legal staff at bshreck@tei.org or +1 202 464 8353.

Respectfully submitted,



Wayne G. Monfries
International President
TAX EXECUTIVES INSTITUTE

Appendix

	Australia CBC Draft Proposals	Existing OECD non-public CBC	EU Public CBC	GRI 207
P&L Measures by Jurisdiction	Required (though definition of Related Party Revenue is different)	Required	Required	Required
Tax Accrued & Paid by Jurisdiction	Required	Required	Required	Required
Balance Sheet Measures by Jurisdiction	Required	Required	Required	Required
Employees by Jurisdiction	Required	Required	Required	Required
Statement of approach to tax	Required	Not required	Not required	Required
Expenses from transactions with related parties that are not tax resident in the jurisdiction	Required	Not Required	Not Required	Not Required
ETR including reasons for the difference between CIT accrued on profit/loss and tax due if the statutory rate is applied to profit/loss	Required	Not Required	Not Required	Not Required
Tangible assets other than cash and cash equivalent	Requires listing of book value of tangible assets in the jurisdiction	Only requires consolidated or sum of NBV for all tangible assets in the jurisdiction	Only requires consolidated or sum of NBV for all tangible assets in the jurisdiction	Only requires consolidated or sum of NBV for all tangible assets in the jurisdiction
Intangible assets other than cash and cash equivalent	Requires listing of book value of intangible assets in the jurisdiction	Not required	Not required	Not required