



Thursday, 4 May 2023

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

By email: MNETaxTransparency@treasury.gov.au

Dear Sir or Madam

Public country-by-country reporting exposure draft legislation

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback on *Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency – Tax changes* exposure draft legislation (ED) and explanatory materials (EM).

CA ANZ represents more than 128,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live. Around the world, Chartered Accountants (CAs) are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

The ED proposes to implement the October 2022-23 Budget announcement to require certain large multinationals to publicly disclose selected tax information on a country-by-country basis (CBC). CA ANZ supports well-designed tax transparency rules which are consistent with the global tax transparency rules.

Broadly, the ED requires the CBC reporting parent to make public the information provided in the OECD CBC reports, with additional information required under the Global Reporting Initiative's Sustainability Reporting Standards GRI 207: Tax (2019) (GRI 207) and additional items that currently do not exist in any global transparency reporting framework.

The narrative reporting aspect of the GRI 207 will provide better context behind the basic information published, however the compliance obligations for the CBC reporting parent to publicly disclose these additional items will significantly increase. Given the 1 July 2023 start date is fast approaching, we recommend the additional CbC data requirements for public disclosure that go beyond the current global transparency frameworks be *delayed* and subject to further consultation.

We note there is still a Post-Implementation Review of the Tax Transparency Code that has not been finalised since February 2019. There is also a Draft Appendix to the Tax Transparency Code (containing information from the Australian Accounting Standards Board on principles and guidance for entities voluntarily adopting the Tax Transparency Code to consider when preparing and presenting tax disclosures) which has been in draft since 2017. It would be helpful if these outstanding

documents were also considered and either withdrawn or updated to reflect any interaction with the additional measures proposed.

We have provided our feedback on the ED and EM in the attached Appendix.

If you have any queries regarding the submission, please contact Karen Liew at karen.liew@charteredaccountantsanz.com in the first instance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Croker'.

Michael Croker

Tax Leader - Australia

Comments on the ED and EM

Do investors and the public need all the information?

According to the EM, the objective of these amendments is to improve information flows to help investors and the public compare entity tax disclosures, to better assess whether an entity's economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction. With that objective in mind, we query why a CBC reporting parent should be required to publish the following items for each jurisdiction when those items are not required under current global public CBC standards such as the EU Directive on public CBC reporting (EU Directive 2021/2101), or GRI 207:

- Expenses arising from transactions with related parties that are not tax residents of the jurisdiction (paragraph 3D(6)(e))
- A list of tangible and intangible assets as at the end of the income year (paragraph 3D(6)(g))
- The book value at the end of the income year or tangible and intangible assets, other than cash and cash equivalents (paragraph 3D(6)(h)), and
- BEPS Pillar Two effective tax rates for each jurisdiction.

An investor or the public should be able to assess whether an entity's economic presence in a jurisdiction aligns with the amount of tax they pay in that jurisdiction without the details of the above items. The additional compliance burden for adding these data requirements for public disclosure will be significant and there needs to be a very strong policy rationale for Australia's rules to deviate from the global CbC frameworks.

Some specific exemptions should be entrenched in the legislation

CA ANZ is also concerned that making a list of tangible and intangible assets (and their book value) publicly available would potentially involve making commercially sensitive information publicly available for business competitors to analyse. We note that a condition for the exchange of CBC reports between the tax authorities is that there is no public disclosure of confidential information and other commercially sensitive information. The OECD Transfer pricing and CBC reporting: Action 13 – 2015 final report states:¹,

“44. 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. In cases where disclosure is

¹ OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241480-en>.

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required in public court proceedings or judicial decisions, every effort should be made to ensure that confidentiality is maintained, and that information is disclosed only to the extent needed.

45. The OECD Guide (2012) “Keeping It Safe” on the protection of confidentiality of information exchanged for tax purposes provides guidance on the rules and practices that must be in place to ensure the confidentiality of tax information exchanged under exchange of information instruments.”

Although subsections 3D(13) to (15) provides that the Commissioner may specify an entity that is exempt from publishing information of a particular kind, this does not provide enough certainty for entities upfront about the safety of their information from competitors. This is because:

- the Commissioner **may** exempt the entity from publishing particular information which means an entity would need the Commissioner’s approval for the exemption, and
- it will take time for the entities to apply and for the Commissioner give notice of the exemption.

Accordingly, CA ANZ recommends that there be an exemption specified in the legislation so that information is not required to be published if it involves revealing commercially sensitive information.

If a foreign headquartered multinational group only has a minimal presence in Australia, they should not be within scope for these new rules as the compliance costs involved for the Australian presence far outweigh Australia’s exposure to tax risks from these entities. Like the EU Directive, there should be a de minimis rule for foreign headquartered subsidiaries and branches to be within the public CBC reporting. The EU Directive only requires multinational groups that are not EU parented to report if they have EU subsidiaries or branches of a certain size.

CA ANZ recommends a de minimis rule for foreign headquartered subsidiaries and branches to be within the Australian public CBC reporting.

Application date of amendments

We note that there is inconsistency between the draft ED and the draft EM concerning the application date of the amendments. Item 3 of the ED states:

“The amendments made by this Schedule apply in relation to the 2023-24 income year and later income years.”

However, the EM states at paragraph 1.38:

“The amendments apply to reporting obligations for income years commencing on or after 1 July 2023.”

This inconsistency affects early balancers, such as a December early balancing entity which is already subject to the measure as drafted as its 2023-24 income year commenced on 1 January 2023. If the application provision adopted the words provided in the EM, then the measure would apply to a December early balancing entity from 1 January 2024.

With the public CBC reporting measure only in draft form and with draft legislation to incorporate Pillar Two in Australian legislation yet to be released for consultation, the requirement for early balancers to collect data from 1 January 2023 for the public CBC reporting measure is unreasonable (especially given the draft legislation was only released on 6 April 2023).

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Accordingly, we recommend the application date be deferred to provide affected entities greater time to prepare for implementation and to also address overseas jurisdictions which have an alternative form of public CBC reporting.

In addition, if our earlier de minimis recommendation is not adopted, a transitional staggered implementation could be adopted for example for affected entities that, while they might be a CBC reporting parent, have a smaller Australian presence.

CA ANZ recommends the application date be deferred to provide affected entities greater time to prepare for implementation and the inconsistency between the ED and the EM concerning the application date be addressed.

Consistency with global tax transparency rules

If the application date for the amendments is not deferred, to ensure the public CBC reporting in Australia is streamlined with the development of other global tax transparency rules, we recommend the requirement to publish the effective tax rate based on Pillar Two rules be removed, or at least deferred until the Pillar Two rules have been enacted in more jurisdictions around the world (including Australia).

Given that Pillar Two effective tax rates are not required to be filed with the relevant tax authority until 18 months after year end for the first year and 15 months after year end subsequently, we have concerns around requiring multinational groups with operations in Australia to prepare their Pillar Two effective tax rates globally for Australian public CbC reporting purposes up to six months earlier than the timelines agreed by OECD Inclusive Framework members (including Australia). We note that other current global public CBC reporting standards do not require effective tax rates to be disclosed.

Any additional data requirements in excess of existing global transparency frameworks should ideally be agreed at a global level, such as through the OECD, to ensure jurisdictions do not introduce inconsistent regimes.

From a practical perspective, the early disclosure of the Pillar Two effective tax rate for public consumption may cause confusion and will do little to improve public perception or understanding of the tax system. Corporates will have to try and reconcile what the effective tax rate means and why it differs to the effective tax rate in their annual reports and/or Tax Transparency Report. The effective tax rate should be consistent with other already established and understood tax transparency measures.

CA ANZ recommends the requirement to publish the effective tax rate based on Pillar Two rules be removed, or at least deferred until the Pillar Two rules have been enacted in more jurisdictions around the world (including Australia).

Voluntary disclosure by multinational groups

Given previous experience with the Australian Taxation Office (ATO) reporting of information about large corporate tax entities, we anticipate that companies will be concerned about the *manner* in which the ATO will publish the information. Of particular concern will be entities whose statistics may, on their own, raise concerns about the presence of business activities in certain jurisdictions. But with

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appropriate *further explanation* of their circumstances, these concerns can be readily allayed to the general reader. Accordingly, we think it is very important that provision be made for additional voluntary disclosures by the public CBC reporting parent, and for that additional information to be published by the ATO to provide further transparency and thereby avoid any misconceptions about the published data.