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The Treasury
Langton Crescent
PARKES ACT 2600

email: MNETaxTransparency@treasury.gov.au

RE: Treasury Laws Amendment Bill 2024: Multinational Tax Transparency – Country-by-Country Reporting

The Australian Chamber of Commerce and Industry (ACCI) appreciates the opportunity to provide comment on the revised exposure draft of the proposed new Multinational Tax Transparency Bill, specifically country-by-country reporting (CbCR).

ACCI is Australia's largest and most representative business association. Our members are all state and territory chambers of commerce, which in turn have 430 local chambers as members, as well as over 70 national industry associations. Together, we represent Australian businesses of all shapes and sizes, across all sectors of the economy, and from every corner of our country.

We support the intent of the legislation to provide a meaningful improvement in the tax transparency of MNEs operating in Australia. However, as raised in earlier consultations on the initial exposure draft, we stress that it is necessary to get the balance right.

ACCI raised serious concerns during the earlier consultation, particularly on:

- The inclusion of additional disclosure requirements that extended beyond the OECD standard and EU CbCR disclosure requirements.
- The requirement to report financial information and the amount of tax paid in all jurisdictions that the multinational enterprise (MNE) operates.
- The lack of a materiality threshold for jurisdictional reporting.
- A lack of safeguards for sensitive data.

We acknowledge extensive consultation has been undertaken with key stakeholder including ACCI after the initial exposure draft was withdrawn last year. We appreciate that, following this consultation, the current version of the exposure draft has addressed many of the concerns that ACCI and other stakeholders raised. However, there are still issues around the Country-by-Country Reporting Jurisdictions list and exemptions from public disclosure of sensitive data that require further consideration.

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Additional disclosure requirements

During earlier consultations on the legislation in 2023, ACCI stressed the need for consistency between the information disclosure requirements applying in Australia and those applying in other jurisdictions. Given the OECD CbCR framework is being instituted internationally, it is important that the Australian reporting requirements follow as closely as possible the OECD standard, and that applying in other jurisdictions such as the EU CbCR requirements.

The initial exposure draft of the Bill included metrics that were not included in the OECD standard or required in other jurisdictions, specifically effective tax rates (ETRs); expenses from related party transactions; and details on intangible assets. There was no clear reason for the inclusion of this additional data, or indication of the benefit that reporting on these measures would provide. The lack of consistency with reporting requirements in other jurisdictions would lead to a substantial additional administrative and compliance burden, requiring MNEs to develop bespoke reporting frameworks for Australia.

ACCI is reassured by the removal of these additional data disclosures from the CbCR requirements in the current version of the exposure draft. The Australian CbCR requirements now better align with the OECD standard, the EU CbCR Disclosure and those applying in other jurisdictions.

However, we remain concerned about the request to provide a reconciliation between the current tax expense and the theoretical tax expense based on the country corporate tax rate. On this point the Bill is still not in line with the current CbCR and the future EU public CbCR and will consequently entail a significant and unnecessary administrative burden for companies.

Disclosure of information for all jurisdictions the MNE operates in

ACCI was concerned that the CbC reporting requirements of the initial exposure draft of the Bill required MNEs the reporting of financial and tax information in all jurisdictions that the MNE operates, with this information then published on the Treasury website. This is well beyond the OECD Standard and the EU public CbCR Disclosure requirements.

In the EU, public disclosure is limited to operations in EU member states and EU listed non-cooperative jurisdictions, with financial details and tax paid in other jurisdictions reported on an aggregate basis, as activity in the 'rest-of-world'. ACCI argued a similar approach should be taken in Australia, with disclosure limited to the Australian operations of the entity as well as blacklisted/grey-listed states, i.e.



countries with very low to zero tax rates and where there are no residency requirements for non-domiciled investors. Activity from all other countries should only be required to be reported on an aggregated basis as the 'rest-of-world'. ACCI asserted this approach delivers the necessary information on an MNE's financial arrangements, revenues and tax paid in Australia, without the very high administrative burden and compliance cost of reporting in every jurisdiction the entity operates.

ACCI endorse the decision to limit the disclosure requirements to just Australia and those included on the Country-by-Country Reporting Jurisdictions list, with information from all other countries to be reported on an aggregated basis. This significantly reduces the administrative burden on MNEs. It now better aligns with the OECD standard and those applying in other jurisdictions, such as the EU CbCR Disclosure.

However, we question the proposed blanket approach and particularly the inclusion of Switzerland, Singapore, and Hong Kong on the list of CbCR Jurisdictions. The exposure draft provides no clear guidance, nor are there any prerequisites for listing or de-listing countries. In contrast, the EU listing process is based on objective and verifiable criteria. The explanatory statement to the exposure draft simply notes that jurisdictions included on the CbCR Jurisdictions list are those that are "*typically associated with tax incentives, tax secrecy, and other matters likely to facilitate profit shifting activities*". While the CbCR Jurisdiction list does mostly coincide with countries specified in the International Dealings Schedule (IDS), the IDS is focused on related-party dealings and only a subset of these countries are relevant to "profit shifting activities". Switzerland, Singapore and Hong Kong are members of the OECD's Global Forum on Transparency and the exchange of information for tax purposes. There is no clear reason for their inclusion on the CbCR Jurisdictions list.

Materiality

The earlier draft Bill did not include a materiality threshold, with MNEs required to disclose financial and tax information on its operations, regardless of the amount of revenue generated in Australia and other jurisdictions where it operates.

While an MNE may operate in many countries, the bulk of an MNE's operations and revenue is typically generated in a small number of countries. For large MNEs with only a very small footprint in Australia, ACCI questioned the value of disclosing financial details and tax paid. This would greatly increase the administrative and compliance burden and may dissuade MNEs from setting up operations in Australia.

ACCI had suggested, a materiality threshold should be included in the Bill, exempting MNEs with operations in Australia below a certain threshold. This should be consistent with other financial disclosure requirements in Australia. As an example,



the proposed new climate-related financial reporting legislation only requires MNEs to report if their Australian operations meet two or more of the following:

- \$50 million or more in consolidated revenue
- \$25 million or more in consolidated assets
- 100 employees or more.

ACCI support the decision to set materiality threshold for CbCR, exempting MNEs with turnover from Australian operations of less than \$10 million from the disclosure requirements. While we consider the higher (medium-sized business) threshold ACCI had previously proposed to be more proportionate to Australian compliance efforts, given the broad breadth of information creates a considerable reporting burden on business. The lower (small business) threshold does go some way to reduce the administrative burden on MNEs in the early stages of establishing operations in Australia.

Safeguards for sensitive data

ACCI's earlier submission noted the lack of safeguards for sensitive data. The initial exposure draft of the Bill requires MNEs to provide CbC financial and tax information to the ATO, with this information then published on a publicly accessible government website. However, there were only limited provisions in the proposed legislation to protect or exclude from publication information that may be confidential or commercially sensitive.

While an entity can apply to the Tax Commissioner for an exemption from publication where disclosure of particular information by a particular entity would be inappropriate, this does not apply explicitly to confidential and commercially sensitive information. The explanatory material then states that "it is expected these discretions will only be exercised in limited circumstances".

The decision to allow an exemption from publication appears to be solely at the discretion of the Tax Commissioner. There are no clear guidelines as to what may qualify for an exemption or the criteria the Tax Commissioner would apply in determining whether to withhold this information from publication. It is not evident that this exemption is applicable to information deemed to be confidential and/or commercially sensitive.

More clarity is needed on how confidential and commercially sensitive information is to be treated, how MNEs can apply and qualify for an exemption from publication of this information and the criteria the Tax Commissioner must apply in determining whether to grant an exemption. ACCI insist that an exemption for confidential and commercially sensitive information of should be granted in the law itself to provide legal certainty.



Conclusion

It was important to get the balance right so that the Multinational Tax Transparency CbCR requirements provide a meaningful improvement in tax transparency while at the same time are workable and do not impose a large administrative and compliance burden on MNEs operating in Australia. ACCI appreciates that the government has engaged in genuine consultation on the CbCR requirements over the past year. We appreciate that many of the issues raised by ACCI in earlier consultation have been addressed.

ACCI recognise the revised exposure draft of the legislation is a substantial improvement on the earlier draft Bill. However, there are still some crucial issues that need to be dealt with. We would appreciate further consideration and resolution of the above-mentioned areas of concern in order to fully align the proposed legislation with the OECD standards and maintain a reasonable level of disclosure in line with the policy intent.

ACCI would welcome the opportunity for further discussion on these and other issues related to the CbCR requirements. Please contact ACCI's Principal Economist, Peter Grist on 02 6270 8021 or peter.grist@acci.com.au for further detail on ACCI's submission.

Yours sincerely

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