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March 4, 2024

Dear Madam, Dear Sir,

The Association of French Large Companies (Afep) welcome the opportunity to comment on the new exposure draft dealing with the Public country-by country reporting in Australia. Our association brings together 117 of the largest French companies operating in France and internationally in all sectors of activity that are very much concerned by the implementation of Public country-by-country (CBC) reporting.

According to the European Directive 2021/2101 and 2013/36/EU (EU public CBCR and public CbCR specific to the banking industry), this reporting obligation will already be applicable to European parent companies with a turnover superior to EUR 750m for the last two fiscal years, and to European subsidiaries/branches of non-EU groups.

In this context, we welcome the implementation of the Public CBC reporting in Australia to improve the tax transparency measures and the fact that the new version is considering some of the remarks pointed out by the business. However, French large companies remain concerned by (i) the extraterritorial application of this new domestic reporting obligation including foreign headquartered groups already submitted to a public CBC reporting obligation, and (ii) the additional disclosures required which represent a huge administrative burden and are confidential and could trigger commercial harm.

Our members are therefore strongly opposed to such a wide application of this new reporting obligation applicable to French groups and new disclosure requirements that could be misleading, generate additional costs and raise confidentiality and liability issues for preparers. For the reasons exposed in annex, Afep requests to limit the scope of the entities subject to Public CBC reporting to Australian subsidiaries or branches of foreign headquartered groups or to have the same reporting scope in Australia than the list of non-cooperative or partially cooperative countries set forth by the OECD forum on tax transparency, and to limit the requested information.

Yours sincerely.

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ANNEX

1- Scope of entities subject to this new reporting obligation must be limited to Australian subsidiaries or branches

Australian's new tax transparency proposal would be applicable to CBC reporting parent i.e., the entity's annual global income is A$1 billion or more, could be either Australian or foreign headquartered group and 10 M$ or more of the aggregated turnover is Australian-sourced, which would exclude CBC group with only a very small presence in Australia.

The list of countries for which the country-by-country reporting would be required is too broad.

The parent company of these groups would be required to provide qualitative and quantitative information for Australia and 41 specific jurisdictions (those typically associated with tax incentives, tax secrecy…) and for the other countries, data could now be aggregated for all foreign jurisdictions. And the list includes countries now fully compliant with transparency and exchange of information obligations (as confirmed by the OECD Forum performing the reviews).

Therefore, French large companies recommend that the list should be based on the list of non-cooperative or partially cooperative countries set forth by the OECD forum on tax transparency. This is the international reference, also used by the European Union to establish its black and grey lists.

In addition, if the list is not the same as the list of non-cooperative or partially cooperative countries set forth by the OECD forum on tax transparency, this would result into an extraterritorial application of domestic law, which is not acceptable. There is neither legal nor tax reasons to provide information (aggregated or not) regarding all the non-Australian companies of non-Australian groups.

Through Directives 2021/2101 and 2013/36/EU, French Groups are already submitted to the public CBC reporting obligation, to which we believe this domestic law seeks alignment. The application of this new report to the afore-mentioned Groups would be duplicative, adding more compliance burden with very limited benefit for the public who already has access to this information.

Afep is opposed to this extraterritorial application of this new Australian domestic obligation to French groups because of their Australian operations. If the list of reported countries is not the same as list of non-cooperative or partially cooperative countries set forth by the OECD forum on tax transparency, the scope of the Public CBC reporting should be applicable to Australian groups and Australian subsidiaries/branches of foreign groups only (similar to the European Public CBCR).

2- The public CBC reporting must be limited regarding information to be disclosed in order to preserve confidentiality and to avoid commercial harm

The Australian draft legislation requires additional information to be disclosed compared with OECD comments and/or European Directive related to CBC.

In particular, we are very worried by the requirement to reconcile the actual amount of accrued current tax with the amount of theoretical tax applicable on the profit before tax based on country corporate tax rate, as it represents a huge administrative burden for companies.

The additional information to be disclosed in this new draft would decrease compared to the previous one but still include :

- Statement on the approach to tax
- Revenue from third parties
- Revenue from transactions with related parties that are not tax residents of the jurisdiction[1]
- Book value of tangible assets at the end of the income year, other than cash and cash equivalents
- And for Australia and jurisdictions specified by the Australian Minister, reasons for difference between CIT accrued on profit/loss and tax due if the statutory rate is applied to profit/loss.

[1] Even if the EU public BcB data includes reporting of revenues, the split requested will raise additional issues for companies.

The Australian public CBC reporting proposal still goes beyond the requirements of other global standards on this matter. The foreign headquartered groups would have to implement specific data reporting process to meet the Australian requirements, which could trigger significant cost for their Australian subsidiaries regarding the number of additional data requested.

Even though the Commissioner is allowed to grant some exemptions through written notices, the nature of those exemptions remains unknown at this stage.

The administrative burden and cost attached to the implementation of the public CBC reporting must be limited as far as possible. The definition of the data must be similar to the same definition than the one applicable under other global standard (same data, same perimeter of subsidiary).

Beyond the additional administrative burden and ensuing additional costs (change of financial communication tools, ERP, creation of new reporting tools), a declaration raises real confidentiality and/or distortion of competition difficulties. There is a real economic problem for the groups if strategic and confidential information were to be disclosed, for example in the event of a leak in a jurisdiction benefiting from the information. This would be particularly damaging as it would lead to the communication of strategic information from companies to competitors and/or customers.

This additional information is very sensitive or confidential. The disclosure of such information would trigger commercial harm. It is why in Europe, these additional items are not at all requested and, for the other information requested in both Australia and Europe, a safeguard clause has been providing for European groups. This clause allows the European groups:

- not publishing the requested data for 5 years if there is a commercial harm;
- in the event of non-publication of the data pursuant to the safeguard clause, removal of the obligation to publish them retroactively at the end of the 5-years period.

The existence of such a clause demonstrates that the publication of information can trigger effective commercial harm.

AFEP Member Companies (117)

ACCOR
AFM (Association Familiale Mulliez)
AIRBUS
AIR FRANCE KLM
AIR LIQUIDE
ALSTOM
ALTICE FRANCE
AODocs*
ARCELORMITTAL FRANCE*
ARKEMA
ARTEMIS
AXA
BIOMERIEUX
BNP PARIBAS
BOLLORÉ
BOUYGUES
BPCE SA
BUREAU VERITAS
CAPGEMINI
CARREFOUR SA
CASINO GUICHARD PERRACHON
CLARIANE
CMA CGM
COMPAGNIE DE SAINT-GOBAIN
COMPAGNIE PLASTIC OMNIUM
CONSTELLIUM
COVIVIO
CREDIT AGRICOLE SA
CRITEO
DANONE
EDENRED
EIFFAGE
ELIOR GROUP
ELIS
ENGIE
ERAMET
ESSO SAF*
EURAZEO
EUROFINS*
EURONEXT
EUTELSAT GROUP
FIVES
FNAC DARTY
FORVIA
GALERIES LAFAYETTE
GE Vernova France*
GECINA
GENERALI FRANCE*
GETLINK
GROUPAMA ASSURANCES MUTUELLES
GROUPE BIC
GROUPE INDUSTRIEL MARCEL DASSAULT
GROUPE LACTALIS
GROUPE ROCHER
GROUPE SEB
HERMES INTERNATIONAL
HSBC Continental Europe*
ICADE
ILIAD
IMERYS
INTERNATIONAL SOS
IPSEN
JCDECAUX
KERING
KINGFISHER FRANCE*
LAGARDERE SA
LAZARD FRERES
LEGRAND SA
L'OREAL
LVMH – MOET HENNESSY LOUIS VUITTON
MANPOWERGROUP*
MERSEN
MICHELIN
NESTLE FRANCE*
NEXANS
ORANGE
PERNOD RICARD
PEUGEOT INVEST
RAMSAY SANTE
REMY COINTREAU
RENAULT GROUP
REXEL
ROQUETTE FRERES
ROTHSCHILD & CO
SAFRAN
SANOFI
SCHNEIDER ELECTRIC SA
SCOR
SHELL FRANCE*
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SNF
SOCIETE GENERALE
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SOLVAY*
SONEPAR
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